

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1256 of 2020

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Rambalak Choudhary S/o Shankar Choudhary, Resident of C/o-Professor Sadan Prasad Singh, Kila Ghat Sarai, Vivekanand Colony, P.O.-Jagdishpur, District-Bhagalpur.

... .. Petitioner/s

Versus

1. T. M. Bhagalpur University Bhagalpur through its Vice Chancellor.
2. The Vice Chancellor, T. M. Bhagalpur University, Bhagalpur.
3. The Registrar, T. M. Bhagalpur University, Bhagalpur.
4. The Director, Agro Economic Research Centre for Bihar and Jharkhand, T. M. Bhagalpur University, Bhagalpur.
5. The Economic and Statistical Advisor, Ministry of Agriculture and Farmers Welfare, Govt. of India, Krishi Bhawan, New Delhi.
6. The Advisor, Ministry of Agriculture and Farmers Welfare, Govt. of India, Krishi Bhawan, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shivendu Kishore, Sr. Advocate Ms. Rabia Gulnaz, Advocate
For the Respondent/s	:	Mr. S.D. Sanjay (Adl.SG)
For the University	:	Mr. Ashhar Mustafa, Advocate Ms. Anita Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

14 28-11-2024 The respondent University has filed Interlocutory Application No.02 of 2024 for condonation of order of cost, which was passed by this Court on 27.11.2024.

2. In view of the above, the order of cost is waived and the I.A. No.02 of 2024 stands allowed.

3. Heard learned counsels for the parties.

4. One Dr. Amlendu Kumar was an employee of Agro Economic Research Centre/T.M. Bhagalpur, University. The



said Amlendu Kumar took lien for three years to work in Dr. Rajendra Prasad Central Agricultural University, Poosha. In the leave vacancy of the said Dr. Amlendu Kumar, an advertisement was published in the year 2008, inviting application for appointment on the post of Research Officer, on lien vacancy reserved for SC/ST candidates in the prescribed pay scale of Rs.8000-13500/- plus admissible allowances on purely temporary basis on probation of one year. Indisputably, the present petitioner, namely, Rambalak Choudhary was appointed on selection to the said post of Research Officer in T.M. Bhagalpur University (hereinafter described as the 'said college').

5. It is important to note at the outset that in the appointment letter issued in favour of the petitioner on 20.01.2009 it is stated :-

“Vice-Chancellor on the recommendation of the selection Committee has been pleased to appoint Rambalak Choudhary, on the post of Research Officer, SC against leave vacancy on purely temporary basis in the Agro Economic Research Centre for Bihar and Jharkhand, T.M. Bhagalpur University, Bhagalpur in the prescribed pay scale of Rs.8000-13500/- plus admissible allowances as per Rules.

Subject to continuation of vacancy Shri Chandra will be on probation for one year during



which his performance will be observed and on successful completion of probation period he may be considered for absorption against the permanent post."

6. Further case of the petitioner is that the said Dr. Amlendu Kumar who took lien for three years never returned to Bhagalpur University on completion of the period of lien. On the contrary, he was confirmed on absorption in Dr. Rajendra Prasad Central Agricultural University, Poosha in the year 2016. Thus, the post of Research Officer, which was filled up by Dr.Amlendu Kumar was left vacant from the date of his departure on lien and the petitioner practically had been continued his service in the said vacant post even after expiry of the period of lien.

7. It is contended on behalf of the petitioner that as per appointment letter, the petitioner was directed to be on probation for one year and on continuation of vacancy he might be confirmed/absorbed as a regular employee. However, after expiry of one year, he was allowed to continue with his work as Research Officer in the same capacity without being absorbed.

8. The learned Advocate on behalf of the petitioner next draws my attention to page-79 of the second supplementary affidavit on perusal of which it is ascertained that the petitioner



was confirmed only on 21.08.2024 despite the fact that he joined the post on 28.01.2009 against the appointment order dated 28.01.2009. The petitioner raised a question of unequal treatment and violation of Article 14 & 16 of the Constitution on the ground that vide a Notification No.77/2024 dated 26.09.2024, ten teachers were confirmed from the date of their joining. He also refers to Annexure-14 of the supplementary affidavit filed on behalf of the petitioner to show that the said Dr. Amlendu Kumar in whose leave vacancy, the petitioner was selected and joined his service on the basis of appointment letter dated 17.01.1997, he was confirmed vide order dated 12.10.2001 w.e.f. 24.01.1997 i.e. from the date of his appointment. Again, the said Dr. Amlendu Kumar was confirmed in Dr. Rajendra Prasad Central Agricultural University, Poosha after completion of two years from his joining as Assistant Professor w.e.f. 11.07.2009. Thus, the petitioner contends that he ought to have been confirmed and absorbed in the respondent University as Research Officer on completion of one year of probation.

9. In support of the petitioner's contention, the learned Advocate on behalf of the petitioner refers to a Coordinate Bench decision of this Court, reported in *1995 (2) PLJR (Smt.*



Krishna Rai & Ors. Vs. State of Bihar and others) in the said judgment the Coordinate Bench had the occasion to define the scope of the term “probation” in relation to Rule 41 of the Bihar Service Code. In Bihar Service Code “probation” means a Government servant employed on probation in or against a substantive vacancy in the cadre of a department. It is well known that the term “probation” means testing of a person’s capacity, conduct or character especially before it is admitted to regular employment. In Webster’s dictionary “Probation” is said to have been derived from the Latin word “*Probatio*” and French “*Probare*” which mean to try, examine, prove and is itself defined as any proceeding designed to ascertain truth, to determine character, qualification etc., examination, trial or a period of trial, as to engage a person on probation. A reference may be made to the decision of the Supreme Court in the case of ***S. Sukhbans Singh Vs. State of Punjab (AIR 1965 SC 1711 at Page-1714-15)***. Further the meaning given to the word “Probation” in Wharton’s Law Lexicon; thirteenth Ed., is “suspension of a final appointment to an office until” a person temporarily appointed (who is called a “Probationer”) has by his conduct proved himself to be fit to fill it. Thus, even from reading of Rule 41 of the Code it is clear that when a



Government servant is put on probation only then he gets appointment in a substantive capacity in the cadre of a department against a substantive vacancy.

10. The learned counsel for the petitioner next refers to another decision of this Court reported in **1986 PLJR 26**, the issue involved in the aforementioned decision is as to whether seniority admissible to a person is reckoned from the date of his confirmation or his length of service in the cadre.

11. With regard to the facts and circumstances of this case, I do not find much relevance of the ratio laid down in the above-mentioned report. Learned counsel for the petitioner next refers to the case of **Madhu Mangal Tiwary Vs. The State of Bihar & Ors.** reported in **2004(3) PLJR 716**, it is held by a Coordinate Bench of this Court that only a substantive appointment creates a lien and not temporary or officiating appointments. When petitioner is appointed on a temporary basis of a purely temporary post, services transferred and merge in corporation and the post seized to exist in Government, there cannot have any lien under the Government. Therefore, he is not entitled to get any pension from the date of his appointment against a lien.

12. The factual circumstances of this case is also



distinguishable, in view of the fact that on absorption of certain post in the corporation, the Government post ceased to exist. Under such circumstances, a coordinate Bench of this Court in the above-mentioned reported decision held that the incumbent cannot claim pension on the basis of his lien in the Government post.

13. In the instant case, the petitioner's appointment was never seized, it was initially against leave vacancy but in the appointment letter itself the respondent Authority declared that on successful completion of probation period he may be absorbed. There is absolutely no adverse remark produced by the respondents till date that the petitioner failed to discharge his duty satisfactorily.

14. The respondent authority failed to satisfy this Court that after Dr. Amlendu Kumar being absorbed in Dr. Rajendra Prasad Central Agricultural University, Poosha, the said post automatically became vacant. The respondent authority did not take any step for recruitment against the said post. On the contrary, the respondent allowed the petitioner to continue with the said post without any break.

15. Learned Advocate on behalf of the University refers to a Full Bench Judgment of this Court, reported in



2013(1) PLJR 964 (Ram Sevak Yadav & Anr. Vs. The State of Bihar & Ors.). The aforesaid decision came up on reference of a question, viz., if **(2010) 9 SCC 247 (The State of Karnataka Vs. M.L. Kesari)** makes a departure from the distinction between an illegal and irregular appointment as held in **(2006)4 SCC 1 (State of Karnataka Vs. Uma Devi)** for purposes of regularisation. If it does, shall it constitute a precedent. The Full Bench of this Court answered the above question in Para-43, which runs thus :-

“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.”

16. Plinth and substances of the decision of this Court in the above-mentioned report is that an illegal appointment is void ab-initio and such appointment cannot be made permanent. Similarly regularization on daily wage, casual, ad-hoc and temporary appointments is prohibited. However, irregular appointment can be regularised, if the appointment was made by the authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution of India with equal opportunity for participated to other eligible candidates by competitive selection and the candidates possessed the eligibility qualification for regular appointment to the post.

17. In the instant case, the respondents did not dispute petitioner's eligibility in respect of the said post. One Dr. Amlendu Kumar's confirmation in another University, the vacancy created in the sanctioned post was not attempted to be filled-up by the University. The petitioner was appointed on the basis of an advertisement notice by the Selection Committee.

18. Therefore, I do not find any reason as to why the



appointing authority refuses to give affect to the second part of the appointment letter, where the petitioner might be considered for absorption on confirmation on successful completion of probation period. At-least, the petitioner ought to have been confirmed from the date when the vacancy against Dr. Amlendu Kumar fell vacant on his confirmation in another University.

19. In view of the above discussion, the instant writ petition is allowed on contest, however, without cost.

20. The respondent authority is directed to issue an order of confirmation either from the date of completion of probation period by the petitioner or from the date of confirmation of Dr. Amlendu Kumar causing resultant vacancy in the post held by Dr. Amlendu Kumar with all consequential reliefs, such action shall be taken by the University, within 60 days from the date of communication of this order.

21. In view of the above order, the Office Order No.110/2024 dated 23.08.2024 granting confirmation of service in favour of the petitioner w.e.f. 21.08.2024 is quashed and set aside.

(Bibek Chaudhuri, J)

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