

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.728 of 2014

In
Civil Writ Jurisdiction Case No.2173 of 2008

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State Of Bihar

... .. Appellant/s

Versus

1. Prasant Shankar Mishra Son of Late Sonelal Mishra Resident of Village Post Madhurapur, Via- Narayanpur, P.S- Bhawanipur, District- Bhagalpur.
2. Rajendra Poddar Son of Late Yogi Poddar Resident of Village- Madhurapur, P.O- Madhurapur, P.S- Bihpur, District- Bhagalpur.
3. Md. Zulfakkar Ali Son of Late Ainul Haque Resident of Village Post Madhurapur, Via- Narayanpur, P.S- Bhawanipur, District- Bhagalpur.
4. Md. Zubari Alam Son of Md. Babaruddin Resident of Village- Chaurami, P.O- Narayanpur, P.S- Bihpur, District- Bhagalpur.
5. Nand Lal Yadav Son of Harinarayan Yadav Resident of Village P.O- Balha, P.S- Bihpur, District- Bhagalpur.
6. Manoj Kumar Sharma Son of Chandradeep Sharma Resident of Village- Madhurapur, Via-Narayanpur, P.S- Bhawanipur, District- Bhagalpur.
7. Amit Kumar Yadav Son of Isha Yadav Resident of Village- Chhauhadi, P.O- Narayanpur, P.S- Bihpur, District- Bhagalpur.
8. Suresh Poddar Son of Late Rameshwar Poddar Resident of Village P.O- Madhurapur, P.S- Bihpur, District- Bhagalpur.
9. Raj Kumar Haldhar Son of Motilal Haldhar Resident of Village P.O- Balha, P.S- Bihpur, District- Bhagalpur.
10. Pushpalata Kumari Daughter of Jagprakash Shah Resident of Village P.O- Madhurapur, P.S- Bihpur, District- Bhagalpur, all are the Class- III and IV daily wages employees of J.P. College, Narayanpur, Bhagalpur and T.M.University, Bhagalpur.
11. The Vice Chancellor, Tilkamanjhi Bhagalpur University, Bhagalpur.
12. The Tilkamanjhi Bhagalpur University, Bhagalpur through its Registrar.
13. The Principal, J.P. College, Narayanpur, Bhagalpur.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 12569 of 2012

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1. Sunil Kumar Jha and Ors S/O Sri Lakshmi Kant Jha R/O Vill-Bhramarpur, P.S.-Bihpur, Distt-Bhagalpur
2. Rajesh Kumar Yadav S/O Late Shivnarayan Yadav R/O Vill-Narayanpur, Distt-Bhagalpur
3. Prakash Kumar Jha S/O Sri Satrugan Jha R/O Vill-Baghaba, P.S.-Gopalpur,



Distt-Saharsa

4. Chulhai Das S/O Late Arabi Das R/O Vill-Nagarpara, Distt-Bhagalpur
5. Ashok Kumar Jha S/O Sri Parmanand Jha R/O Vill-Bharamarpur, P.S.-
Bihpur, Distt-Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors Government Of Bihar, Patna
2. The Vice-Chancellor, Tilka Manjhi Bhagalpur University Bhagalpur
3. The Tilkamanjhi Bhagalpur University, Bhagalpur Through Its Registrar
4. The Principal , J.P.College,Narayanpur, Bhagalpur

... .. Respondent/s

with

Letters Patent Appeal No. 102 of 2014
In
Civil Writ Jurisdiction Case No.12814 of 2010

1. The State Of Bihar and Ors
2. The Principal Secretary, Mahila College, Khagaul, Patna A Constituent Unit
Under Magadh University, Bodh Gaya
3. The Principal Secretary, Hrd Higher Education, Govt. Of Bihar, Patna
4. The Director, Higher Education, Govt. Of Bihar
5. Magadh University, Bodh Gaya, Through Its Registrar
6. The Vice-Chancellor, Magadh University, Bodh Gaya
7. The Registrar, Magadh University, Bodh Gaya
8. The Finance Officer, Magadh University, Bodh Gaya

... .. Appellant/s

Versus

1. Smt. Ragini Kumari and Ors W/O Sri Navin Kumar R/O Village- Saidpura,
P.S.- Kadam Kuan, Distt.- Patna
2. Smt. Madhuri Kumari W/O Sri Ashok Kumar Sinha R/O Karman Tola,
Behind Moti Cinema Hall, P.S.- Arrah, District- Bhojpur
3. Smt. Shakuntala Kumari W/O Sri Vishnu Dayal Singh R/O Mohalla-
Chitkohra, P.S.- Gardanibagh, Distt- Patna
4. Smt. Nisha Kumari W/O Sri Ramyatna Prasad R/O Village- Ismailpur, P.S.-
Hajipur, District- Vaishali

... .. Respondent/s

with



Letters Patent Appeal No. 187 of 2015

In

CIVIL REVIEW No.493 of 2013

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1. The Vice Chancellor T.m. Bhagalpur University and Anr
 2. The Tilka Manjhi Bhagalpur University, Bhagalpur through its Registrar.

... .. Appellant/s

Versus

1. Prashant Shankar Mishra and Ors Son of late Sonelal Mishra, resident of village Post -Madhurapur, Via - Narayanpur, P S - Bhawanipur, District - Bhagalpur
2. Rajendra Poddar, Son of late Yogi Poddar, resident of village - Madhurapur, P O - Madhurapur, P S -Bihpur, District - Bhagalpur
3. Md Zulfakkar Ali, Son of late Md Ainul Haque, resident of village Post -Madhurapur, Via - Narayanpur, P S - Bhawanipur, District - Bhagalpur
4. Md Zubair Alam, Son of Md Badaruddin, resident of village -Chaurami, P O -Narayanpur, P S - Bihpur, District - Bhagalpur
5. Nand Lal Yadav, son of Harinarayan Yadav, resident of village P O - Balha, P S - Bihpur, District - Bhagalpur
6. Manoj Prasad Sharma, Son of Chandradeep Sharma, resident of village - Madhurapur, Via - Narayanpur, District - Bhagalpur
7. Amit Kumar Yadav Son of Isha Yadav, resident of village - Chhauhadi, P O - Narayanpur, P S - Bihpur, District - Bhagalpur
8. Suresh Poddar, Son of late Rameshwar Poddar, resident of village P O - Madhurapur, P S - Bihpur, District - Bhagalpur
9. Raj Kumar Haldhar, Son of Motilal Haldhar, resident of village P O - Balha, P S - Bihpur, District - Bhagalpur
10. Pushpalata Kumari, daughter of Jayprakash Shah, resident of village P O - Madhurapur, P S - Bihpur, District - Bhagalpur, all are the Class-III and ClassIV daily wages employee of J P College, Narayanpur, Bhagalpur and T M University, Bhagalpur
11. The State of Bihar through Secretary/Commissioner, Higher Education, Government of Bihar, Patna
12. The Principal, J P College, Narayanpur, Bhagalpur

... .. Respondent/s

with

Letters Patent Appeal No. 188 of 2015

In

Civil Writ Jurisdiction Case No.2173 of 2008

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1. The Vice Chancellor Tilka Manjhi Bhagalpur University and Anr
 2. The Tillkamanjhi Bhagalpur University, Bhagalpur through its Registrar



... .. Appellant/s

Versus

1. Prashant Shankar Mishra and Ors Son of late Sonelal Mishra, resident of village Post -Madhurapur, Via - Narayanpur, P S - Bhawanipur, District - Bhagalpur
2. Rajendra Poddar, Son of late Yogi Poddar, resident of village - Madhurapur, P O - Madhurapur, P S -Bihpur, District - Bhagalpur
3. Md Zulfakkar Ali, Son of late Md Ainul Haque, resident of village Post -Madhurapur, Via - Narayanpur, P S - Bhawanipur, District - Bhagalpur
4. Md Zubair Alam, Son of Md Badaruddin, resident of village -Chaurami, P O -Narayanpur, P S - Bihpur, District - Bhagalpur
5. Nand Lal Yadav, son of Harinarayan Yadav, resident of village P O - Balha, P S - Bihpur, District - Bhagalpur
6. Manoj Prasad Sharma, Son of Chandradeep Sharma, resident of village - Madhurapur, Via - Narayanpur, District - Bhagalpur
7. Amit Kumar Yadav Son of Isha Yadav, resident of village - Chhauhadi, P O - Narayanpur, P S - Bihpur, District - Bhagalpur
8. Suresh Poddar, Son of late Rameshwar Poddar, resident of village P O - Madhurapur, P S - Bihpur, District - Bhagalpur
9. Raj Kumar Haldhar, Son of Motilal Haldhar, resident of village P O - Balha, P S - Bihpur, District - Bhagalpur
10. Pushpalata Kumari, daughter of Jayprakash Shah, resident of village P O - Madhurapur, P S - Bihpur, District - Bhagalpur, all are the Class-III and ClassIV daily wages employee of J P College, Narayanpur, Bhagalpur and T M University, Bhagalpur
11. The State of Bihar through Secretary/Commissioner, Higher Education, Government of Bihar, Patna
12. The Principal, J P College, Narayanpur, Bhagalpur

... .. Respondent/s

with

Letters Patent Appeal No. 161 of 2017

In

Civil Writ Jurisdiction Case No.9439 of 2012

The State Of Bihar

... .. Appellant/s

Versus

1. Sada Nand Mandal and Ors S/o Late Mukti Mandal, resident of Village- Usmanpur, P.S.- Bihpur, District- Bhagalpur.
2. The Tilka Manjhi Bhagalpur University through its Registrar.
3. The Vice-Chancellor, Tilka Manjhi Bhagalpur,
4. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.



5. The Principal, J.P. College, Narayanpur, District- Bhagalpur.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 728 of 2014)

For the State	:	Mr.Anjani Kumar, AAG-4 Mr.Deepak Sahay Jamuar, AC to AG-4 Mr.Utkarsh Bhushan, Advocate
For the Respondent/s	:	Mr. Amit Srivastava, Sr. Advocate Mr.Navjot Yesu, Advocate Mr.Girish Pandey, Advocate
For the Intervenor	:	Mr.Rajeev Kr. Singh, Advocate
(In Civil Writ Jurisdiction Case No. 12569 of 2012)		
For the Petitioner/s	:	Mr.Sanjeev Kumar Singh, Advocate
For the State	:	Md. N. Hoda Khan, SC-1 Ms.Babita Kumari, AC to SC-1

(In Letters Patent Appeal No. 102 of 2014)

For the Appellant/s	:	Mr.Brisketu Sharan Pandey
For the Respondent Nos. 1,2&4	:	Mr.Kishore Kumar Thakur, Advocate Mr.Shashi Nath Jha, Advocate

(In Letters Patent Appeal No. 187 of 2015)

For the Appellant/s	:	Mr.Prabhat Ranjan, AC to GP6
For the Respondent/s	:	Mr.Sc31-Pandey S.Sahay

(In Letters Patent Appeal No. 188 of 2015)

For the Appellant/s	:	Mr.Prabhat Ranjan, AC to GP6
For the Respondent/s	:	Mr.Sc31-Pandey S.Sahay

(In Letters Patent Appeal No. 161 of 2017)

For the Appellant/s	:	Mr.Sunil Kumar
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-02-2023

LPA No. 728 of 2014; LPA No. 187 of 2015; LPA No.
188 of 2015; LPA No. 161 of 2017

Pursuant to earlier order dated 04.02.2023 Mr. Deepak Kumar Singh, Dy. Director Higher Education and Dr. Girijesh Nandan Kumar, Registrar, Tilka Manjhi Bhagalpur University are present in the Court.



2. Matter is adjourned from time to time for want of certain issues in particularly whether the Principal of the J.P. College Narayanpur, Bhagalpur (for short 'college') is competent authority to appoint Class-III & IV employees on *ad hoc* basis or not?

3. College was converted into constituent college in the year 1976-1977. The respondents were stated to have been appointed on *ad hoc* basis in the year 1988-1989. Their grievances before the learned Single Judge is entitlement of regularisation with reference to length of service rendered by each of the respondents in the college. Learned Single Judge allowed the CWJC No. 2173 of 2008 on 28.03.2011. There was in action on the part of the authorities whereby respondents were compelled to file MJC No. 5073 of 2011. During pendency of MJC No. 5073 of 2011 respondents' services were regularised on 05.03.2012. After lapse of two years from the date of regularisation, State of Bihar presented this LPA questioning the order of learned Single Judge.

4. Learned counsel for the appellant-State submitted that learned Single Judge has not appreciated that power and functions insofar as appointment of Class-III & IV employees in the college is vested with the University and not with the Principal.



5. Learned counsel for the appellant relied on various sections of the Bihar University Act, 1976 like Section 10(6), Clause (d) of Section 15 and Section 35 and further relied on Sub-clause 3 of 3 (Part II). With reference to these various provisions, it is pointed out that Principal of the college is not empowered to appoint Class-III & IV employees in the college on *ad hoc* basis.

6. *Per contra*, learned counsel for the respondents resisted the aforesaid contentions and submitted that appellants have not apprise this Court relating to delegating the powers of appointment to the Head of the Department/Principal on 14.05.1977 (Annexure-14 to the CWJC). He has also relied on Apex Court decision in the case of **Amarkant Rai vs. State of Bihar & Ors.** reported in **(2015) 8 SCC 265** (Para 8,10,13 & 15). Therefore, the appellants-State have not made out a case so as to interfere with the learned Single Judge order.

7. Heard the learned counsel for the respective parties.

8. No doubt, it is true that Head of the Department/Principal of the college is empowered to appoint Class-III & IV employees subject to approval of University officials like Vice Chancellor. Perusal of the records shows there is no material information on two issues namely whether Vice Chancellor is empowered to delegate his powers to Head of the



Department/Principal or not? Further, assuming that Principal of the college was empowered to appoint Class-III & IV employees, he or she required to get approval from the Vice Chancellor of the University or not?

9. In this regard, there were no material placed on record. Any how in the light of Apex Court decision in the case of **Secy., State of Karnataka and Others vs. Uma Devi** reported in **(2006) 4 SCC 1**, having regard to the length of service rendered by the respondents they are entitled to be considered for regularisation as one time measure. Therefore, the concerned authority is hereby directed to prepare a service chart of the respondents and thereafter verify whether each of the respondent fulfill the criteria laid by the Apex Court decision in the case of *Uma devi* or not?

10. In this regard, if there is any shortcoming of any of the respondents in that event necessary detailed notice shall be prepared and issued to the concerned respondent. Concerned respondent is hereby directed to furnish his explanation along with material information to the concerned authorities in the event of issuance of show cause notice. The above exercise shall be completed within a period of six months from the date of receipt of this order. In the event of respondent is entitled to regularisation in



that event necessary service and monetary benefits shall be extended to the respective respondent.

11. In the light of above order the regularization order dated 05.03.2012 is subject to outcome of passing a fresh order on regularisation. To this extent order of learned Single Judge is modified.

12. Learned counsel for the respondent cited decision in the case of **Amarkant Rai vs. State of Bihar & Ors.** reported in **(2015) 8 SCC 265**, no doubt in that decision it is held that Principal may not be competent authority whatever the action taken by him has been treated as irregular, therefore, the respondents service condition could be almost identical to that of in the case of **Amarkant Rai vs. State of Bihar & Ors.** reported in **(2015) 8 SCC 265**. Therefore, we are compelled to ask the concerned authority to re-visit their regularisation as to whether each of the respondent fulfill the criteria laid down by the Apex Court in the case of **Secy., State of Karnataka and Others vs. Uma Devi** reported in **(2006) 4 SCC 1**.

13. Accordingly, LPA is allowed in part.

14. At this stage the court is apprised that fifth respondent is stated to have died during pendency of litigation,



therefore question of reopening his regularisation would not arise, his regularisation *vide* order dated 05.03.2012 stands confirmed.

15. Pending I.As stand disposed off.

CWJC No. 12569 of 2012

16. In CWJC No. 12569 of 2012, even though matter is identical except to the extent that petitioner in CWJC No. 12569 of 2012, their services have not been regularised in the year 2012. Therefore, for the purpose of regularisation, all the service particulars of each of the petitioner read with criteria laid down by the Apex Court in the case of **Secy., State of Karnataka and Others vs. Uma Devi** reported in **(2006) 4 SCC 1** read with **State of Karnataka and Ors. vs. M.L. Kesari and Ors.** reported in **(2010) 9 SCC 247** shall be taken note of and necessary notice shall be issued to each of the petitioner if they are not entitled to regularisation. If they are entitled to regularisation, question of issuing notice and obtaining explanation and thereafter passing orders is not warranted. In this case also within six months concerned respondent is directed to undertake exercise of whether petitioners are entitled to regularisation or not?

17. At this stage learned counsel for the petitioner submitted that petitioner no. 3 and 4 in CWJC No. 12569 of 2012 were stated to have died during pendency of the present petition,



therefore, the proceedings insofar as petitioner no. 3 & 4 stands abated.

LPA No. 102 of 2014

18. Registry is hereby directed to de-link LPA No. 102 of 2014.

Relist this matter on 28.02.2023.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2023
Transmission Date	NA

