

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5938 of 2018

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Upendra Prasad, S/o Late Chhathu Prasad Lal @ Chhathu Mehta, R/o Village-
Balhampur, P.S.- Simri Bakhtiyarpur, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Higher Education, Bihar, Patna.
2. Principal Secretary, Higher Education, Bihar, Patna.
3. LN Mithila University, Darbhanga through its Vice Chancellor.
4. Vice Chancellor, LN Mithila University, Darbhanga.
5. Registrar, LN Mithila University, Darbhanga.
6. Principal, Udaynacharya Rossera College, Rosera.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Baidya Nath Thakur, Advocate
For the State	:	Mr. Kameshwar Kumar , GP-17
		Mr. Amit Bhushan, AC to GP-17
For the University	:	Md. Nadim Seraj, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 16-05-2023

1. The writ petitioner seeks quashing of the order dated 12.07.2017, whereby and whereunder the Vice-Chancellor of Lalit Narayan Mithila University (hereinafter referred to as “University”) has rejected the petitioner’s claim for regularisation.

2. It is the petitioner’s case that he was appointed on daily wages against a sanctioned vacancy on the post of Orderly on 14.06.1993 along with another person, namely, Yogendra Rai, who has not been impleaded as a party-respondent in the instant writ proceedings. He alleges discrimination in the



matter of regularisation since Yogendra Rai, who was appointed on daily wages by the same order with the petitioner, has been regularised in services on 06.06.2004, whereas his claim for regularisation was rejected. In support of his claim, reliance is placed on decision of Hon'ble Apex Court in the case of *Jivanlal vs. Pravin Krishna, Principal Secretary & Ors.* reported in **(2016) 15 SCC 747**.

3. At this juncture, this Court would take notice of the admitted position as emerges from the averment made in the writ petition that on 27.04.1994 altogether 40 daily wages employees including petitioner were retrenched and re-engaged on 27.09.1994. The alleged re-engagement, however, is not supported by any order. Other than submission made to this effect in the writ petition, there is no material basis for such assertions.

4. It is also an admitted position as is apparent from the petitioner's representation dated 17.11.2014 (Annexure-8) that certain services of the University were outsourced to an agency. The petitioner, as an employee of the outsourcing agency, started working in the University since 21.01.2013. The regularisation of Mr. Yogendra Rai with whom the petitioner was claiming parity admittedly took place long before, on



06.06.2004 itself.

5. The petitioner's claim to regularisation was considered and orders passed pursuant to such consideration on 25.11.2007, as well as by the order impugned in the instant writ proceedings. The Vice-Chancellor, in the impugned order, has assigned the following reasons in support of his decision not to regularise petitioner's services.

"1. The appointment of Sri Upendara Prasad to the post of IV grade employee in U.R. College, Rosera was not in consonance with the recruitment rules as laid down by the constitution bench of the Hon'ble Apex Court in the matter of Secretary, State of Karnataka and others Vs. Uma Devi.

2. The petitioner was also provided opportunity to appear before the Interview Board vide University letter no. 10008 dt. 23.07.1997. But he was not found fit which is evident from the fact that his name was not included in the list of 199 daily wagers subsequently regularised under approval of the State Govt.

3. The State Govt. has imposed ban upon regular appointment of non-teaching employees of the University and constituent colleges.



4. Pursuant to the aforesaid ban on appointment, the University has engaged the petitioner on out sourced basis and the petitioner had also accepted the same and is working their in the college and getting regular wages through the Service Provider Company.

Therefore the services of Sri Upendra Prasad, on the basis of his claim of being a daily wager, cannot be regularized. Hence, the claim of Sri Upendra Prasad is rejected."

6. This Court does not find any infirmity in the consideration and the order passed by the Vice-Chancellor in the factual background, noted above.

7. The petitioner's claim for parity with Mr. Yogendra Rai is also not tenable. Firstly because Mr. Yogendra Rai has not been made party to the instant proceedings and thus it is not possible to examine the details of the procedure, if any, that preceded his appointment on daily wages along with petitioner. Another vital distinction in the petitioner's case with that of Mr. Yogendra Rai is that as per the order of engagement on daily wages and order of regularisation of Sri Yogendra Rai (Annexure-4), he was appointed on daily wages on a Grade-III post; whereas the petitioner was appointed on a Grade-IV post.



8. In absence of such details, this Court cannot arrive at a conclusion that the petitioner’s claim is at par with Yogendra Rai and that also in absence of any material, as noted above.

9. Reliance placed by the petitioner’s counsel on the case of *Jivanlal (supra)*, therefore, is misplaced. In the instant case, the same would have no application, as discrimination can be alleged only amongst equals whereas the pleadings in the instant proceedings and petitioner’s non-traverse to the assertions made in the counter-affidavit render it impossible for this Court to arrive at a conclusion that the petitioner can claim parity with Mr. Yogendra Rai, for the reasons indicated hereinabove.

10. This Court thus does not find any merit in the instant writ petition. The same stands dismissed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.05.2023
Transmission Date	NA

