

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.694 of 2016

In

Civil Writ Jurisdiction Case No.10442 of 2015

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Shahnaz Begum wife of late Dr. Abdul Latif r/o Ward no. 24, Kadwa,
Rampara, P.O., P.S. and District- Katihar.

... .. Appellant/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department Government of Bihar, Patna.
3. The Director, Higer Education, Education Department Government of Bihar, Patna.
4. Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura through its Registrar.
5. The Vice Chancellor, Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura.
6. The Registrar, Bhupendra Narayan Mandal University, Laloo Nagar, Madhepura.
7. The Principal, K.B. Jha College, Katihar, P.O. P.S. and District - Katihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shashi Bhushan Kr. Manglam, Advocate
For the Respondent/s	:	Mr.Arvind Ujjwal- Sc25
For B.N.M.U.	:	Ms. Vandana Kishor, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 13-02-2023

Heard learned counsels for the parties.

2. Pursuant to the order dated 04.02.2023, 6th

Respondent- Registrar, Bhupendra Narayan Mandal University,

Madhepura, Mr. Mihir Kumar Thakur is present in the Court.

Today, he has clarified relating to deceased-employees



absorption and the fact that he had worked during the intervening period from the year 2012 to 2015 and continued to work till 11.10.2017 (the date on which he died). Deceased Dr. Abdul Latif was appointed as a Lecturer on *adhoc* basis on 12.05.1986. In the year 2001 University has taken a decision that such of those *adhoc* employees are entitled to absorption if he/she was appointed prior to 30th April, 1986. Ignoring the cut off date of 30th April, 1986, Respondent-University adjusted the deceased Lecturer that he is regular holder of the post of Lecturer on 17.01.2006. Thereafter he earned promotion to the post of Associate Professor in the year 2011. Whereas, during the year 2012 to 2015 he has not been paid salary, therefore, he has filed C.W.J.C. No. 10442 of 2015. It is submitted that even thereafter till his death salary has not been paid.

3. Learned counsel for the appellant submitted that once the deceased Lecturer services were treated as regular w.e.f. 17.01.2006, there is no point in re-visiting whether deceased employee is entitled to regularization or not with reference to cut off date as 30th April, 1986 read with the fact that appellant was appointed on 12.05.1986. It is further submitted that even at the time of granting promotion to the post of Associate Professor in the year 2011,



University/College/State have not raised any objection relating to regularization/absorption of the deceased-Lecturer. On the other hand, in the year 2015, abruptly he has been denied salary attached to the post of Associate Professor only on the score that his initial appointment to the post of Lecturer has not yet attained finality in regularization/ absorption with reference to cut off date i.e. 30th April, 1986 as per the policy decision read with appellant's appointment on 12.05.1986.

4. Learned Single Judge has not appreciated facts of the case with reference to the fact that the appellant has been adjusted against sanctioned vacancy w.e.f. 17.01.2006 to the cadre of Lecturer even though word of regularization or absorption has not been incorporated in the 17.01.2006 order. On the other hand, one has to draw inference that it is a regularization, for the reasons that respondents have promoted deceased- employee to the post of Associate Professor in the year 2011. In the result, order of the learned Single Judge is liable to be set aside and deceased-employee is entitled to all monetary benefits from the year 2012 till 2017 with reference to the post held by him, namely, Associate Professor.

5. At this stage, learned counsel for the State entered appearance and submitted that counter may be taken note of. He



has not read the paper and made his submission in the matter.

6. None appears for the Principal of the College-respondent.

7. Learned counsel for the University reiterated the factual aspect of the matter. On the other hand, they have supported the order of the learned Single Judge stating that there is no regularization order in favour of the appellant and the fact that litigation was pending consideration, therefore, salary of the deceased-employee was not settled.

8. Heard learned counsels for respective parties.

9. The deceased-employee, Dr. Abdul Latif, was appointed on *ad hoc* basis against one of the posts of Lecturer on 12.05.1986. Official respondents have taken a policy decision to regularize such of those employees who have joined any of the post prior to 30th April, 1986, they are entitled to regularization. Obviously, the deceased-employee Dr. Abdul Latif is not entitled to regularization in terms of the policy decision as he has been appointed as a Lecturer on *ad hoc* basis on 12.05.1986, i.e. few days after cut off date. On the other hand, University has taken *suo motu* decision while adjusting the deceased-Lecturer on 17.01.2006, adjusting him against one of the posts of Lecturer. Thereafter, he was extended benefit of



promotion to the post of Associate Professor in the year 2011. Due to various controversies, there were certain reports, like Justice S.C. Agrawal Commission and Justice S.B. Sinha Commission. The commission report and policy decision of the official respondents in the year 2011 may not assist deceased-Lecturer, however, University have taken a decision to re-adjust the deceased-Lecturer against one of the Lecturer post on 17.01.2006. It is to be noted that if the official respondents have committed any error that deceased-Lecturer was not entitled to be adjusted on 17.01.2006 with reference to policy decision of the official respondents issued in the year 2001 read with the Commission's report and further read with cut off date notified as 30th April, 1986. In other words, such of those employees who were appointed on *adhoc* basis prior to 30th April, 1986 and such of those employees are alone entitled to absorption/regularization. It is admitted fact that deceased Abdul Latif was appointed on *adhoc* basis as a Lecturer on 12.05.1986. However, none of the officials have taken note of the fact that regularization of deceased Abdul Latif was contrary to the policy decision. Even to this date none of the official respondents have taken any decision either to withdraw the re-adjustment of deceased-employee services against Lecturer



post on 17.01.2006. That apart, there is no cancellation or modification and further disturbing the promotion order issued in the year 2011 to the post of Associate Professor, therefore, one has to draw inference that there were serious lapses on the part of the official respondents in not taking timely action. In the absence of withdrawal or cancellation of 17.01.2006 University's decision to re-adjust the deceased-employee against the post of Lecturer and in not withdrawing or cancelling promotion order issued in the year 2011 to the post of Associate Professor and continuing the deceased Abdul Latif on the post of Associate Professor till his death on 11.10.2017, the appellant (legal heir of deceased-Lecturer) is/are entitled to all service benefits from 17.01.2006 till 11.10.2017.

10. Learned Single Judge has not appreciated the fact of not withdrawing or cancellation of 17.01.2006 order relating to re-adjustment of the deceased-employee against one of the posts of Lecturer in the College read with promotion order to the post of Associate Professor in the year 2011. In this backdrop, learned Single Judge has committed error. Accordingly, appellant (legal heir of deceased-Lecturer) has made out a *prima facie* case that deceased is entitled to the benefit of service as well as monetary benefits during the



intervening period from the year 2012 to 11.10.2017. The same shall be calculated and disbursed in favour of the legal heirs of the deceased-employee within a period of four months from the date of receipt of this order, failing which appellant is entitled to interest @ 8% p.a. on all arrears amount in the light of Apex Court's decision *Vijay L. Mehrotra Vs. State of U.P. & Ors.* reported in *(2001) 9 Supreme Court Cases 687*. If there is any dispute relating to availability of funds with the College or University, the State is hereby directed to provide fund to the University to comply the order of this Court, for the reasons that official respondents might have committed error. Even assuming that if they have committed error in re-adjusting deceased-employee, Abdul Latif, on 17.01.2006 and granted promotion in the year 2011 to the post of Associate Professor, still legal heirs of deceased-employee is/are entitled to regularization under the Apex Court's decision in the case of *Secy., State of Karnataka V. Uma Devi reported in (2006)4 SCC page 1* passed in *CWJC No. 16 of 2021*, for the reasons that deceased-employee was appointed on *ad hoc* basis by competent authority, he had been re-adjusted by the University on 17.01.2006 and further he has been promoted to the post of Associate Professor in the year 2011.



11. At this stage, learned counsel for the appellant seeks retiral benefits or death benefits of the deceased-employee in favour of the legal heirs of the deceased-employee. Such relief cannot be granted since it is not a subject-matter of litigation. However, reserving liberty to the appellant or legal heirs to approach the concerned authority in seeking other benefits, if any, the concerned authority is hereby directed to consider the same in accordance with law within a reasonable period of time.

12. Accordingly, the present L.P.A. stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

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AFR/NAFR	
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