

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.253 of 2019

In
Letters Patent Appeal No.666 of 2018

=====

Dharmeshwar Mishra Son of late Rajendra Mishra Permanent resident of Mohalla- Balbhadrapur, Police Station - Laheriasarai, District - Darbhanga, at present residing at 302, Badri mansion, Post office Road, Shastrinagar, Patna-800023.

... .. Petitioner/s

Versus

1. The Vice Chancellor L.N. Mithila University, Darbhanga.
2. The Lalit Narayan Mithila University Darbhanga, P.O. - Lalbagh, Darbhanga through its Registrar.
3. Principal C.M. Law College, Darbhanga, West Harahi Tank, P.O.- Lalbagh, Darbhanga, District- Darbhanga.
4. The State of Bihar Through the Principal Secretary, Human Resources Department, Vikas Bhawan, Patna.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Amrendera Narayan, Advocate
		Mr. Sanjay Kumar Srivastava, Advocate
For LNMU	:	Mr. Nadim Seraj, Advocate
		Mr. Shailesh Kumar, Advocate
For the State	:	Mr. Shashi Shekhar Tiwary, AC to AG

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

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

Date : 07-12-2023

Pursuant to our earlier order dated 09.11.2023, Mr. Ajay Kumar Pandit, Registrar, Lalit Narayan Mithila University, Darbhanga is present in the Court.

2. The present Civil Review Petition No. 253 of 2019 is filed in assailing the order dated 20.06.2019 passed in LPA No. 666 of 2018 arising out of CWJC No. 6838 of 2017.



2. Core issue involved in the present *lis* is whether review petitioner is entitled to have the benefit of Letter No. BSU-8/2005–1614/GS(1), dated 29.06.2005 or not?

3. It is necessary to reproduce Item No. 49 of the Manual of Bihar Universities Laws Part II. It reads as under:-

"49. STATUTES FOR APPOINTMENT OF PART TIME TEACHERS

*Letter No.-BSU-8/2005-1614/GS(I),
dated 29.06.2005)*

(As approved by Chancellor vide No. BSU-8/2005-1614 G.S.(1) dated 29.6.2005)

The minimum qualification for appointment of part time teachers should be the same as that of regular teachers and the mode of selection for appointment shall be the same that for the recruitment of regular teachers. However, such teachers may also be appointed by the Vice Chancellor on the recommendation of duly constituted selection committee, for a period for exceeding six months or till the end of the academic session, which ever is earlier. The part-time teachers should be appointed only in exceptional circumstances when it is appropriate for the requirements of the institution in terms of subject to be taught or work load. They can be appointed on a contract appointment if only for a short period or as permanent half-time/proportionate time employees against half/proportionate salary of the scale (and should include proportionate increments, dearness allowance and any other permissible benefits), Such permanent part-time teachers will also be entitled to the scheme of Career Advancement from Lecturer to General Scale Lecturer, Selection Grade



Lecturer/Reader and Professor. However, they will be entitled to half/proportionate increments, dearness allowance and any other permissible benefits."

4. All along the contention of the respondents is that petitioner was appointed to the post of Permanent Part-time Lecturer subsequent to the University Grant Commission Regulations, 1991 (for short 'Regulations, 1991') which was notified on 19th September, 1991. This Regulation would come into effect immediately, in other words, as and when it was notified. This is evident from (iii) of Regulation No. 1 relating to Short, title, application and commencement. The respondents are of the view that petitioner was required to fulfil educational qualification for the post of Lecturer. Regulation No. 2 deals with the Qualifications. Extract of Regulation No. 2 of Regulations, 1991 reads as under:-

"2. Qualifications-No person shall be appointed to a teaching post in University or in any of institutions including constituent or affiliated colleges recognized under clause (f) of Section 2 of the University Grants Commission Act 1956 or in an institution deemed to be a University under Section 3 of the said Act in a subject if he does not fulfil the requirements as to the qualifications for the appropriate subject as provided in Schedule 1:

Provided that any relaxations in the prescribed qualifications can only be made by a University in regard to the posts under it or any of the institutions including constituent or affiliated



college recognized under clause (f) of Section 2 of the aforesaid Act or by an institution deemed to be a University under Section 3 of the said Act with the prior approval of the University Grants Commission:

Provided further that these regulations shall not be applicable to such cases where selections through duly constituted selection committees for making appointments to the teaching posts have been made prior to the enforcement of these regulations."

5. In the light of second proviso to Regulation No. 2 Qualifications, whether petitioner is entitled to have the benefit of relaxation of education qualification, regulation issued Regulations, 1991 or not? In this backdrop, we have to take note of that the petitioner was appointed as a Permanent Part-time Lecturer in CM Law College, Darbhanga on 14.11.1989 at the prescribed scale of Rs. 700/- per month subject to the concurrence of the Bihar State University (Constituent College) Service Commission, Patna it was notified on 19.02.1992. We have noticed that his appointment had been given effect from 14.11.1989 and it is prior to UGC Regulation, 1991 then what it remains is whether concurrence of the Bihar State University (Constituent College) Service Commission, Patna has been given or not? It has been given on 28.05.1998 vide Annexure-4 it is necessary to reproduce the communication and it reads as under:-



*"State University (Constituent
Colleges) Service Commission Patna
Gokul Marg, Nroth Sri Krishnapuri,
Boring Raod, Patna-13*

54/B.S.U.C.

Dated 28/5/98

From:

*Sri Madan Mishra
Administrative Officer
Bihar State University
Service Commission, Patna.*

To,

*The Registrar,
L.N. Mithila University,
Darbhanga*

*Sub: Appointment of Sri Dharmeshwar Mishra to the
post of part time Lecturer in Law.*

Sir,

*With reference to your letter no. 5247, dated
29.4.98, I am directed to say that relying heavily on
the contents of the Mithila University's letter no. 5247
dated 29.4.98, the Commission concurs in the
appointment of Sri Dharmeshwar Mishra to the post
of Part-time Lecturer in Law provided as noted by the
Registrar in the letter under reference that this
appointment was approved by the State Government.*

*The concurrence may be withdrawn in case
any inconsistency is detected in course of time.*

*Yours faithfully,
Madan Mishra
28/8/98
Administrative Officer"*

(Underline Supplied)

6. Thereafter, one more notification was issued on 30th

July, 1998 by the University. It reads as under:-

**"LALIT NARAYAN MITHILA UNIVERSITY
KAMESHWARNAGAR, DARBHANGA**



NOTIFICATION

In anticipation of the approval of Syndicate the Vice-Chancellor has been pleased to appoint Shri Dharmeshwar Mishra as part time lecturer in Law on fixed salary of Rs. 2200/- per month in C.M.Law College, Darbhanga on the basis of the concurrence of the Bihar State University (constituent colleges) service Commission Patna vide letter No. 54/A/BSUC dt. 28.5.98.

Sd/-

Registrar

Memo No. 9012-17/98 Dated 30.7.98

Copy forwarded to:-

1. Shree Dharmeshwar Mishra, Part Time Lect. In Law and Prof Incharge, C.M. Law College, Darbhanga.
2. Prof. Incharge C.M. Law College, Darbhanga,
3. Controller of Examination, L.N.M.U. Darbhanga
4. F.O./A.R. (Audit), L.N.M.U. Darbhanga
5. Shri Madan Mishra, Administrative Officer, Bihar State University (Constituent) College Service Commission, Patna for information and necessary action."

Sd/-

30.7.98

Registrar"

(Underline Supplied)

7. Reading of Notification dated 19.02.1992 read with 30th July, 1998 a fresh appointment order has been issued on 30th July, 1998 without there being any reference to the Notification dated 19.02.1992 and it has retrospective effect as is evident from Notification that it will be w.e.f. 14.11.1989. This has not been withdrawn, cancelled or modified by the competent authority.



Therefore, merely issuance of another Notification on 30th July, 1998 (cited supra) does not nullify the Notification dated 19.02.1992. In other words, review petitioner has vested right to claim service condition or monetary benefits with reference to Notification dated 19.02.1992 by which petitioner was appointed as a Permanent Part-time Lecturer in CM Law College, Darbhanga w.e.f. 14.11.1989 for the purpose of service condition of the petitioner. Entry of the petitioner into service as a permanent part-time Lecturer would be effective from 14.11.1989 was required to be issued by the Bihar State University (Constituent College) Service Commission, Patna. Such approval has been given on 29.05.1998 with a rider that the concurrence should be withdrawn in case any inconsistency has detected in course of time. The University have not notified the aforementioned condition to the effect of withdrawing or canceling the Notification dated 19.02.1992. Therefore, respondent's contention that petitioner does not fulfil the requisite qualification under Regulation No. 2 of the Regulations, 1991. On the other hand, petitioner has the benefit of proviso 2 of Regulation No. 2. If proviso is given effect in favour of the petitioner in that event petitioner is entitled to have the benefit of Letter dated 29.06.2005 of Manual of Bihar Universities Laws (cited supra).



8. Normally, courts will not interfere in the review matter. In other words, scope of review is limited to the extent of Order 47 Rule 1 of CPC. However, in the present case there is an error apparent on the face of the record in not noticing and appreciating Notification dated 19.02.1992 has a retrospective effect of appointment of petitioner as a permanent part-time Lecturer in law, in CM Law Darbhanga w.e.f. 14.11.1989, the respondents are permitted to insist prescribed qualification with reference to Regulations, 1991 so as to deny the benefit of Letter dated 29.06.2005 (cited supra). On the other hand, petitioner having been appointed w.e.f. 14.11.1989 and its concurrence on 28.05.1998, the petitioner grievance is required to be redressed with reference to second proviso of Regulation No. 2 of Regulations, 1991. In other words, respondents cannot insist that he is required to fulfil the requisite qualification in terms of Regulation No. 2 of Regulations, 1991 so as to deny him the benefit of fixation of half/proportionate income, dearness allowances and other permissible benefits in the light of the letter dated 29.06.2005 (cited supra). Therefore, we proceed to recall the order dated 20.06.2019 passed in Letters Patent Appeal No. 616 of 2018 arising out of CWJC No. 6838 of 2017 while allowing the present Civil Review petition. In the result, Letters Patent Appeal



No. 616 of 2018 arising out of CWJC No. 6838 of 2017 is restored on its original file and number.

9. Registry is hereby directed to re-list Letters Patent Appeal No. 616 of 2018 before the Roster Bench in the second week of February, 2024.

10. With the aforesaid observations, the present Civil Review Petition No. 253 of 2019 stands allowed.

11. Personal appearance of Mr. Ajay Kumar Pandit, Registrar, Lalit Narayan Mithila University, Darbhanga who is present in Court stands dispensed.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

