

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9437 of 2019

1. Kameshwar Kumar Son of Late Hari Narain Singh R/o Village-Kachahari Road, P.O.-Kachhari Road, P.s. Siwan Mufassil, District-Siwan
2. Ramesh Kumar Sahi S/o Sri Ajit Kumar Sahi R/o Village-Angauta, P.O. Mirzapur, P.S.-Nautan, District-Siwan
3. Vishwamohan Thakur son of Kapilsew Thakur R/o Village-Rahui, P.O.-Rahui, District-Nalanda
4. Baban Kumar Son of Devsaran Chaudhary R/o Village-Pindara, P.O.-Balesar, P.S. Uchkagaun via Mirganj, District-Gopalganj
5. Chandan Basphor S/o Late Lalan Basphor R/o Village-Sultanpur, P.O.-Aander, P.S. Aander, District-Siwan
6. Pramod Kumar S/o Sri Rajendra Yadav R/o Village and P.O.-Hapia Buzurg, P.S. Hussainganj, District Siwan
7. Ramnaresh Prasad S/o Sri Suresh Prasad R/o Village and P.O.-Hapia Buzurg, P.S. Hussainganj, District Siwan
8. Anunay Kumar Singh s/o Sri Rajendra Singh R/o Village and P.O.-Panch Mandir Siwan, P.S. Siwan, District-Siwan
9. Pankaj Kumar Azad S/o Sri Arvil Ram R/o Village and P.O.-Dakshintola, Siwan, District-Siwan
10. Binay Kumar Mishra S/o Pashupatinath Mishra R/o Village-Narainiya, P.O. and P.S.-Mirganj, District-Gopalganj
11. Rakesh Kumar Singh S/o Sri Krishna Kumar Singh R/o Gandhi Maidan, Near Moti School, Siwan, District-Siwan
12. Shailesh Kumar S/o Hirallal R/o Village and P.O.-Machkana, District-Siwan
13. Arun Kumar Singh s/o Sri Rajeshwar Singh R/o Village Sandha Newadi Tola, P.O.-Sanda, P.S. Mufassil, District-Chapra
14. Shiv Shankar Kumar S/o Sri Rajeshwar Sahram R/o Village and P.O.-Datibhana, P.S. Bikram, District-Patna
15. Vijay Kumar Sah S/o Sri Budhan Sah R/o Village-Kattalpur, P.O. Pajapur Patti, P.S. Baikunthpur, District-Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Principal Secretary Finance Department, Bihar, Patna
3. The Principal Secretary General Administrative Department, Government of Bihar, Patna
4. The Deputy Secretary Education Department, Bihar, Patna
5. The Vice Chancellor Jai Prakash University, Chapra
6. The Registrar Jai Prakash University, Chapra



7. The Principal D.A.V. College, Siwan

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.
For the Respondent/s : Mr. Narendra Kumar, AC to GP-20
For Respondent No.7 : Mr. Nirmal Kumar, Adv.
For J.P.U. : Mr. Ritesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL ORDER

4 10-01-2023

1. Heard the parties.

2. The present writ petition has been filed for setting aside the communication dated 27.07.2017, whereby the Principal has expressed his inability to pay the arrears of salary to the petitioners at the level of the college for want of funds by the State Government. The Registrar has been requested by the Principal to take steps for releasing of the arrears of salary and the current salary of the petitioners who are admittedly performing their duties as contractual employees at the level of Class-III and class IV with the college.

3. The facts, which have come on record reflect that the petitioners were appointed by advertisement issued at the level of the Principal of the D.A.V. College, Siwan against 75 sanctioned post of third grade and fourth grade employees. The selection was conducted by a selection committee, formed by the Principal and after the appointments were made, the same were sent for approval to the syndicate of the University which



approved it vide its Minutes dated 29.05.2010, in terms of Agenda no.11. The approval was to treat the daily wage employees as contractual employees.

4. The petitioners have been continuously performing their duties as contractual employees but their salary has not been released for want of funds with the college. The University was therefore asked to file its counter affidavit and as per the Registrar and the Vice Chancellor, contend that as per Section 35(2) of the Bihar State University Act, 1976, the appointments could have been made earlier by the Vice Chancellor and now by the Bihar State University Commission alone there was no power available with the Principal to make appointments of Class-III and IV post, and therefore, the subsequent approval of converting the daily wages employees to contractual employees by the syndicate would also be treated to be not in accordance with the law and the provisions of the Act. The University's affidavit also refers to Section 23© of the Act of 1976, which highlights the powers and duties of the syndicate, Vice chancellor and the Academic council. Section 35(2) of the Act provides for prior sanction of the State Government while making appointment in the colleges. Such appointments made in the colleges without sanction are to be treated as invalid.



5. Keeping in view thereto, learned counsel for the University submits that the University could have no authority in law to release the salary and funds to the college for payment of arrears of such petitioners.

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.

9. Accordingly, the writ petition is allowed. Salary may be released within a period of three months.

(Sanjeev Prakash Sharma, J)

amit/-
Item no.59

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