

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7518 of 2019

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1. Rakesh Kumar Son of Motichand Chaudhari, Resident of Village-Markan, Police Station-Hussainganj, District-Siwan
 2. Amrita Kumari Son of Motichand Chaudhari, Resident of Village-Markan, Police Station-Hussainganj, District-Siwan
 3. Rita Kumari W/o Ranjeet Kumar Flat No.11, Defence Colony, Kankarbagh, Police Station-Kankarbagh, Police, Station-Kankarbagh, District-Patna
 4. Shivkant Yadav Son of Vikrma Prasad Yadav Resident of Near Bhawan Cold Store Tarwa, Police Station-Muffasil, District-Siwan
 5. Tasalimm Khan Son of Raja Khan, Resident of Village-Bhada Kala, Police Station-Muffasil Siwan, District-Siwan

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna
3. The Director, Higher Education, Govt. Of Bihar, Patna
4. The Vice-Chancellor Jai Prakash University, Chapra.
5. The Registrar, Jai Prakash Univeristy, Chapra.
6. The Principal, D.A.V. College, Siwan

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.
For the Respondent no. 6 : Mr. Nirmal Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

4 14-02-2023 1. The petitioners by way of this writ petition has
prayed as under:

*“That the petitioners pray for
issuance of an appropriate writ/writs,
order/orders, direction/directions for
commanding the respondents to make
payment of salary which has not been paid*



since November, 2011, although they have been validly appointed on sanctioned post and they are discharging their regular duties.

The petitioners further pray for regularization of service since the initial appointment because they are fulfilling the criteria of regularization.”

2. This Court finds that in **C.W.J.C. 9437/2019(Kameshwar Kumar & Ors. Vs. State of Bihar & Ors.)** decided on 10.01.2023, after examining a case of a similarly placed person of the same University, held as under:

“6. I have considered the submissions. As the facts noted above, it is apparent that the petitioners have been performing their duties on low post of class-IV as well as Class III initially on daily wage and then on contractual. Their appointments was made by way of advertisement and selection. The procedure followed requires approval from the State Government as well as from the University, which was not done by the concerned Principal. Be that as it may, this Court cannot ignore the fact that the



petitioners have been working for more than 10 years and the nature of appointment is contractual.

7. Keeping in view thereto, salary of such class IV and Class III employees deserves to be released. The arrears therefore too was also required to be released. This Court also notices that the State Government has not objected at any given point of time relating to the appointments made by the college, which has been brought to the knowledge of the University and approval of contractual appointment has also been made by the Syndicate which is the body to approve such aspects.

8. Keeping in view thereto and considering that work is being taken from them against sanctioned post, it is directed that the University shall take steps for releasing of the funds for payment of salary which shall be reimbursable from the State Government. As there has been no objection from the State Government for more than 10 years, their appointments would be deemed to have been approved. A presumption has to be drawn of approval subsilento.”



3. It is not objected by the learned counsel for the respondent that the orders passed above would also apply to the present five petitioners who are also working in a similar capacity.

4. Accordingly, it is directed that the aforesaid order and directions shall apply to the petitioners also and their salary shall be released in the same terms as above.

5. So far as the question regarding regularization is concerned, no case of regularization is made out. In view of the Judgment passed by the Supreme Court in **State of Punjab & Ors. vs. Jagjit Singh & Ors., 2017(1) SCC 148**, wherein the Hon'ble Apex Court has held as under:

“60. Having traversed the legal parameters with reference to the application of the principle of “equal pay for equal work”, in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of “equal pay for equal work” summarised by us in para 42



above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of "equal pay for equal work" would be applicable to all the temporary employees concerned, so as to vest in them



the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.”

6. Keeping in view the observations of the Hon’ble Apex Court as above, the respondents are directed to pay the minimum of the pay scale of the post on which the petitioners are working.

7. The writ petition stands disposed of accordingly.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 57

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