

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23957 of 2019

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Rabindra Singh, Son of Late Nageshwar Singh, Resident of Village-
Gheghata, P.S.- Sonapur, P.O.- Govindchak, Distt.- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Director (Higher Education) Department of Education, Government of Bihar, Patna.
3. Jai Prakash University, Chapra, District- Saran through its Registrar.
4. The Vice Chandellor, Jai Prakash University, Chapra, District-Saran.
5. The Registrar, Jai Prakash University, Chapra, District-Saran.
6. The Finance Officer, Jai Prakash University, Chapra, District-Saran.
7. The Principal, Purbotar Railway College, Sonapur, District-Saran, Pin Code-841101

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 15552 of 2019

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Dr. Krishna Gopal Singh, S/o Late Surendra Nath Singh, Resident of Village
Sonapur, P.O. and P.S. Sonapur, District- Saran at Chapra, the retired
Demonstrator, Purbotar Railway College, Sonapur, Disttict- Saran at Chapra

... .. Petitioner/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 Special Secretary, Education Department, Government of Bihar, Patna.
4. The Director, Higher Education, Education Department, Government of Bihar, Patna
5. Jai Prakash University, Chapra through the Registrar.
6. The Vice Chancellor, Jai Prakash University, Chapra.
7. The Registrar, Jai Prakash University, Chapra
8. The Finance Officer, Jai Prakash University, Chapra
9. The Principal, Purbotar Railway College, Sonapur, District- Saran at Chapra

... .. Respondent/s

with



Civil Writ Jurisdiction Case No. 25638 of 2019

Ram Naresh Sharma, Son of Late Chandradip Singh, Resident of Bankman Colony, Hajipur, P.O. and P.S. Hajipur, District- Vaishali at Hajipur, the retired Demonstrator, Botany Department, Purbotar Railway College, Sonapur, District-Saran at Chapra.

... .. Petitioner/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 Special Secretary, Education Department, Government of Bihar, Patna.
4. The Director, Higher Education, Education Department, Government of Bihar, Patna.
5. Jai Prakash University, Chapra through the Registrar.
6. The Vice Chancellor, Jai Prakash University, Chapra
7. The Registrar, Jai Prakash University, Chapra
8. The Finance Officer, Jai Prakash University, Chapra
9. The Principal, Purbotar Railway College, Sonapur, District- Saran at Chapra.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 23957 of 2019)

For the Petitioner/s : Mr. Akshansh Ankit, Advocate

For the Respondent/s : Mr. Vivek Anand Amritesh,

For the University : Mr. Ritesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 15552 of 2019)

For the Petitioner/s : Mr. Purushottam Kr. Jha, Advocate

Mr Vijay Kumar Singh, Advocate

For the Respondent/s : Mr. Madhaw Prasad Yadaw, GP-23

For the University : Mr. Ritesh Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 25638 of 2019)

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate

For the Respondent/s : Mr. Madhaw Pd. Yadaw, GP-23

For the University : Mr. Ritesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 15-03-2023

Considering the similar nature of grievance and the identical issue involved in all the aforementioned writ petitions, with the consent of the parties, the matters have been heard together



and disposed of by this common order/judgment.

2. The petitioners, who are retired Demonstrators of Purvottar Railway College, Sonapur, approached this Court by filing respective writ petitions seeking quashing of the order as contained in Memo no. 2215 dated 04.12.2018 issued under the signature of Special Secretary, Department of Education, Government of Bihar, Patna (respondent no.3) whereby the approval to the appointment of the petitioners on the post of Laboratory Incharge with finance earlier granted by the department vide letter no. 2380 dated 05.12.2008 was withdrawn and further for quashing of the order, as contained in Memo no. 2136 dated 17.09.2019 issued by the Principal Secretary, Education Department, Government of Bihar upholding the aforesaid order dated 04.12.2018. The petitioners further sought a direction upon the respondents to ensure payment of all the admissible post retiral dues along with arrears of pension to the petitioners with effect from the date of their respective retirement, as also the arrears of salary and other benefits for which they are found to be entitled.

3. Bereft of unnecessary details, the matrix of the case for consideration before this Court is that Purvottar Railway College, Sonapur (hereinafter referred to as 'the



College') was established by the officers of Railway in the year 1978 by constituting a Governing Body to look into the affairs of the College. Pursuant to the decision of the Governing Body of the College, an advertisement for appointment of Lecturers and Demonstrators was published in the daily newspaper, namely, "The Indian Nation" on 04.07.1978.

4. It is the case of the petitioners that the State Government meanwhile had put restriction of any appointment against the post of Demonstrator and new post was created as Laboratory Incharge with the same nature of work vide letter no.1710 dated 17.08.1979. The State Government vide its letter no. 1593 dated 15.09.1979 granted consent for affiliation of the College for Sessions 1978-79 and 1979-80. Having obtained the affiliation, the Principal of the College sent a letter to the State Government for approval/sanction of the posts in the college, including four posts of Laboratory Incharge. However, in response to the aforesaid request, the State Government vide its Memo no. 2539 dated 25.12.1979 had sanctioned 12 posts of Lecturers in different subjects and one post of Principal in the College. Having been found no response with regard to the approval and sanction to the post of non-teaching employee, the Secretary of the College again sent letters/reminders to the



Education Commissioner, Bihar, Patna for the needful.

5. It is not in dispute that all the three petitioners were appointed by the Selection Committee duly constituted by Governing Body in between 14.07.1978 and 22.02.1982 and to be more specific petitioners in C.W.J.C. Nos. 23957 of 2019 (Rabindra Singh) and C.W.J.C. No. 15552 of 2019 (Dr. Krishna Gopal Singh) were appointed on 19.07.1978/15.07.1978 in the department of Physics and Zoology respectively, whereas, petitioner in C.W.J.C. No. 25638 of 2019 (Ram Naresh Sharma) was appointed on 22.02.1982 in the department of Botany and since then they had been discharging their duties, till the respective date of their superannuation.

6. In the meantime, the Government of Bihar, in the Department of Education came out with a resolution contained in Memo No. 1065 dated 09.12.1982 taking a decision not to bear the extra financial burden of the teaching and non-teaching staff of the affiliated colleges accrued either on account of affiliation of new faculty or sanction of new posts in the College, with effect from issuance of the aforesaid letter.

7. Subsequently, the State Government vide its Memo No. 1035 dated 13.10.1987 sanctioned for creation/approval of 12 posts of non-teaching employees in the



College without any financial liability, including one post of Laboratory Incharge each in the department of Physics, Zoology and Botany. In the meanwhile, pursuant to the direction of the Hon'ble Supreme Court, the nomenclature of Laboratory Assistant/Laboratory Incharge, having the qualification of Graduation in the concerned subject, re-designated as Demonstrator in the sanctioned pay scale. It is the case of the petitioners that they have the qualification of Post Graduation in their respective subjects and, accordingly, the respondent University re-designated the petitioners as Demonstrators vide Memo no. 5512 dated 16.03.2007.

8. Since the dispute with regard to grant of approval of services of the petitioners in the College with financial aid was pending consideration, the State Government in the Department of Human Resources Development vide Memo No. 2380 dated 05.12.2008 granted approval of three posts of Laboratory incharge/Demonstrator, upon which the petitioners were working with finance since the date of its approval w.e.f. 13.10.1987. Pursuant to the aforesaid order of the Human Resources Development Department, the respondent University had also granted approval of three posts of Laboratory Incharge with finance and subsequently, in



consequence thereof, vide Memo Memo No. 3476(R) dated 07.01.2010 had sanctioned for payment to the petitioners in the basic scale of the post of Demonstrator. It is also the case of the petitioners that in the year 2011, the State Government had taken a decision for sanction of provident fund and pension-cum-gratuity to the teaching and non-teaching employees of the minority college and other deficit aid grant colleges of the University and accordingly the Principal of the College sent the report with supporting documents to the respondent University. Finally all the petitioners superannuated in between 2015 and 2017 and on the basis of the materials available on record it is submitted that petitioner Ravindra Singh and Ram Naresh Sharma, who were superannuated on 30.01.2015, they have been accorded the benefit of gratuity, earned leave, group insurance; and the respective Pension Payment Orders have also been issued in their favour. Both the aforementioned petitioners also received regular pension, till the month of December, 2018. So far petitioner, Dr. Krishna Gopal Singh is concerned, it is submitted that he superannuated from his service on 30.06.2017, however, not a single farthing under the head of gratuity, earned leave, group insurance has been paid and further despite issuance of Pension Payment Order, he has not received any



pension.

9. Now all of a sudden, much after superannuation of the petitioners, the impugned order, as contained in Memo No.2215 dated 04.12.2018, came to be passed unilaterally and the Departmental letter no. 2380 dated 05.12.2008 by which the approval of the appointment of the petitioners, granted with financial liability since the date of approval/sanction of the posts has been withdrawn.

10. At this juncture, learned counsel for the petitioners submitted that subsequently, the respondent authorities in order to rectify their mistakes of the order being not in conformity with the principles of natural justice and in the light of the order dated 04.12.2018 passed in C.W.J.C. No. 16725 of 2015, further afforded opportunity of hearing to the petitioners of C.W.J.C. No. 16725 of 2015 and others likely to be adversely affected and vide impugned order, as contained in Memo no. 2136 dated 17.09.2019 passed by respondent no.2, has affirmed the earlier departmental order, as contained in Memo no. 2215 dated 04.12.2018. though it is vehemently contended that the petitioners have never been afforded any opportunity of hearing nor any show-cause has been served upon them.



11. Per contra, learned counsel for the State on the strength of the materials available on record vehemently submitted that in view of the policy decision taken by the Cabinet on 19.10.1982, the Education Department of the State came out with a resolution, as contained in Memo No. 1065 dated 09.12.1982 whereby non-aided education policy has been implemented. In view thereof, the State Government took a firm decision not to bear the extra financial burden of the teaching and non-teaching staff of the affiliated colleges accrued either on account of creation of new faculty or sanction of new posts in the College and it was made clear by the State Government that it shall bear the financial burden, which was born earlier. It is contended that as the State Government has sanctioned 12 posts of non-teaching employees in the college, in question, without financial liability, including the post of Laboratory Incharge in the department of Physics, Zoology and Botany vide letter no. 1035 dated 13.10.1987, albeit all those posts were subsequently erroneously sanctioned with financial liabilities vide Memo No. 2380 dated 05.12.2008 with effect from 13.10.1987, though the post of laboratory incharge could not have been granted the benefit of financial aid in view of the resolution of the State Government, as contained in Memo no.



1065 dated 09.12.1982.

12. It is further submitted that impugned order dated 04.12.2018 withdrawing the earlier departmental letter no. 2380 dated 05.12.2008 has been passed in the light of the order of the Hon'ble Court passed in C.W.J.C. No. 16725 of 2015, C.W.J.C. No. 6807 of 2016, as also in C.W.J.C. No. 6187 of 2012 wherein this Court has been pleased to hold that if the State Government are of the view that conversion of the posts with financial liabilities with retrospective effect was erroneous decision on the part of the State, they have to rectify the mistake after giving opportunity to the petitioners and others likely to be adversely affected. It is further submitted that in compliance of the order of this Court, the Education Department has issued notices to the petitioners and other adversely affected parties and after giving proper opportunity of hearing at the level of the Additional Chief Secretary, Education Department, a fresh and reasoned order has been passed, as contained in Memo No. 2136 dated 17.09.2019 whereby the departmental letter no. 2215 dated 04.12.2018 has been upheld in view of the resolution no. 1065 dated 09.12.1982 and as such there is no infirmity in the impugned order. Further submission has been made that teaching and non-teaching employees appointed against the



sanctioned post without financial aid in the affiliated colleges are not entitled to get post-retiral benefits in view of the Bihar State Universities Act and Statutes made thereunder and now the posts against which the petitioners were appointed is now sanctioned posts without financial liabilities, hence the relief sought for by the petitioners are not tenable in law as well as on facts.

13. Though the impugned orders have been passed by the State respondent authorities and the University has no role, but to implement the order of the State Government. However, by filing a counter affidavit on behalf of Jai Prakash University it is submitted that the petitioners claim to be appointed as Lab. Incharge in the Department of Physics, Zoology and Botany, created by the State Government vide its Memo No. 2380 dated 05.12.2008 with financial liabilities, hence, on the basis thereof, earlier salary etc. of the petitioners were paid by the University, but as the Government of Bihar has withdrawn the aforesaid letter on 04.12.2018. In view thereof, no kind of admitted dues has been found payable to the petitioners and moreover the financial liabilities of the University rests upon the State Government, thus after withdrawal of the aforesaid Memo dated 05.12.2008, the



grievance of the petitioners is denied.

14. This Court has given anxious consideration to the submissions made on behalf of the parties and the materials available on record.

15. Having gone through the impugned order. It appears that the same is said to have been passed in the light of the order dated 04.04.2018 passed in C.W.J.C. No. 6807 of 2016 and further order dated 04.12.2018 passed in C.W.J.C. No. 16725 of 2015. While disposing the aforementioned writ applications, the learned coordinate Bench of this Court has been pleased to observe, in C.W.J.C. No. 16725 of 2015, as follows:

“The action of the State in converting three posts with financial liability with retrospective effect and denying the benefit of financial assistance to other teaching and non-teaching employees, who were appointed against the post created by same decision of the State Government, is per se discrimination and unsustainable in the eye of law. Either the State has to adopt corrective measures by converting the posts of the petitioners and others, who were appointed against the posts created in the same transaction in the year 1987 which were converted vide Annexure-8 as post with financial liability or to rectify its mistake if they are of the view that conversion



of the posts with financial liability with retrospective effect vide Annexure-8 was erroneous decision on the part of the State. They have to rectify the mistake after giving opportunity to the petitioners and others likely to be adversely affected. Corrective measures in the nature of granting the same benefit or withdrawing the benefit to all the teaching and non-teaching employees, who were appointed against the posts vide Annexures- 3 and 4, should be taken by the respondents within a period of three months from the date of receipt/production of copy of this order.”

16. Similarly, the Court in C.W.J.C. No. 6807 of 2016 has been pleased to direct the respondent authorities as follows:

“Respondent-State is directed to explain special reason for excluding the post of Laboratory Incharge in the subject of Psychology and Chemistry and the discrepancy while converting the three posts from without financial liability to with financial liability. The policy decisions are for uniform application and the respondent cannot adopt pick and choose method, they have to answer how they can justify their action of excluding the petitioner from conversion of post from without financial aid to grant in aid vide Annexure-11.”

17. At this juncture, it would be relevant to observe



that while making submissions on behalf of the petitioners, learned counsel has painstakingly taken this Court through the note-sheets of the relevant file relating to grant of financial aid to the petitioners.

18. This Court is not oblivious of the fact that notings/opinion recorded in the official files by the Ministers/officials are not government orders and hence no legal effect, it simplicitor representing expression of opinion by particular individual and cannot be treated as decisions to be relied upon. However, in the opinion of this Court, if a final decision is taken by the competent authority after going through the notings, the same can be looked into for the ends of justice with a view to cull out the reasons for the decisions, if the decision does not have the reason.

19. Having gone through the note sheets, it appears that on 24.12.1979 recommendation for creation of posts of teaching and non-teaching employees of the College was sent to the State Government, but the creation/sanction has been restricted only to the post of teaching employees ignoring the case of the petitioners, who were appointed as Demonstrator, later on re-designated as Laboratory Incharge. Nonetheless, the post of non-teaching employees of other colleges like B.D.



Evening College, Patna, Allama Iqbal College, Bihar Sharif and Vidya Pati College, Siwan were sanctioned along with the teaching post with financial aid. The petitioners having found aggrieved represented before all the authorities concerned. Realizing the mistake that the post of Laboratory incharge ought to have been sanctioned along with the teaching employees with effect from 1979, the State Government vide his Memo No. 1035 dated 13.10.1987 sanctioned for creation of altogether 12 posts of non-teaching employees, including the post of Laboratory incharge in five subjects, including the subject of Physics, Botany and Zoology. However, the posts were sanctioned without financial aid in view of the Resolution No. 1065 dated 09.12.1982 wherein in paragraph nos. 3 and 4 it was stipulated that “any financial burden resulting from affiliation of any fresh faculty and creation of any new teaching and non-teaching posts by an affiliated College shall have to be born by the different colleges and the financial burden being born by the State Government on the basis of the decision taken by it, so far shall continue to be born as before, by the State Government.”

20. From the relevant records, it also appear that the post of non-teaching employees were not sanctioned on the pretext of staffing pattern. However, subsequently, it was found



that the posts on which the petitioners were working since their inception were basic posts available at the time of affiliation and it ought to be created/sanctioned like posts of other teaching employees and this mistake has been rectified by issuing Memo No. 2380 dated 05.12.2008 whereby approval of three posts of Laboratory Incharge upon which the petitioners were working had granted approval with finance since the date of its approval i.e. 13.10.1987. The approval has been accorded even at the level of the Minister Incharge, Human Resources Development Department with the consent of the Finance Department, as is evident from the relevant paragraphs of the note-sheet of the concerning file, which has also been brought on record by way of Annexure-P/30 to C.W.J.C. No. 25638 of 2019.

21. Learned counsel for the petitioners, during the course of argument, have rightly made reliance upon the judgments of this Court passed in identical matter. The learned coordinate Bench of this Court in the case of Janardan Prasad Singh Vs. The State of Bihar and Others (C.W.J.C. No. 8120 of 2016) vide order dated 27.03.2018 after taking note of the fact that the College, in question, was granted affiliation up to intermediate level before introducing the वित्त रहित शिक्षा नीति of 9.12.1982, the respondents are required to consider the case of



the petitioner institution covered by प्रे वित रहित शिक्षा नीति and grant all the benefits admissible to the college on account of affiliation granted prior to 9.12.1982.

22. The aforesaid order of the learned Single Judge was unsuccessfully assailed by the State of Bihar and its authorities in Letters Patent Appeal No. 1312 of 2018 and the learned Division Bench of this Court vide order dated 27.02.2019 has been pleased to observe as follows:

“7. In the background aforesaid, what we find is that the bone of contention narrows down to the admissibility of the grant-in-aid to the respondent-petitioner. The posts which are claimed to have been sanctioned by the respondent-petitioner under the deeming clause does not appear to be disputed. What appears to be disputed is the date of the applicability of the extension of the benefit of the grant-in-aid to the Institution. We are unable to find any material in the affidavits filed on behalf of the appellant-State, which may establish that the appellants’ claim of having acquired the right to claim grant of funds from the State that had already crystallized prior to 09.12.1982 is in any way diluted. In the absence of any such material to contradict the aforesaid established facts, we do not find that the learned single Judge has committed any error in proceeding to allow



the writ petition filed by the respondent-petitioner.”

23. It would be necessary to observe that the Governing Body of the College created the post of Lecturers and three posts of Demonstrators in the year 1978 itself and pursuant thereto Advertisement was issued and the appointments of the petitioners have been made as Demonstrator in their respective subject. However, while according sanction to the posts of teaching employees, the State Government has not considered the post of Demonstrator/ Laboratory Incharge for the reasons best known to them.

24. Since the appointment of the petitioners were made against the posts created by the Governing Body as per the Advertisement, thus the Resolution No.1065 dated 09.12.1982 would not come in the way of the petitioners in according sanction to the posts with financial liability. For the reason aforesaid, the State Government had rightly taken a decision for grant of approval of three posts of Laboratory Incharge with finance since the date of their approval i.e. with effect from 13.10.1987 vide Memo No. 2380 dated 05.12.2008.

25. So far the writ petitioner of C.W.J.C. No. 6807 of 2016 is concerned, the order of which has been made the very basis of the impugned order, his case is not akin to the case of



the petitioners, as he was neither appointed against the post advertised by the Governing Body of the College at the time of its establishment nor he was redesignated Demonstrator and moreover the petitioners are the appointees of prior to coming into force of Government Resolution dated 09.12.1982, which is not the case of the petitioner of C.W.J.C. No. 6807 of 2016 and 16725 of 2015 and C.W.J.C. No. 6125 of 2016. The petitioners have also categorically stated that in some of the Colleges, where affiliation was made prior to coming into force of resolution dated 09.12.1982, the post of Laboratory Incharge was created/sanctioned along with the teaching posts in the said college and this fact has not been refuted by the contesting respondents.

26. Further, this Court also finds that before passing the impugned order, the concerned respondent has completely glossed over as to what wrong has been done while issuing the order of approval of three posts of Laboratory incharge with finance w.e.f. 13.10.1987 when their appointment was made prior to resolution dated 09.12.1982 and once a right has been created in favour of the petitioners that cannot be divested unilaterally in such a casual and cavalier manner without giving any show-cause notice or proper opportunity of



hearing and further providing a *post facto* compliance of the principles of natural justice is nothing but an empty formality and, thus, on this ground also the order suffers from infraction of the principles of natural justice.

27. In view of the discussions made herein above, this Court finds substance in the writ applications and accordingly, the impugned order as contained in Memo no. 2215 dated 04.12.2018 and Memo no. 2136 dated 17.09.2019 are hereby set aside and the respondents are directed to ensure payment of all the consequential benefits, including the continuation of the pension and admissible retiral benefits, preferably within a period of three months from the date of receipt/production of a copy of this order.

28. Accordingly, these writ petitions stand allowed.
There shall be no order as to costs.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	24.11.2022
Uploading Date	18.03.2023
Transmission Date	

