

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19604 of 2018

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Indra Kant Jha S/o Late Sahdeo Jha resident of Mohalla Nath Nagar, P.S.
Nath Nagar, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Department of Higher Education, Government of Bihar, Patna
2. The Director Higher Education, Department of Higher Education, Government of Bihar, Patna.
3. Special Secretary, Department of Education, Government of Bihar, Patna.
4. Additional Secretary, Department of Education, Government of Bihar, Patna.
5. Tilka Manjhi Bhagalpur University, Bhagalpur through its Registrar.
6. Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
7. Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
8. Financial Advisor, Tilka Manjhi Bhagalpur University, Bhagalpur.
9. Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur.
10. Principal, T.N.B. College, Bhagalpur.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 20640 of 2014

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1. Najmul Hakim Nayeem, S/O Md. Abu Nayeem, resident of Islam Nagar (gumti no. 3), Muhalla Bhikhanpur, P.s.-Ishak Chak, District-Bhagalpur, at present posted as Demonstrator/Laboratory Incharge Department of Botany, in T.N.B.College, Bhagalpur
 2. Shyam Sundar Mishra, son of Sri Kamleshwar Mishra, resident of quarter no. 9, T.N.B. College campus Bhagalpur, at present posted as Demonstrator/Laboratory Incharge Department of Zoology, in T.N.B.College, Bhagalpur
 3. Indrakant Jha, son of late Sahdeo Jha, resident of Muhalla Nathnagar, P.S.-Nathnagar, Dist.-Bhagalpur, at present posted as Demonstrator/Laboratory Incharge of Physics Department, in T.N.B.College, Bhagalpur
 4. Pankaj Kumar Jha, son of Sri Akhileshwar Jha, resident of village Rampur Dih, P.S.-Shahkund, District-Bhagalpur, at present posted as



Demonstrator/Laboratory Incharge Department of Zoology, in
T.N.B.College, Bhagalpur

5. Gangadhar Chaudhary, son of late Shivanand Chaudhary, permanent resident of village Murali, P.S.-Mahishi, District-Saharsa, at present posted as Library Assistant in T.N.B College, Bhagalpur.
6. Bibhash Chandra Jha, son of late Vishwanath Jha, resident of Mahavir Prasad Dwivedi Road, Kajwali Chak, P.S.-Tatarpur, District-Bhagalpur, at present posted as Assistant in T.N.B.College, Bhagalpur
7. Kartik Chandra Chakravarty, son of Anandi Nath Chakravarty, resident of Mahashay Dyorhi, P.S.-Nathnagar, District-Bhagalpur at present posted as Assistant in T.N.B. College, Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Secretary Higher Education, Government of Bihar
3. Special Secretary, Education Department, Government of Bihar.
4. Director Higher Education, Government of Bihar
5. Tilka Manjhi Bhagalpur University, Bhagalpur through the Register of the said University.
6. The Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur
7. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur
8. The Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur
9. The Principal, T.N.B.College, Bhagalpur

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 2905 of 2019

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Durga Rani Sarkar W/O Late Shashi Prasad Singh R/O Village and PO
karaharia, PS-Bath, District Bhagalpur

... .. Petitioner/s

Versus

1. The T. M. Bhagalpur University, Bhagalpur, through Its Registrar



2. The Vice Chancellor ,T.M. Bhagalpur University,Bhagalpur
3. The financial Advisor ,T.M. Bhagalpur University, Bhagalpur
4. The Finance Officer ,T.M. Bhagalpur University, Bhagalpur
5. The Principal T.N.B.college, Bhagalpur
6. The State of Bihar Through The Principal Secretary Education Department Government of Bihar, New Secretariat, Patna
7. The Special Secretary, Education Department, Government of Bihar, New Secretariat, Patna
8. The Director, Department of Higher Education , Govt Of Bihar Patna

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 6988 of 2021

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1. Amrendra Kumar Jha S/o Shakti Nath Jha R/o - MS Quarter No. 1, T.N.B. College Campus, Bhagalpur, P.S. - Tatarpur, Town and District- Bhagalpur - 812007.
2. Bibhash Chandra Jha S/o Vishwanath Jha, M.P. Dwivedi Road, Kajwali Chak, P.S. - Tatarpur, Town and District - Bhagalpur - 812002.
3. Kartik Chandra Chakraverty S/o Anandi Nath Chakraverty R/o Somesh Babu Lane, Bangali Tola, Mohanpur, Champanagar, P.S. - Nathnagar, District- Bhagalpur, PIN Code - 812004.
4. Gangadhar Choudhary S/o Shivnand Choudhary R/o - Puranisarai, Rampur Khurd, P.S. - Nathnagar, District- Bhagalpur - 812006.
5. Syed Zainul Abedin S/o Syed Shams Uddin R/o - 7, Meer Feku Lane, near Idgah, Barahpura, P.S. - Ishakchak, Town and District- Bhagalpur - 812001.
6. Jahandar Ali Meerza S/o Yousuf Meerza R/o - Wasif Manzil, Rekabganj, Urdubazar Road, P.S. Tatarpur, Town and District- Bhagalpur - 812002.
7. Pankaj Kumar Jha S/o Akhileshwar Jha R/o-Srikrishnanagar, Nayachak, Ishakchak, P.S. - Ishakchak, Town and District- Bhagalpur - 812001.
8. Shyam Sundar Mishra S/o Kameshwar Mishra R/o - Quarter No. 9, T.N.B. College Campus, P.S. - Tatarpur, Town and District- Bhagalpur - 812007.

... .. Petitioner/s

Versus

1. The T. M. Bhagalpur University, Bhagalpur, through its Registrar.
2. The Vice - Chancellor, T.M. Bhagalpur University, Bhagalpur.



3. The Financial Advisor, T.M. Bhagalpur University, Bhagalpur.
4. The Finance Officer, T.M. Bhagalpur University, Bhagalpur.
5. The Principal, T.N.B. College, Bhagalpur.
6. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
7. The Special Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
8. The Director, Department of Higher Education, Govt. of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 19604 of 2018)

For the Petitioner/s : Mr.Ajit Kumar, Adv.
For the Respondent/s : Mr.Jitendra Kumar Roy 1 -SC13.

(In Civil Writ Jurisdiction Case No. 20640 of 2014)

For the Petitioner/s : Mr.Abhinav Srivastava, Adv.
For the Respondent/s : Mr. Manoj Kumar, AC to GP-4
Mr. Ajay Kumar, AC to GP-4

(In Civil Writ Jurisdiction Case No. 2905 of 2019)

For the Petitioner/s : Mr. Purushottam Kumar Jha, Adv.
Mr. Avanindra Kumar Jha, Adv.
Mr. Narendra Kumar Sinha, Adv.
Mr. Anand Tiwary, Adv.
For the State : Mr. Subash Chandra Mishra, SC-16
Mr. Madhukar Mishra, AC to SC-16
Mr. Samir Kumar, Adv.

(In Civil Writ Jurisdiction Case No. 6988 of 2021)

For the Petitioner/s : Mr. Purushottam Kumar Jha, Adv.
Mr. Avanindra Kumar Jha, Adv.
Mr. Narendra Kumar Sinha, Adv.
Mr. Anand Tiwari, Adv.
For the Respondent/s : Mr. S.S. Tiwary, AC to AAG-13
For the University : Mr. Ashhar Mustafa, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 25-08-2022

Regard being had to the commonality of the issue involved in all the aforesaid four writ petitions, it was thought apposite to hear them



analogously and accordingly, they were heard together with the consent of the parties and are being disposed off by the present singular order.

2. Challenge has been made to the decision of the Special Secretary, Education Department, Government of Bihar, Patna dated 08.09.2014, whereby and whereunder the appointment of the petitioners of the aforesaid four cases has been held to be contrary to the rules / regulations, consequently their appointments have been held to be illegal.

3. Before, advertng to the factual outline of the cases in hand, it would be appropriate to mention here that as far as CWJC No. 2905 of 2019 is concerned, the petitioner therein is the widow of one Late Shashi Prasad Singh, who was employed as Class-III employee in the TNB College, Bhagalpur under the Tilka Manjhi Bhagalpur University, Bhagalpur and had stood superannuated w.e.f. 30.09.2016, whereafter, he died on 24.11.2016.

4. In order to narrate the factual aspect of the



matter, it would be appropriate to refer to the facts of one of the aforesaid writ petitions i.e. the one bearing CWJC No. 20640 of 2014. The petitioners were appointed on non-teaching post of Assistant/ Sorter/ laboratory In-charge/ Library Assistant etc., in an around the year 1984, in the TNB College, Bhagalpur under the Tilka Manjhi Bhagalpur University, Bhagalpur, initially on daily wages, whereafter their services were regularized, however, in the year, 1999, their salary was stopped, leading to them having approached this Court by filing a writ petition bearing CWJC No. 2300 of 2000. A co-ordinate Bench of this Court, by an order dated 05.08.2005, passed in the aforesaid writ petition bearing CWJC No. 2300 of 2000, relying on the Order dated 19.03.2005 passed by the Chancellor of the Universities, directing for regularization of the services of the petitioners and payment of salary to them, had directed the respondents to pay the salary of the petitioners at the earliest. It is a matter of record that the petitioners were not paid salary, hence they had to



file a contempt petition bearing MJC No. 203 of 2006, whereafter the services of the petitioners as also that of the husband of the aforesaid Smt. Durga Rani Sarkar, were regularized with effect from the date of their initial appointment vide office order dated 08.03.2007, issued by the Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur. The said order dated 08.03.2007 was ratified by the State Government and the State Government, by an order dated 02.05.2007, which is at Annexure-10 to the aforesaid writ petition bearing CWJC No. 20640 of 2014, issued under the pen and signature of the Deputy Secretary to the Government, Human Resources Department (Higher Education), Government of Bihar, Patna had granted approval to the regularization of the services of the petitioners with effect from the date of their initial appointment. In fact the said order dated 02.05.2007 categorically mentioned therein that the same was being issued in light of the directions issued in MJC No. 203 of 2006. Thereafter, the said contempt petition bearing MJC



No. 203 of 2006 was disposed of vide order dated 10.5.2007.

5. The misery of the petitioners did not stop here inasmuch as by an order dated 09.11.2009, the Respondent-University modified the date of absorption of the petitioners and directed for recovery of excess payment made to them, which was challenged by the petitioners, by filing two writ petitions bearing CWJC No. 17867 of 2009 and CWJC No. 16674 of 2009. The aforesaid two writ petitions were heard by a coordinate Bench of this Court, which by an order dated 05.02.2013 had though quashed the aforesaid order of the Respondent-University dated 09.11.2009, but had remanded the matter back to the State Government for granting an opportunity of hearing to the petitioners and then taking appropriate decision in the matter. It appears that thereafter, the petitioners were given an opportunity of hearing and then the Special Secretary, Education Department, Government of Bihar, Patna passed the impugned order dated 08.09.2014, holding the



appointments of the petitioners to be illegal and contrary to the rules / regulations.

6. The learned counsels for the petitioners have submitted that once the University/the State Government, in pursuance to the orders of this Court passed both in the earlier round of litigation i.e. in CWJC No. 2300 of 2000 as also in MJC No. 203 of 2006, had regularized the services of the petitioners with effect from the date of their initial appointment by issuance of an Office Order dated 08.03.2007, under the pen and signature of the Registrar of the Respondent-University as also by issuance of a letter dated 02.05.2007, under the pen and signature of the Deputy Secretary to the Government, Human Resources Department (Higher Education), Government of Bihar, Patna whereby and whereunder the State Government had granted approval to the regularization of the services of the petitioners with effect from the date of their initial appointment, the Special Secretary, Education Department, Government of Bihar, Patna could not have passed the impugned order dated



08.09.2014, holding the appointments of the petitioners to be illegal, without either recalling or reviewing the aforesaid earlier order of the State Government dated 02.05.2007 or for that matter without taking the leave of this Hon'ble Court. Thus it is submitted that the Special Secretary, Education Department, Government of Bihar, Patna has taken a myopic view of the matter and has passed a perverse and a deluding order dated 08.09.2014, overreaching the Orders of this Court, for which appropriate punishment is required to be meted out to the said Special Secretary, Education Department, Government of Bihar, Patna.

7. The learned counsels for the petitioners have further referred to Section 35 (ii) of the Bihar State Universities Act, 1976 to contend that appointment has to be made on such posts, which are created with the prior sanction of the State Government as also after approval of the State Government, thus, it is submitted that in compliance of the provisions contained under Section 35(ii) of the Bihar State Universities Act, 1976, the State Government had



consciously and with open eyes granted approval to the regularization of the services of the petitioners with effect from the date of their initial appointment vide letter dated 02.05.2007, hence, there is no iota of doubt that the same cannot now be reviewed and therefore, the appointment of the petitioners cannot be held to be illegal.

8. Lastly, it is submitted by the learned counsels for the petitioners that a bare perusal of the order dated 05.02.2013, passed in CWJC No. 16674 of 2009 and analogous case would show that the only issue with regard to which the matter was remanded back to the State Government was pertaining to change in the date of absorption of the petitioners. The relevant paragraphs of the said order dated 05.02.2013 is reproduced herein below:-

*"In the present two writ applications the Court is concerned with regard to the manner in which an order having civil consequences has come to visit the petitioners of these writ applications. **A change in their date of absorption is surely a decision having***



civil consequences because Office Order No. 203 of 2009 also talks in terms of recovery.

All these actions cannot be taken or enforced or implemented without giving an opportunity to the petitioners in this regard. The fault finding can go on but the petitioners cannot suffer at the hands of different bodies which are at variance or logger-heads as to what is the actual state of affairs.

Both the writ applications are allowed. Office Order No.203 of 2009 dated 9.11.2009 is quashed.

Let the respondent State and the University do what is required to be done by giving opportunity of hearing to these petitioners."

9. Thus it is submitted by the learned counsels for the petitioners that the Special Secretary, Education Department, Government of Bihar, Patna was not required to consider the legality of the appointment/ absorption of the petitioners, but only the factum as to whether the date of absorption of the petitioners would be the date mentioned in the letter of the Respondent-University dated 08.03.2007 / the letter of the



State Government dated 02.05.2007 or the one mentioned in the subsequent letter of the Respondent-University dated 9.11.2009 hence, it is apparent that the Special Secretary, Education Department, Government of Bihar, Patna has exceeded his jurisdiction by passing the impugned order dated 08.09.2014 and has therefore, not only violated but disobeyed the order of this Court dated 05.02.2013.

10. Per contra, the learned Senior Counsel for the Respondent-University has submitted that it is for the State Government to explain as to under what circumstance the aforesaid order dated 08.09.2014 has been passed, however, the stand of the University is that it has rightly modified the date of absorption of the petitioners vide letter dated 09.11.2009.

11. Per contra, the learned counsel for the Respondent-State has submitted that the appointment of the petitioners is dehors the provisions contained in Section 35(ii) of the Bihar State Universities Act, 1976 and they were



appointed against unsanctioned post, hence their appointment has been rightly held to be illegal by the impugned decision of the Special Secretary, Education Department, Govt. of Bihar, Patna.

12. I have heard the learned counsels for the parties and considered the materials on record from which few things are not in dispute i.e. firstly the services of the petitioners were initially regularized with effect from the date of their initial appointment vide Office order dated 08.03.2007, issued by the Registrar of the Respondent-University, in pursuance to the judgment of this Court dated 05.08.2005 passed in CWJC No. 2300 of 2000, secondly, the State Government had granted approval to the regularization of the services of the petitioners with effect from the date of their initial appointment vide letter dated 02.05.2007, issued by the Deputy Secretary to the Government, Human Resources Department (Higher Education), Government of Bihar, Patna, discernibly and undeniably under Section 35(ii) of the Bihar State Universities Act, 1976, thirdly



though the office order, issued by the Respondent-University on 08.03.2007, was modified by the University itself vide letter dated 09.11.2009 and the date of absorption of the petitioners was changed, however, the same had stood quashed by an order dated 05.02.2013, passed by a coordinate Bench of this Court in CWJC No. 17867 of 2009 & CWJC No. 16674 of 2009, nonetheless, liberty was granted to the Respondents to grant an opportunity of hearing to the petitioners and then do whatever was required to be done with regard to the issue of change in the date of absorption of the petitioners.

13. This Court finds that in pursuance to the order dated 05.08.2005 passed in CWJC No. 2300 of 2000 as also upon passing of various orders in MJC No. 203 of 2006, by coordinate Benches of this Court, not only the Respondent-University, but also the Respondent-State had issued orders of regularization of the services of the petitioners with effect from the date of their initial appointment, as is apparent from the order dated



08.03.2007, issued by the Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur (Annexure-8 to the present writ petition) and order contained in letter dated 02.05.2007, issued by the Deputy Secretary to the Government, Human Resources Department (Higher Education), Government of Bihar, Patna (Annexure-10 to the writ petition), which clearly mentions that the same is being issued in compliance of the Order passed in M.J.C. No. 203 of 2006, hence, this Court finds that the Special Secretary, Education Department, Govt. of Bihar, Patna, in the impugned Order dated 08.09.2014 has failed to consider, not only the aforesaid facts but also the earlier Orders passed by this Court, which in fact, amounts to overreaching the process of this Court, therefore, there is no iota of doubt that the said Order dated 08.09.2014 is perverse and illegal.

This Court further finds that the Special Secretary, Department of Education, Govt. of Bihar, Patna without, either recalling the State Government's order dated 02.05.2007, undeniably



issued under Section 35 (ii) of the Bihar State Universities Act, 1976 or without holding the same to be bad in law, has, by the impugned order dated 08.09.2014, illicitly and unlawfully held that the petitioners were illegally appointed against unsanctioned post, hence, their appointment is illegal. In fact the said order dated 08.09.2014 has also been passed contrary to & in transgression of the order dated 19.03.2005, passed by the Chancellor of the Universities, directing for regularisation of the services of the petitioners & payment of salary to them.

14. Another aspect of the matter is that after the State Government had granted approval to the regularization of the services of the petitioners with effect from the date of their initial appointment vide letter dated 02.05.2007, it had consciously again reviewed the matter and vide letter dated 05.09.2009, had directed the Respondent-University to modify the date of absorption of the petitioners, whereafter, the Respondent-University had issued office order



dated 09.11.2009, modifying the date of absorption, but the State Government had never ever sought to hold the absorption of the petitioners to be illegal, hence on this score as well the order dated 08.09.2014, passed by the Special Secretary, Education Department, Government of Bihar, Patna is illegal and fit to be set aside.

15. It is yet another aspect of the matter that the order dated 09.11.2009, issued by the Respondent-University, modifying the date of absorption of the petitioners and directing for recovery of excess payment made to them, was challenged by the petitioners, before this Court, by filing two writ petitions bearing CWJC No. 17867 of 2009 and CWJC No. 16674 of 2009, which were allowed by a coordinate Bench of this Court by an order dated 05.02.2013 and liberty was granted to the Respondents to grant an opportunity of hearing to the petitioners and then do whatever was required to be done with regard to the issue of change in the date of absorption of the petitioners, nonetheless, the Special Secretary, Education



Department, Government of Bihar, Patna exceeded his jurisdiction and instead, reviewed the entire matter vide the impugned order dated 08.09.2014, not only in disobedience and in teeth of the earlier judgments/Orders of this Court passed in CWJC No. 2300 of 2000 and in MJC No. 203 of 2006, but also in defiance of the earlier decision of the State Government, as contained in letter dated 02.05.2007 and 05.09.2009, discernibly issued under Section 35 (ii) of the Bihar State Universities Act, 1976 as also in utter disregard of the mandate of the remand Order dated 05.02.2013, passed by a coordinate Bench of this Court in CWJC No. 17867 of 2009 & CWJC No. 16674 of 2009, hence, this Court finds that the impugned order dated 08.09.2014, passed by the Special Secretary, Education Department, Government of Bihar, Patna, is a lame-brained and an imbecilic Order, which is not sustainable in the eyes of law.

16. Having regard to the aforesaid facts and circumstances of the case and for the reasons mentioned hereinabove, all the aforesaid writ



petitions are allowed and the impugned order dated 08.09.2014, passed by the Special Secretary, Education Department, Government of Bihar, Patna stands quashed. As a result of quashing of the impugned order dated 08.09.2014, passed by the Special Secretary, Education Department, Government of Bihar, Patna, this Court directs that since the petitioners herein including the widow of one Sri Shashi Prasad Singh (petitioner in CWJC No. 2905/2019) are now entitled to the consequential benefits by way of outstanding salary / pensionary benefits/ death-cum-retiral dues, etc., the same be paid to the petitioners within a period of four weeks from today, failing which, the Additional Chief Secretary, Department of Education, Government of Bihar, Patna and the Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur, shall not draw their salary.

It is needless to state that those petitioners, who have been restrained from working, shall be permitted to discharge their services with effect



from tomorrow itself, provided they have not stood retired.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.8.2022
Transmission Date	NA

