

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18817 of 2017

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1. Jai Prakash Vishwavidyalya Karmachari, Chapra and Ors son of Shri Ram Lakhi Thakur resident of Ramlila Mathiya, Daroga Rai Chowk, P.S. Bhagwan Bazar, District - Chapra.
 2. Shri Satyendra Kumar Singh son of Shri Ram Lakhi Thakur resident of Ramlila Mathiya, Daroga Rai Chowk, P.S. Bhagwan Bazar, District - Chapra.
 3. Saroj Kumar son of Shri Kapildeo Mahto resident of At - Ratanpura Ojha Toli, P.O. P.S. - Bhagwan Bazar, District - Chapra.
 4. Vidyabhushan Srivastava son of Shri Vishwanath Prasad resident of 13/121E, Madho Bihari Lane, Salempur, P.S. - Town, District - Chapra.
 5. Rajesh Kumar Pandey son of Shri Vishwanath Pandey resident of Ward No. 9, At Salapatganj, Gudri Bazar, P.S. - Bhagwan Bazar, District - Chapra.
 6. Bipin Kumar son of Late Ram Pravesh Sharma Near N.H. 30, Hardas Bigha Railway Station, Village - Jagmal Bigha, P.O. - Katauna, P.S. - Khusrupur, District - Patna.

... .. Petitioner/s

Versus

1. The Ghancellor Of Universities Of Bihar and Ors
2. Jai Prakash University, Chapra through its Registrar.
3. Vice Chancellor, Jai Prakash University, Chapra.
4. Registrar, Jai Prakash University, Chapra.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 19601 of 2021

1. Munna Kumar, Son of Late Ramayan Prasad, Resident of Daulatgang, Bhachuli, Babu Ki Gali, P.S. and Town - Chapra, District - Saran.
2. Paras Ray, Son of Raj Ballabh Ray, Resident of Sahpur, Diara, Sonapur, P.S. and Town - Chapra, District - Saran.
3. Jiyauddin Ansari, Son of Md. Shafiullah Ansari, Resident of Garkha Dakshin Tola, P.S. Garkha, District - Saran.
4. Mina Devi, Wife of Madhu Ram, Resident of Dahiyawan, P.S. and Town - Chapra, District - Saran.
5. Manoj Kumar Pandey, Son of Kashinath Pandey, Resident of Ward No. 29, Roopganj, P.S. and Town - Chapra, District - Saran.
6. Bol Bam Ram, Son of Ramkishun Ram, Resident of at, P.O. and P.S. - Magaidih, District - Saran.
7. Deepak Kumar, Son of Brahama Prasad, Resident of Aspatal Road, Nai Bazar, P.O., P.S. and Town Chapra, District - Saran.



8. Amit Kumar, Son of Surendra Prasad, Resident of Daulatganj, Bhagwan Bazar, P.S. and Town - Chapra, District - Saran.
9. Ranjay Kumar Singh, Son of Gauri Shankar Singh, Resident of Jain Colony, Bichla Telpa, Purwari Telpa, P.S. and Town - Chapra, District - Saran.
10. Afzal Ali Ansari, Son of Amzad Ali, Gudri Bazar, Takkar More, Salapatganj, P.S. Bhagwan Bazar, Town Chapra, District - Saran.
11. Rajeev Ranjan Kumar, Son of Narendra Prasad Singh, Resident of 202 - Nisarpura, Mohammadpur, P.S. - Bikaram, District - Patna.
12. Randhir Kumar Yadav, Son of Ashok Kumar Yadav, Resident of Chhota Telpa, P.S. - Town, Chapra, Saran.
13. Shyam Kishore Ray, Son of Dharmdev Rai, Resident of Village - Chakahan, P.O. - Shamkauriya, Isuwapur, District - Saran.
14. Alok Kumar Singh, Son of Shivji Singh, Resident of near Shiv Mandir, P.O. Kanar, Hariharpur, Chhitarauli, Khairia, District - Saran.
15. Ram Eqbal Ram, Son of Late Man Man Ram, Resident of East Dahiyawan, Jagdamba Road, Chhpara, Saran.
16. Ram Pravesh Sharma, Son of Late Visho Mistri, Resident of Nawada, P.O. - Mohammadpur, P.S. and Town Barh, District - Patna.
17. Anoj Kumar, Son of Tarkeshwar Raut, Ramgarha, Saran.
18. Kedar Nath Singh, Son of Param Nath Singh, Resident of Inai, Purabpatti, P.S. - Revilganj, District - Saran.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Additional Chief Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
2. Jai Prakash University, Chapra, through its Registrar.
3. Registrar, Jai Prakash University, Chapra.
4. Vice Chancellor, Jai Prakash University, Chapra.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 18817 of 2017)

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv.
For the Chancellor	:	Mr. Rana Vikram Singh, Adv.
For the J.P. Univ.	:	Mr. Ritesh Kumar, Adv. With Mr. Ashhar Mustafa, Adv. With Mr. Abu Nasar, Adv.

(In Civil Writ Jurisdiction Case No. 19601 of 2021)

For the Petitioner/s	:	Mr. Saroj Kumar, Adv.
For the State	:	Mr. Amit Bhushan, AC to GP-17)
For the J.P. Univ.	:	Mr. Ritesh Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA



C.A.V. JUDGMENT

Date : 6th -04-2023

1. Heard the parties.

2. The petitioners by way of these writ petitions challenges the orders passed by the Vice Chancellor, J.P. University, Chapra dated 09.11.2017 and the order dated 07.12.2017, whereby the Vice Chancellor has declared the appointments of the petitioners to be unlawful and the payment be made to the 43 non-teaching employees namely the petitioners as unlawful and illegal in terms of Section 10 (6) of the Bihar State University Act, 1976 (hereinafter referred as Act of 1976) and Article 3 (5) of the Service Tenures.

3. The brief facts as mentioned in C.W.J.C. No. 19601 of 2021 which need to be noticed for disposal of the petitions are in October, 1982 Colleges situated within Saran Division were carved out from the B.R.A. Bihar University, Muzaffarpur and a separate University by the name of J.P. University, Chapra was established. The University would have control and supervision over administrative jurisdiction on the colleges situated under Saran Division. Consequently, the non-teaching employees of the B.R.A. Bihar University, Muzaffarpur were also apportioned in terms of Section 70 (B) of the Act, but such non-teaching employees did not joined the J.P. University. Resultantly, the



petitioners were engaged on daily wage basis against the sanctioned vacant posts for discharging duties as Class-IV and Class-III employees by the competent authority of J.P. University. They were allowed minimum of the pay-scale of Class-IV and Class-III employees posts with admissible D.A. On 12.1.2011, the Syndicate in its meeting Agenda No. 4, resolved to pay salary to the petitioners on the regular pay-scale w.e.f. 01.01.2006 and also regularized their services since they were working on sanctioned vacant posts since long. The resolution was accepted by the University and vide order dated 28.01.2011, the Registrar passed orders regularizing services of the petitioners on Class-IV and Class-III employees posts and granted regular pay-scale. The pay-scale was released w.e.f. March, 2011. The said order was however, canceled by the Chancellor vide order dated 11.12.2011 on the premises that Vice-Chancellor had passed the order just before his retirement in January, 2011.

4. Thereafter, the regular Vice-Chancellor of the University placed the matter before the Syndicate afresh on 13.02.2012 for approval of the order dated 28.01.2011 passed earlier by his predecessor. The same was approved by the Syndicate on 13.2.2012 and the Senate further approved the resolution of the Syndicate on 15.02.2012, requesting the Vice-



Chancellor to issue a consequential fresh order. The Vice-Chancellor vide order dated 01.03.2012 re-validated its earlier order dated 20.01.2011 under Section 10(6) of the Act and regularized 43 non-teaching employees on Class-IV and Class-III employees posts. The pay fixation was approved w.e.f. 01.01.2006 and allowed regular salary and orders were passed by the Registrar on 01.10.2013 releasing regular salary w.e.f. September, 2013.

5. The petitioners continued to receive their salary till January, 2015 in the regular pay-scale, whereafter their salary was withheld w.e.f. December, 2015. They were placed on a consolidated salary of Rs. 6,000/- per month treating them as Ad-hoc appointees. The ad-hoc payment was later on increased from Rs.6,000/- to Rs. 14,400/- per months. The petitioners stated to have protested against the said ad-hoc payment, whereupon the impugned orders were passed by the Vice-Chancellor.

6. It is stated by the petitioners that the order impugned was challenged in C.W.J.C. No. 18817 of 2017 by the Union of J. P. Vishwavidyalaya Karmchari Sangh, since the petitioners were members of the Union. However, they were advised to file separate writ petition also.



7. The writ petition bearing C.W.J.C. No. 19601 of 2021 was directed to be tagged with C.W.J.C. No. 18817 of 2017 and, therefore, both the cases have been heard together.

8. Facts of C.W.J.C. No. 18817 of 2017:- facts quoted hereinabove are also mentioned by the petitioner Union in their writ petition and challenge is also to the same orders as above and the facts of the case are, therefore, not repeated.

9. Learned counsels appearing for the petitioners in both the writ petitions have commonly argued and submitted that the Vice-Chancellor does not have the powers to pass the impugned orders and has exercised without having any authority under Section 10 of the Act to set aside the decision of the Syndicate and the Senate. It is submitted that sanction of the State Government is only limited to the creation of posts and approval of staffing pattern. Appointments made by the competent authority do not require further sanction from the State Government and submit that Section 35 of the Act has been wrongly interpreted and constituted by the State Government. The action of the Vice-Chancellor is also challenged on the ground of violation of principles of natural justice as no notice was given to the persons affected by the order. The grounds and reasons mentioned in the affidavit to the writ petition go beyond the order passed by the



Vice-Chancellor. It is submitted that validity of any order passed by any authority has to be judged on the reasons and their validity alone. Fresh reasons cannot be supplemented in the name of affidavit or otherwise.

10. Reliance has been placed on the Judgments reported in **AIR 1952 SC page 16 (Commissioner of Police, Bombay Vs. Gordhan Das Bhanji)** , **A.I.R. 1978 SC page 851 (Mohindar Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.)** and **1999 (3) P.L.J.R. 628 (U.D. Bhargava @ Umesh Datt Bhargava Vs. Hindustan Copper Ltd. & Ors.)**.

11. It is further submitted that the Vice-Chancellor's powers of review in terms of Section 9 (4) (A) could not have been exercised to recall order of the Senate and Syndicate. Such action is to be termed as arbitrary and hence it is prayed to quash and set aside the impugned orders passed by the Vice-Chancellor and paid the arrears of salary in the regular pay-scale w.e.f. February, 2015.

12. Per contra, learned counsel appearing for the University have submitted written submission and assert that the method and manner of appointment of the petitioners was not in accordance with law. They were engaged on daily basis without following any procedure namely without issuing of an Advertisement, selection process and without any approval of the



State Government, as contemplated under Section 35 of the Act of 1976. It is further submitted that the regularization of the petitioners was contrary to the decision of the Chancellor which was binding upon the Vice-Chancellor, Syndicate as well as Senate and other bodies of the University in terms of Section 9 (7) (2) of the Act of 1976.

13. The respondents further submits that the Governor Secretariat vide his letter dated 22.10.2010 has issued directions in terms of Section 9 (7) (2) of the Act of 1976, not to take any policy decision relating to financial and administrative matters, but the then Vice-Chancellor violated the orders of the Chancellor and convened the meeting on 12.01.2011 and, therefore, the Governor rightly annulled the proceedings of the meeting of the Syndicate dated 18.01.2011, vide his order dated 31.03.2011. It is stated that the Syndicate wrongfully decided to again approve the same Agenda vide its meeting dated 13.02.2012 and the Registrar has wrongfully issued orders holding the 43 employees including the petitioners entitled for regular pay-scale along with other allowances. The State Government was asked to release funds, whereupon the Secretary objected the appointments of petitioner nos. 1, 2, 9 and 16 of C.W.J.C. No. 19601 of 2021. The Accountant General audit also raised audit objection with regard to payment of



salary to the 43 employees vide his letter dated 09.03.2017, stating that the procedure prescribed under Section 35 (1) (2) of the Act of 1976 has not been followed. It is submitted that without approval of the State Government the regularization of services of the petitioners of C.W.J.C. No. 18817 of 2017 is illegal.

14. Reliance has been placed on Full Bench Judgment of this Court reported in **1997 (1) P.L.J.R. 509 (Brij Kishore Singh & Ors. vrs. State of Bihar & Ors.)**. Learned counsel for the respondents also rely on **2005 (9) SCC 129, (State of Bihar & Ors. Vrs. The Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.)** to submit the provisions of section 35 are mandatory. He also relies on **2010 (9) SCC 247 (State of Karnataka Vs. M.L. Keshri)** as well as **2018 (3) SCC 680 (Upendra Singh Vrs. State of Bihar & Ors.)** in support of his contention. Learned counsel submits that any persons appointed in violation of provisions of Section 35 of the Act cannot be allowed to continue and their service deserves to be terminated at any time. The expenditure incurred for such appointment or promotion shall be released from the Official making such appointment in terms of Section 35 (3) of the Act of 1976. The subsequent decision taken by the Syndicate in its meeting dated 13.02.2012 and the decision of the Senate dated 15.02.2012 are also per se illegal as the Syndicate or Senate did



not have the power to release the decision of the Chancellor without his prior approval in view of Section 9 (4), Section 9 (7) (II) of the Act of 1976.

15. The Bihar State University Act, 1976 lays down provisions and powers of the Vice Chancellor and the Chancellor. The Chancellor in terms of Section 9(4) of the Act of 1976, would have the power to annul any proceedings or order, which he finds to be contrary to the provisions of the Act, Statute, Ordinance or Regulations. He may also annul any order which lacks reasoning. However, there is a caveat of providing opportunity of hearing before passing any such order as above. Section 9 (7) empowers the Chancellor to transfer any Officer, Teacher from one post to another in same University or to Another University and his directions are required to be implemented by the Vice Chancellor, Syndicate and Senate.

The powers of the Vice Chancellor are mentioned in **Sections 10 (5), (6), (7) and (8) of the Act of 1976**. As per **Section 10 (11)** he exercises general control over the educational arrangement of University and he may take all steps which are necessary for maintaining academic standard and administrative discipline of the University. It would apposite to quote **Section 10 (12) and (13) of the Act of 1976** , which reads as under:-



“10. (12) *If at anytime, except when the Syndicate or the Academic Council is in session, the Vice-Chancellor is satisfied that an emergency has arisen requiring him to take such immediate action involving the exercise of any power vested in the Syndicate or Academic Council] by or under this Act, the Vice-Chancellor shall take such action as he deems fit, and shall report the action taken by him to such authority which may either confirm the action so taken or disapprove of it.*

(13) It shall be the duty of the Vice-Chancellor to see whether the proceeding of the University are carried on in accordance with the provisions of this Act, the Statutes, the Ordinance, the Regulations and the Rules or not and the Vice-Chancellor shall report to the Chancellor every proceeding which is not in conformity with such provisions.

For so long as the orders of the Chancellor are not received on the report of the Vice-Chancellor that the proceeding of the University is not in accordance with this Act, the Statutes, the Ordinance, the Regulation and the Rules, the Vice-Chancellor shall have the powers to stay the proceeding reported against.”

As per Section 35 of the Act of 1976, its heading provides that no post for appointment shall be created without the prior sanction of the State Government. As per Clause 35 (i), the prior approval is required for creation of teaching and non-teaching posts. No University or College shall create teaching or non-teaching post involving financial liability. They are also



restrained from increasing the pay or allowances attached to any post or sanction any new allowances. They are also restricted from sanctioning any special pay or allowances or other remuneration of any kind including ex-gratia and payment or any other benefits having financial implication to any person holding a teaching or non-teaching post. They are also restrained from appointing any person on any post without prior approval of the State Government. It further provides that any appointment made in an irregular or unauthorized panel, shall be invalid and such person services can be terminated at any time and expenditure incurred would be realized from the Officer making such appointment.

16. In view of the aforesaid provisions, the decision of the Syndicate and Senate regularizing the services of 43 Class IV and Class III employees working in the University for a long period, were required to be placed before the State Government for seeking its approval for regularization. However, it seems that the State had received a proposal from the University on 30th October, 2004 and the State Government sent a letter on 14th June, 2005 refusing to regularize petitioner nos. 1, 2, 9 and 16 of C.W.J.C. No. 19601 of 2021. Thus, the State Government having refused regularization or grant of regular pay-scale, could not have been by-passed by the Syndicate and the Vice-Chancellor could not



have issued orders for regularization of the concerned employees, but this Court cannot close eyes to the fact that the petitioner have been working with the University for almost 30 years and they cannot be faulted if the Senate as well as the Syndicate and the Vice-Chancellor have approved their regularization and have granted them regular pay-scale.

17. I have considered the submissions, in **A.I.R. 1978 SC page 851 (Mohindar Singh Gill & Anr. Vs. Chief Election Commissioner, New Delhi & Ors.)**, Supreme Court has held as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by



the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

18. In 1999 (3) P.L.J.R. 628 (U.D. Bhargava @

Umesh Datt Bhargava Vs. Hindustan Copper Ltd. & Ors.), the

Apex Court has held as under:-

“18. For the first time the respondents came out with a case in the counter affidavit that the impugned order of termination was in fact an order of compulsory retirement which has been passed in exercise of power under Rule 10(17)(a) of the NMDC service regulation. The respondents, by filing additional affidavits in the shape of rejoinder and reply, further make out a case that the appraisal report of the petitioner was considered by the reviewing committee and it was found that in the public interest his services does not require any more and he should be relieved by way of compulsory retirement. It is sell settled that if any order is passed by an authority on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reason in the shape of affidavit or otherwise. At this stage I must quote the principle laid down by the Supreme Court in the case of Mohinder Singh v. Chief Election



Commissioner (AIR 1978 SC 851), where their Lordships observed:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

19. A protracted litigation seems to have been going on in the State of Bihar with regard to disputes concerning absorption of employees working on teaching and non-teaching posts in several College, affiliated to the University, which were taken over as Constituent Colleges under the provisions of Act of 1976. The litigation ultimately laded in the Apex Court in **2005 (9) SCC 129, (State of Bihar & Ors. Vrs. The Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.)** Committees were formed by the State Government to examine proposals with regard to creations of posts of teachers and non-teaching staffs in affiliated College and also to go into the question of absorption of staffs and submitted its report.

20. Besides the Court, the Supreme Court ultimately appointed Justice S.C. Agarwal retired Judge of the Apex Court as one member Enquiry Commission to conduct the enquiry in



relation to the reference made therein. Its report was accepted in part which was accepted. In a case the Apex Court examined the provisions of Section 35 and its interpretation.

21. In 2005 (9) SCC 129, (State of Bihar & Ors. Vrs. The Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.) Supreme Court has held as under:-

“43. For deciding the question of interpretation of Section 4(1)(14) and Section 35 and the competing claims of the State and the university concerning their powers in the matter of absorption of the staff of erstwhile affiliated colleges converted into constituent colleges, a closer examination of the two provisions in the light of other provisions of the Act becomes necessary. Section 35 is couched in mandatory terms. It prohibits any affiliated college either to create a teaching or non-teaching post involving financial liabilities or to make any appointment against such post without prior approval of the State Government. Compared with this provision, clause (14) of Section 4(1) enables the university, after obtaining sanction from the Government or on the basis of the proposals of the State Government, to take over any “institution” affiliated or non-affiliated. It is with the purpose of enabling universities to take over any institution that it has been conferred with a power to enter into an agreement with the Governing and/or Managing Body of such institution. After entering into such agreement the university is empowered by the proviso to clause (14) to review the appointments made in the institution which is taken over and take a decision with regard to



the regularity or otherwise of the appointments. The decision of the university in the above regard is to be held as “final and binding”.

48. If we examine the scheme of the Act and object of the two provisions, they seem to operate in two different fields and there is no conflict in them. Section 35 is expressly applicable to affiliated colleges and mandates that new posts giving rise to financial liabilities cannot be created and appointments against them cannot be made without prior approval of the State Government.

“50. Section 35 is applicable to all “affiliated colleges” but does not cover a situation at a stage when an “affiliated college” is proposed to be taken over as “constituent college” by the university on the sanction or proposal of the State Government. The subject of taking over an institution affiliated or non-affiliated with assets, liabilities and staff is regulated by provisions of clause (14) of Section 4(1) alone. Section 35 of the Act requiring obtaining of prior approval to creation of posts or appointments against them, is not intended to restrict the powers of the university in absorbing staff of institutions taken over in accordance with the terms of agreement entered into with the Governing Bodies of those institutions. It is a different matter that in taking a decision for absorbing the staff of non-affiliated or affiliated institution under an agreement to be entered into with the Governing Bodies or managements of such institution, the university may bestow due regard on the validity or otherwise of the appointments where the institution is an affiliated college and the qualifications of persons appointed. University may also take into consideration the provisions of Section



35 to decide whether any appointment made against posts, without prior approval of the State Government, should be recognised for absorption or not.”

22. Thus, the Supreme Court passed orders directing the University to take a decision for absorption of appointees in the Colleges which has already been taken over. The question, therefore, arises whether the petitioners were appointed in affiliated Colleges or they were appointed in the Constituent Colleges. The Judgment of **Upendra Singh (supra)** was not dealing with the situation as has arisen in the present case. It was with respect to a College which was later on taken over as a Constituent College. The question arose whether the appointment of such a person in the erstwhile College before they became the Constituent College was after following due procedure and whether the said appointment was against the sanctioned posts. The Apex Court noted the statement of the respondents therein that the appointment was not against a sanctioned post as there was no sanctioned posts even on the date of appointment.

23. In the present case, the petitioners were appointed in the University as the Class IV employees of the B.R.A. University did not join. They have been now working for almost as 25 to 30 years. **In 2006 (1) SCC 1 (Secretary, State of Karnataka Vrs. Umadevi)**, the Apex Court in para 53 has held as under:-



“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”



24. When the University considered their cases in 2012 they had completed more than 10 years. Thus, those persons, who have completed 10 years of service as on the date when the Syndicate took a decision in 2012, would be entitled for regularization as one time measure. However, this Court finds that several of the petitioners, they have not completed 10 years of service even as on 13.12.2012, their regularization, therefore, could not have been made, even though they were working as sanctioned posts. Principally, the law is well settled in **Umadevi** (supra) that a persons who has been appointed by back door cannot be allowed to be regularized. It is an exception carved out in para 53.

25. In 2013 (1) PLJR 964 (FB) (**Ram Sewak Yadav Vr. State of Bihar**), the Full Bench of Patna High Court has held as under:-

“43. We therefore sum up our conclusions and answer the reference as follows : -

A) Uma Devi (supra) prohibits regularisation of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularised under any circumstances.

C) Irregular appointments can be regularised if the appointment was made by an authority competent to



do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”

26. Keeping in view Clause ‘C’ as above, this Court finds that the appointment of the petitioners was on the Class-IV posts which were duly sanctioned. For appointment as Class-IV employees, the appointment were made on daily wage basis. Procedure for appointing on daily wage basis is not provided. Thus, the question whether their appointment was by following due procedures cannot be gone into. If a due procedure would have been followed, they would have been appointed on regular basis itself. The question of regularization only arises whether the appointment has not been followed by due procedure, but the appointment is against the sanctioned posts. In the circumstances, therefore, the decision to regularize their services is found to be in accordance with law as laid down by the Apex Court in **Secretary, State of Karnataka Vrs. Umadevi (supra)** as well as in accordance with para 43 (C) of Ramsevak Yadav (supra). Since their appointment was made in the University itself, approval for



appointment in terms of Section 35 (b) was not required as Section 35 of the Act of 1976 would be applicable only in relation to affiliated College as noticed in **2005 (9) SCC 129, (State of Bihar & Ors. Vrs. The Bihar Rajya M.S.E.S.K.K.Mahasangh & Ors.)** The plea of the respondents State and the order passed by the Vice-Chancellor, on the ground of the services could not have been regularized is therefore, not sustainable in law. As has come on record that all those who were appointed in the University itself, thus, the University alone had the power to appoint the same and prior approval as envisaged under Section 35 is not necessary for their appointment or regularization. The Syndicate and the Senate has a final authority in this regard.

27. It is to be noticed that vide amendment dated 31.3.2021, requirement of prior approval from the State Government was inserted as a proviso to **Section 10 (6)** as under:-

“10 (6) Provided that appointment on sanctioned posts of non teaching employees of grade III in the universities/Constituent colleges of state shall be done by the Vice-Chancellor of the university on the recommendation of Commission decided by the State Government through due process. University shall take prior approval of the state government for sending requisition to the



concerned Commission for appointment to those posts.”

28. Thus, appointments made prior to 31.03.2021, the University did not require prior approval from the State Government.

29. Recently, the Apex Court in **the State of Bihar & Ors. vrs. Devendra Sharma, 2020 (15) SCC 466** has approved the view taken in **Ram Sevak Yadav** (supra), where a Division Bench judgement of Patna High Court following Full Bench judgement of Ram Sevwak Yadav (supra) was challenged, has held as under:-

“44. In view of the aforesaid judgments, it cannot be said that the appointment of the employees in the present set of appeals were irregular appointments. Such appointments are illegal appointment in terms of the ratio of the Supreme Court judgment in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] . As such appointments were made without any sanctioned post, without any advertisement giving opportunity to all eligible candidates to apply and seek public employment and without any method of recruitment. Such appointments were back door entries, an act of nepotism and favouritism and thus from any judicial standards cannot be said to be irregular appointments but are illegal appointments in wholly arbitrary process.”



46. We do not find any error in the order of the High Court dated 24-9-2014 [State of Bihar v. P.S. Dhaka, 2014 SCC OnLine Pat 2636] , and, therefore, the appeals filed by the candidates against such order are dismissed. The pending applications, if any, shall stand disposed of.

30. The petitioners have also challenged the order of the Vice-Chancellor on the ground of lack of authority. Section 10 of the Act of 1976 (supra) lays down the powers of the Vice-Chancellor.

31. It is to be noticed that Syndicate consists of Chancellor and Vice-Chancellor as members in terms of Section 18 of the Act and is the final authority of the University.

32. Once the Senate has approved the resolution of the Syndicate to regularize the services of the petitioners vide its decision dated 15.02.2012, the Vice-Chancellor, who passed the impugned orders in 2017 is found to have acted beyond his powers as he could not have ordinarily defied the decision of the Senate.

33. He thus, does not have the powers to nullify the decisions of the Syndicate or the Senate.

34. However, the aspect of the petitioners getting regular pay-scale up to 2015 also cannot remain un-noticed. The State Government did not make any objections for grant of regular pay-scale to the petitioners till January, 2015.



35. This court further notices that a vested right is created in favour of the petitioners. Once they started getting regular pay-scale from 2012, such pay-scale could not have been withdrawn and they could not have been placed in ad-hoc pay without following the procedure of law. Once the pay-scale has been granted, right vests in the individual to receive the same, the order of withdrawing the pay-scale and placing them as ad-hoc pay-scale is thus found to be in violation of principles of natural justice and deserves to be set aside on that count alone. However, as this Court in foregoing paras has examined the validity and legality of the earlier orders passed in 2012 by the Syndicate and the Senate, as had upheld the action of regularizing and granting regular pay-scale. No purpose would be served in allowing the respondents to comply with the principles of natural justice as the very basis of withdrawing of salary and withdrawing regularization has been found to be unjustified.

36. In view of above, these writ petitions deserves to be allowed. Accordingly, the impugned orders dated 09.11.2017 and 07.12.2017 are quashed and set aside. The State Government is bound to release finances to the University for payment of salary to the 43 Class-IV employees, who are working against sanctioned posts. Arrears of salary shall also be released within a period of



three months. Of course, the payments made on ad-hoc basis shall be adjusted while preparing the arrears of salary.

37. Accordingly, the writ petitions stand allowed. No costs.

(Sanjeev Prakash Sharma, J)

pravinkumar/-

AFR/NAFR	A.F.R.
CAV DATE	04.02.2023
Uploading Date	
Transmission Date	

