

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7738 of 2021

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Sudista Prasad Singh Son of Late Ram Bhikhari Singh Resident of Village-
Jadhua, PS- Hajipur Town, District- Vaishali at present working as Assistant
Professor and Head of Department (English), S.M.S. Samta College, Jandaha,
Vaishhali.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Additional Chief Secretary-cum-Principal Secretary, Department of
Education, Govt. of Bihar, Patna.
3. The Director, Higher Education, Department of Education, Bihar, Patna.
4. The Chancellor of the University, Governor House, Patna.
5. The Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
6. The Registrar, B.R. Ambedkar Bihar University, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amresh Kumar Singh, Adv. Mr. Onkar Kumar, Adv. Mr. Dinashankar Pd. Singh, Adv.
For the State	:	Mrs. Shilpa Singh (GA12) Mr. Ram Vinay Pd. Singh, AC to GA12
For the University	:	Mr. Nikhil Kumar Agrawal, Adv.
For the Chancellor	:	Mr. Janardan Pd. Singh, Sr. Adv. Mr. Rajiv Ranjan Kr. Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 25-09-2024

Heard learned counsel for the petitioner, learned
counsel for the State, learned counsel for the University and
learned Senior Counsel for the Chancellor.

2. The present writ petition has been filed seeking the
following reliefs:

*“(i) For issuance of a writ in the nature of certiorari
to shift back the notification containing Memo No.
BB/2358 dated 09-12-2005 so far it relates to the
absorption/regularization of the service of the
petitioner with effect from 28-10-2002 as also the*



office order containing Memo No. 3789 dated 05.09.2009 issued under the signature of Registrar B.R Ambedkar Bihar University, Muzaffarpur to the same effect and notification containing Memo No. B/686 dated 18.06.2018 to the same effect.

(ii) For issuance of a consequential writ in the nature of mandamus directing and commanding the respondents particularly the respondents Ambedkar B.R Bihar University, Muzaffarpur to shift back the date of absorption /regularization of the petitioner from 28.10.2002 to 11.09.1981 i.e the date of joining as per statute framed by the Chancellor of the Universities for regularization of the service of purely temporary Lecturers appointed on or before 28.02.1982 approved by the Chancellor vide letter no. BSU-25/85-283-GS(1) dated 29-01-1986 and after shifting back the absorption /regularization to give all consequential benefits including seniority and monetary benefit.

and/or

(iii) For issuance of a writ /order/direction for which the petitioner may be found legally entitled to under the facts stated above herein under.”

3. The brief facts of the present case is that the petitioner joined the post of Lecturer in Samta College, Jandaha on 11.09.1981, which was affiliated to the then Bihar University, Muzaffarpur. The said college was converted into a constituent unit of the then Bihar University, Muzaffarpur. The Chancellor of the Universities, through letter no. BSU-25/85-283-GS (1) dated 29.01.1986, issued guidelines for the regularization of services of purely temporary lecturers who were appointed on or before 28.02.1982. The criteria for regularization stipulated that purely temporary lecturers serving in the universities or colleges as of that date shall be appointed by the Syndicate or the Governing Body, as applicable, into regular service if they meet



the following conditions: (a) they were appointed as a Lecturer on a purely temporary basis on or before 28.02.1982 and have since been continuously serving in the university or college; (b) they possess at least a second-class Master's degree in the relevant subject; and (c) the post to which the Lecturer was appointed was duly sanctioned by the competent authority, or a proposal for sanctioning the post had been submitted by the university or college to the State Government's Department of Education on or before 28.02.1982.

4. The said college was converted into a constituent unit of Bihar University, Muzaffarpur, by the State Government during the 4th Phase. This decision was communicated through a letter issued by the Department of Education, bearing letter no. 1095, dated 19.08.1986, which officially informed the college of its transition from an affiliated college to a constituent unit of the university.

5. The State Government, through letter no. 38C dated 01.02.1988, informed all university registrars regarding the ad-hoc adjustment/absorption of teaching and non-teaching staff from colleges that became constituent units during the 4th Phase. This communication followed the State Government's decision based on the recommendations of a three-member



inquiry committee, chaired by the President/Chairman of the Inter-University Board, which submitted a report on ad-hoc adjustment/absorption. In the list issued for Bihar University, Muzaffarpur, concerning Samta College, Jandaha, the petitioner's name was included among the approved teachers, occupying the first post in the Department of English (Annexure 2 of the Writ Application).

6. The State Government issued letter bearing no. 181/C, wherein it was stated that teachers securing less than 52.5 percent marks at the postgraduate level will be allowed to continue in service on an ad-hoc basis on the available posts only on the condition that they acquire the required marks or obtain a PhD degree within four years from the date of absorption. It was also stated that their adjustment in the service will be done from the date of attaining the qualification and their seniority will be determined considering them appointed from the said date (Annexure-3 of the writ application). It is an admitted fact that the petitioner had secured 47.3% mark in his post-graduation.

7. A writ petition being C.W.J.C. No. 4021/1995 was filed by an organization, in which this Court vide order dated 31.07.1997, directed the University inter-alia to take steps



as per the Universities Act. The State Government preferred an SLP before the Hon'ble Apex Court, wherein the Hon'ble Justice (Retd.) Agrawal Commission was constituted for verification and recommendation of eligible persons for regularization. Hon'ble Justice (Retd.) Agrawal Commission in its report had categorically observed that those who had not improved their qualification prior to 09.05.1988 would be deemed to have been regularized in the service only from the date on which they acquired such qualification. The commission had also specifically observed that among the teaching staff, only the petitioner did not possess the requisite qualification for the post of Lecturer. The petitioner acquired his Ph.D Degree on 28.10.2002.

8. Learned counsel for the petitioner submits that the Hon'ble Apex Court in Civil Appeal No. 6098/1997, accepted the report of the Agrawal Commission. In compliance with the order of the Hon'ble Supreme Court, the University regularized the services of the petitioner with effect from 28.10.2002 i.e. the date when he acquired his Ph.D Degree. On 04.01.2006, the petitioner filed a Writ Petition being C.W.J.C. No. 268/2006, challenging his regularization order on the ground that his absorption should have been considered from



the date of his joining. During the pendency of C.W.J.C. No. 268/2006, the petitioner's services were terminated which was challenged by an I.A. dated 29.08.2008. The Hon'ble Court vide a common order in similar cases quashed the order of termination but did not consider it fit to delve into the question of petitioner's seniority. An order bearing Memo No. 3789 dated 05.09.2009 was issued under the signature of the Registrar, once again regularizing the services of the petitioner with effect from 28.10.2002 (Annexure-10 of the writ application).

9. Learned counsel for the petitioner further submits that on 12.01.2010, the petitioner filed another writ petition being C.W.J.C. No. 842/2010, challenging his regularization order dated 05.09.2009, feeling aggrieved by the date of effect of his regularization. The said C.W.J.C. No. 842/2010 was heard along with several writ applications by a Full Bench of this Court and vide order dated 11.03.2010, a commission was constituted for verification of issues relating to regularization of concerned employees. Thereafter, an SLP being SLP(C) No. 12591/2010 was filed against the order dated 11.03.2010 passed in C.W.J.C. No. 842/2010. During the adjudication of the said SLP, the Hon'ble Apex Court constituted



the Hon'ble Mr Justice (Retd.) S.B. Sinha Commission. The Hon'ble Mr Justice (Retd.) S.B. Sinha Commission, after careful consideration of the case of the petitioner herein, passed the order dated 09.08.2015, wherein it was observed that the regularization order of the Petitioner may be given effect from 28.10.2002.

10. Learned counsel for the petitioner further submits that the Hon'ble Supreme Court in Civil Appeal No. 2703/2017, vide order dated 31.08.2017, accepted the report of the Hon'ble Mr Justice (Retd.) S.B. Sinha Commission. In compliance with the Hon'ble Mr Justice (Retd.) S.B. Sinha Commission which was duly accepted by the Hon'ble Apex Court, an order dated 18.06.2018 was issued by the University, in supersession of earlier notifications (i.e. of 2005 and 2009) regularizing the services of the Petitioner w.e.f. 28.10.2002.

11. Learned counsel for the petitioner lastly submits that the petitioner's case is squarely covered by the order passed by this Court in the case of *Akhilanand Singh & Ors. v. State of Bihar & Ors.*, reported in *2018 (3) PLJR 1029*.

12. Learned counsel for the respondents no. 2 and 3 submits that the Hon'ble Supreme Court had appointed the Hon'ble Justice S.C. Agrawal Commission to submit a report



regarding the regularization or absorption of employees from the fourth phase constituent colleges. The Commission submitted its report to the Hon'ble Supreme Court, which was duly accepted. It is pertinent to mention that the petitioner's service was thoroughly examined by the Hon'ble Justice Agrawal Commission, which found that, at the time of his appointment, the petitioner neither had a consistently good academic record, as required under the applicable 1978 Statutes nor did he possess a high second-class master's degree in the relevant subject. The Commission specifically concluded that the petitioner did not meet the qualifications prescribed under the relevant Statutes for appointment to the post of Lecturer in English (Annexure-B of the counter affidavit). The petitioner obtained his Ph.d degree on 28.10.2002, the same has also been mentioned in the order dated 09.08.2015 in Claim Petition No. 481 of 2013 filed before Hon'ble S.B. Sinha Commission. In this connection, it is stated that the Hon'ble Justice Agarwal Commission in Annexure-IIIB (Annexure-C of the counter affidavit) of its report has placed the name of the petitioner against the heading i.e. "Teacher who do not possess qualifications for the requisite appointment." Further, the name of the petitioner also does not figure in the list mentioned as



Annexure-IVA wherein it states about the "Lecturers who become eligible after appointment." (Annexure-D of the counter affidavit).

13. Learned counsel on behalf of the respondents no. 2 & 3 further submits that the Hon'ble Supreme Court appointed another commission headed by Hon'ble Justice S. B. Sinha to investigate various aspects of regularization/absorption of employees of the fourth phase constituent colleges. The petitioner filed a Claim Petition No. 481 of 2013 before the Hon'ble S.B. Sinha Commission wherein the petitioner has raised all his contentions *inter-alia* for correction related to the date of regularization of his service, which was disposed of vide order dated 09.08.2015. The Hon'ble Justice S. B. Sinha Commission contained in the order dated 09.08.2015 passed in Claim Petition No. 481 of 2013 (***Sudista Prasad Singh Vs B. R. Ambedkar University & Ors.***), wherein it has been specifically mentioned that "For the reasons aforementioned, there is no merit in the Claim Petition, which is disposed of with an observation that an order of regularization passed by the university may be given effect to, that is with effect from 28.10.2002. " This report of the Hon'ble S.B. Sinha Commission has already been accepted by the Hon'ble Supreme Court.



Moreover, it is pertinent to note here that the petitioner has not brought this aforesaid order of the commission on record (Annexure -A of the Counter Affidavit).

14. Learned counsel for the respondents no. 2 and 3 further submits that the petitioner's reliance on the Statute regarding the Services of Regularization of Purely Temporary Lecturers appointed on or before 28.02.1982 is misconceived. This is because the Hon'ble Division Bench of this Court, in ***Dr. Shiv Narayan Yadav vs. State of Bihar***, reported in ***2001 PLJR 817***, struck down the Chancellor's order, stating that the recruitment process cannot bypass the established procedure. It was further held that the said Statute cannot be enforced in violation of the statutory provisions of Section 57A of the Bihar State Universities Act, 1976.

15. Learned counsel for the respondents no. 2 and 3 further submits that the absorption of all the employees, including the petitioner, pursuant to the direction of Hon'ble Justice S.B. Sinha Commission report is under scrutiny by the CBI and ED as per the direction of the Hon'ble Supreme Court. Several contempt applications have been filed before vide Contempt Petition No. 1188 of 2018, with respect to the implementation of the order passed by the Hon'ble S.B. Sinha



Commission and in the said proceeding the Hon'ble Supreme Court vide order dated 11.07.2019 found that huge amount has been worked out vis-a-vis to each of the employees running into Rs.20 lacs to Rs.80 lacs and directed that no further disbursement of the amount to any of the employees be made by the States, University or institution (Annexure-E of the Counter Affidavit).

16. Learned counsel for the respondents no. 4 and 5 submits that the petitioner filed the instant writ petition with a prayer to shift back the date of effect of his absorption/regularization as contained in the regularization orders of 2005, 2009 and 2018 to the date of his joining and for the consequential benefits being counted similarly.

17. Learned counsel for the respondents no. 4 and 5 further submits that the petitioner did not possess the requisite qualification on the date of his appointment as has been regularized by the University with effect from the date when such qualification was obtained by him. This decision is in consonance with the view of the Hon'ble Justice (Retd.) Agrawal Commission as well as the Hon'ble Justice (Retd.) S.B. Sinha Commission, both of which have been duly accepted by the Hon'ble Supreme Court.



18. Having heard learned counsel for the parties and perused the record, it is admitted fact that the report of Hon'ble Justice (Retd.) Agrawal Commission as well as the Hon'ble Justice (Retd.) S.B. Sinha Commission, have been duly accepted by the Hon'ble Supreme Court. Further, it is also admitted fact that the petitioner did not possess the requisite qualification on the date of his appointment and the University regularized the services of the petitioner with effect from 28.10.2002 i.e. the date when he acquired his Ph.D Degree.

19. Considering the facts and circumstances of the case, it is not fit case to shift back the date of regularization of the services of the petitioner.

20. Accordingly, this writ application is dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	12.09.2024
Uploading Date	25.09.2024
Transmission Date	NA

