

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9371 of 2019

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Sant Kumar Son of Brahmanand Singh Resident of Mohalla Dighi Kala, P.O.-
Dighi Kala, P.S.-Sadar, Hajipur, District-Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna
2. The Additional Chief Secretary, education Department, Government of Bi-
har, Patna
3. The Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur through
its Vice Chancellor
4. The Vice Chancellor, The Babasaheb Bhimrao Ambedkar Bihar Univerisity,
Muzaffarpur
5. The Registrar, Babasaheb Bhimrao Ambedkar Bihar University, Muzaf-
farpur
6. the Principal, D.C. College, Hajipur,. Distt. Vaishali

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shivendra Kishore, Sr. Advocate Mr.Priyank Deepak, Advocate
For the State	:	Mr.Kumaresh Singh, J.C. to S.C. 28
For the University	:	Mr.Nikhil Kumar Agrawal, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :21-02-2024

Heard Mr. Shivendra Kishore, learned Senior Counsel as-
sisted by Mr. Priyank Deepak, Advocate appearing for the peti-
tioner, Mr. Kumaresh Singh, learned counsel for the State and
Mr. Nikhil Kumar Agrawal, learned counsel appearing for the
B.R. Ambedkar University.

2. The present writ application has been filed for the follow-
ing relief(s):

(i) For quashing the order dated 27.08.2018,



passed by the Vice-Chancellor of the Babasaheb Bhimrao Ambedkar Bihar University, Muzaffarpur whereby and where under it has been ordered that ‘.... the services of the petitioner may not be regularized’, though the aforesaid order dated 27.08.2018 has been passed in compliance of the order dated 14.12.2015 passed in C.W.J.C. No.2004 of 2013 (Sant Kumar Vs. The Vice Chancellor B.R.A. Bihar University, Muzaffarpur & Ors.), but it is not in tune with the observation and direction contained in the order dated 14.12.2015, passed by this Hon’ble Court.

(ii) For a direction upon the concerned respondent to consider the regularization of the petitioner in right perspective, particularly in the light of the fact that the petitioner has been appointed prior to 10.05.1986 and his case is covered under clause-6 of the notification of the State Government dated 10.05.1991.

(iii) For any other relief/reliefs this Hon’ble Court may find fit and proper in the facts and circumstances of the case.



3. Learned Senior Counsel for the petitioner submits that the petitioner had been appointed on the post of Assistant vide appointment letter dated 22.09.1988, issued under the signature of the Principal, D.C. College, Hajipur, District-Vaishali (hereinafter to be referred as college). Pursuant to the appointment letter, the petitioner tendered his joining vide letter dated 29.09.1988 at the college and since then, he is continuously working sincerely. Thereafter, the name of the petitioner along with other employees of the college was recommended several times by the Teacher Association of the University/Principal of the college for regularization vide letter dated 06.11.2006. The petitioner vide letter dated 31.01.2008 requested the Vice Chancellor of the University to regularize the service of the petitioner. The petitioner has been appointed prior to 10.05.1986, hence he is covered by the notification of the State Government dated 10.05.1991 in Clause 6 which stipulate that even in absence of vacancy under the staffing pattern, such appointees are to be considered against future vacancies. This Hon'ble Court, in a similar and identical case, has directed the Authority to consider the claim of the petitioners of that case, vide order dated 14.08.2012 passed in C.W.J.C. No.13780 of 2012 (Nagendra Singh & Ors. Vs The State of Bihar & Ors.) and another analo-



gous case. In the aforesaid circumstances, the petitioner filed a writ application bearing C.W.J.C. No.2004 of 2013 (Sant Kumar Vs. The Vice Chancellor, B.R.A. Bihar University, Muzaffarpur and Ors.) before this Hon'ble Court, which has been disposed of by order passed in C.W.J.C. No.13780 & 13813 of 2012 vide order dated 14.12.2015 in the light of the order dated 14.08.2012. Despite the categorical direction to consider the regularization of the petitioner, the University did not take any action in this regard, which forced the petitioner to file a contempt application bearing M.J.C. No.1441 of 2017. During the pendency of the aforesaid contempt application, the Registrar of the University requested the Principal of the College to supply the information regarding the availability of the posts and persons working against them, so that steps may be taken to regularize the service of the petitioner (Annexure-P/13).

4. It is submitted that the impugned order has been passed in haste due to the pendency of the aforesaid contempt application without appreciating the order and direction of the order dated 14.12.2015 passed by this Hon'ble Court. The petitioner vide letter dated 09.10.2018, requested the Vice Chancellor to re-consider the case of his regularization. In light of the impugned order, the contempt application has been disposed of vide order



dated 21.02.2019 with a liberty to the petitioner to challenge the same before the appropriate forum in accordance with law. The Vice Chancellor of the University did not consider this fact in the impugned order that the petitioner has been appointed prior to 10.05.1986 and is covered under clause 6 of the notification of the State Government, dated 10.05.1991. Before passing of the impugned order, the petitioner has not been heard and suffers from the violation of principle of natural justice.

5. Because of pendency of contempt application and before the information was sent to the University, the Vice-Chancellor passed the impugned order (Annexure-1). The Vice-Chancellor is of the view that the petitioner is not working, on the basis of the attendance register but it is the stand of the petitioner that he is working in the College since last 36 years and till now he is working. In this aspect of the matter, reliance is placed upon the judgment of the Apex Court in the case of ***Secretary, State of Karnataka and Others Versus Uma Devi and Others***, as reported in ***(2006) 4 SCC 1*** at para-53 which reads as under:-

“One aspect needs to be clarified. There may be case where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan 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 abovereferred 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 to 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.”

6. Learned Senior Counsel for the petitioner further placed reliance upon the judgment of the Apex Court in ***State of Kar-***



nataka and Others Versus M.L. Kesari and Others as reported in *(2010) 9 Supreme Court Cases 247*, whereby the Apex Court has taken note of para-53 of the *Uma Devi (supra)* case and in para-7 has defined the difference between regular appointee and irregular appointee. Para-7 of the judgment reads as under:

“7. It is evident from the above that there is an exception to the general principles against “regularisation” enunciated in Uma Devi, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.”

7. Learned Senior Counsel for the petitioner draws the atten-



tion of the Court to the Full Bench judgment of this Court, as reported in **(1997) 1 PLJR 509 (Braj Kishore Singh and Others Vs. The State of Bihar and Others)**, at relevant para-32, whereby the Full Bench held as follows:

“32., the judgment of the learned Single Judge rejecting the claim of the appellants on the ground that they were appointed without prior approval of the State Government as contemplated under Section 35 of the Act cannot be sustained. In the ordinary course, in view of my conclusion that it is the validity of appointments already made for the purpose of granting or refusing post facto approval, I would have considered asking the State Government to look into the claim of the appellants afresh. However, having regard to the fact that the appellants have continued in service for more than 17 years, I do not think would be appropriate exercise of discretion to re-open the matter after such a lapse of time. In Direct Recruit Class-II Engineering Officers Association V. The State of Maharashtra, AIR 1990 Supreme Court 1607 a Constitution Bench of the Apex Court has held that where initial appointment is not made according to the rules but the appointee continues in service uninterruptedly for long period till regularisation of his service, the entire period as the period spent in service for the purpose of consequential benefits will be counted. The appellants are accordingly entitled to have



their services regularised against the posts within the staffing pattern as applicable to the College.”

8. Learned Senior Counsel submits that in the above-cited case, the Full Bench clearly held that even if the appellants have continued in service for more than 17 years, it was appropriate to look into the claim of the appellants afresh and the appellants were entitled to have their services regularised. Here, the petitioner has continued in service for more than 36 years. Further, he relied upon the Division Bench decision of this Court in the case of ***Braj Kishore Singh & Ors. vs. The State of Bihar & Ors.***, reported in ***2004 (3) PLJR 668*** at paragraphs-6, 12 to 15, which reads as under:

“6. The Full Bench took the view that once the staffing pattern recommended by the Bihar Inter University Board has been approved by the State Government, the same will amount to creation of posts and if the appointments are made against the posts as per the staffing pattern, i.e. within the sanctioned strength, they cannot be said to be violative of Section 35 of the Act on the ground that the posts having not be sanctioned by the State Government provided the candidates possessed the requisite qualification and selection was not in breach of Articles 14 and 16 of the Constitution of India. The Full Bench further took the view



that in normal course, the State Government would have been directed to consider the validity of the appointment of the appellants for granting or refusing post facto approval but having regard to the fact that they have continued for about 17 years, directed that the appellants are entitled to have their services regularised against the posts within the staffing pattern as applicable to the college.

12. Admitted fact is that the appellants were appointed in 1979. Their appointments were approved by the University. The only question in controversy was as to whether their appointments was legal or not. The State Government took the stand that as that was beyond the staffing pattern, the appointment was not permissible in law. The Full Bench of this Court as stated above has held that the appellants were appointed against the post as per staffing pattern. However, it was open to the State Government to consider the validity of their appointment for the purpose of granting or refusing to grant post-facto approval in terms of Section 35 of the Act as interpreted by the Full Bench. The Full Bench further observed that it would have sent the matter to the State Government to consider the validity of their appointment but as stated above taking into consideration more than 17 years of their services, ordered for regularisation of their services against the post within the staffing pattern as applicable to the college. Though the Full Bench did not pass specific order as to from which date the regu-



larisation is to take effect but as it appears from paragraph 32 of the judgment that the Full Bench took note of the judgment of the Apex Court in the case of Direct Recruit Class-II Engineering Officers Association and held that the period prior to regularisation shall be counted for the purpose of consequential benefits.

13. The question as to whether the appellants were entitled to payment of arrears of salary or not for a period to the regularisation as ordered by the Full Bench was not subject matter in the earlier writ application. As stated above, the writ application was filed challenging the order refusing to grant approval to the appointment of the appellants and as such the claim of the appellants for arrears of salary etc. cannot be rejected on the ground that there was no such direction by the Full Bench judgment of this Court.

14. From perusal of the Full Bench judgment it appears that the Full Bench accepted the appointments of the appellants from the initial date and thereafter passed the order of regularisation instead of sending the matter for post facto approval of their services. In case the matter would have been sent to the Government and in case of approval of their services from the date of the appointment they would have been entitled to salary from the very beginning. This Court instead of adopting the said procedure passed an order of regularisation. It is not disputed that the appellants



have rendered their services in the College. It is also not disputed that they were paid salary prior to passing the order of the State Government in 1983 for some time. In such a situation, they cannot be denied the salary prior to 20th May, 1998 when the order of regularisation was made. It will be unjust and inequitable to hold that though the appellants continued to work in the college and this Court having noticed their continuance in service and having ordered that the services rendered by them will be counted for the purpose of consequential benefits, they are not entitled to payment of arrears of their salary. Even the State Government has understood the order of this Court in the same manner but later on reviewed the same, which is subject matter of challenge before this Court.

15. Accordingly, the impugned order dated 19th July, 1998, is quashed and it is held that the appellants are entitled to payment of arrears of their salary for the period prior to regularisation and other consequential benefits by treating them as appointed in the year 1979.”

9. Learned Senior Counsel further submits that despite the fact that the Registrar of the University called for information from the College with regard to number of posts sanctioned and names of persons, who were working against them under the Staffing pattern, it was not supplied to the University and in ab-



sence thereof, because there was a contempt pending before this Hon'ble Court filed by the petitioner, Annexure-1 was passed.

10. Per Contra, it is submitted on behalf of the respondent-University that the present writ application is wholly misconceived and is devoid of any merit. The College became constituent unit of the University w.e.f. 01.03.1981. After taking over the College as constituent unit of the University, the Principal is not the competent Authority for appointment. Moreover, such appointment was never confirmed by the University. As per the records of the University, the petitioner was appointed on 22.09.1988 by the then Principal without undergoing the valid selection process. It is further submitted that since the petitioner was appointed beyond the cut-off date of 10.05.1986, his case cannot be considered under staffing pattern norms and the benefit of regularization cannot be extended to him.

11. It is submitted that the petitioner has taken plea that he is similarly situated to those petitioners of C.W.J.C. No.13780 of 2012 and C.W.J.C. No.13813 of 2012, in which, it was the stand of the petitioners that they were appointed prior to 10.05.1986, they are therefore, fully covered by the notification of the State Government dated 10.05.1991 in Clause (6) that even in absence of vacancy under the staffing pattern such appointees are



to be considered against future vacancies. The erstwhile College became a Constituent College of the University...., but the case of the petitioner herein stands on different footing as in that case, those petitioners were appointed before the cut off date of 10.05.1986, therefore, regularisation was considered but admittedly in this case the date of appointment of the petitioner is 22.09.1988, which does not come within the ambit of the 1991 notification. The said writ applications were disposed off, observing that the representation of the petitioners is to be considered. In the present case, the Principal had no authority, after taking over of the College as constituent unit, to make appointment. Further, the proof of payments in support of the claim of the petitioner itself shows that he was paid irregularly out of the internal funds of the College as an internal arrangement with the Principal, from time to time, for which the University is not responsible. He reiterates that regularisation of the service, in view of the staffing pattern is applicable only to those, who were appointed before 1986 but the petitioner herein was appointed in the year 1988. It is argued that illegality can never be perpetuated by the Court, if one illegal order has been passed in his favour, the petitioner cannot claim parity on that ground.

12. Furthermore, the date of birth of the petitioner is 1971,



which clarifies that he was not even an adult on the date of appointment and the appointment of a minor is itself illegal and illegal appointment can never be entertained for regularisation as the then Principal had no power to give appointment to a person without fulfilling the process of appointment. He has relied upon the judgment of the Apex Court passed in the Case of ***Vibhuti Shankar Pandey versus State of Madhya Pradesh and Others*** as reported in ***(2023) 3 SCC 639*** at para-4, which reads as under:-

“4. The learned Single Judge while allowing the writ petition gave directions for regularisation of the appellant from the date on which his juniors were regularised. This order was challenged by the State Government before a Division Bench which allowed the appeal of the State Government. The Division Bench rightly held that the learned Single Judge has not followed the principle of law as given by this Court in State of Karnataka v. Umadevi(3), as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily-rated employee must be working. These two conditions were clearly missing in the case of the present appellant. The Division Bench of the High Court, therefore, has to our mind rightly allowed the appeal and set aside the order dated 27-6-2019.”



13. It is therefore, submitted that the when the initial appointment of the petitioner is itself doubtful, irrespective of the staffing pattern, he is not in the ambit of getting regularisation. The Full Bench judgment as reiterated above has held at para-2 that “Jagdam College, Chapra was an affiliated college of Bihar University (now known as Babasaheb Bhimrao Ambedkar University and it was made a constituent unit of the said University with effect from April 1, 1975. The college is now a constituent unit of Jai Prakash University. According to the appellants, prior to January 17, 1973, 20 sanctioned posts of class III and 43 sanctioned posts of class IV were in existence. On January 17, 1973 9 class III posts and 13 Class IV posts were created. Thus, 29 Class III posts and 56 Class IV posts were available in the college. In 1977, the Bihar University constituted a Selection Committee comprising of the Principal and three Senior Professors for appointment against vacant class III/IV posts. In August, 1978, advertisement was published. In March, 1979 appointments were made including those of the appellants....”. It is submitted that with regard to this case, in the entire writ petition, there is no pleading that the appointment of the petitioner was against vacant sanctioned post and hence, he should get appointment in future.



14. On the contrary, learned counsel for the petitioner submits that on the basis of the staffing pattern, Registrar asked for details and in absence of details, the impugned order (Annexure-1) was passed. Further, so far as the date of birth of the petitioner is concerned, it is a settled principle of law that the matriculation certificate is a relevant document to confirm the date of birth. There is no pleading in the counter-affidavit regarding the date of birth and anything beyond the pleading cannot be argued. It is lastly submitted that in the *Uma Devi (supra)* case, ten years regular service was considered and the petitioner herein has rendered 36 years of regular service and must be considered but the same has not been done.

15. Having heard the rival submissions of the parties and on perusal of the record, it is clear that the petitioner has joined in the College on the post of Assistant on daily wages on 29.09.1988. It is also clear that the Principal of the College vide letter dated 23.06.2007 sent the list of employees, including the name of the petitioner to the Registrar of the University with a recommendation to regularize their services and again on 06.07.2007, the Principal of the College requested the Registrar of the University to regularize the service of the petitioner but no action was taken by the University. It is admitted fact that the



petitioner is working for more than 35 years in the College. The cases cited by the petitioner is not applicable in the present case because there is a cut off date of Staffing pattern which is 10.05.1986.

16. I have considered this fact that the petitioner is not working prior to 10.05.1986 but this fact can also not be overlooked that the petitioner is working in the College for more than 35 years, as such, the petitioner is directed to file a fresh representation before the respondent no.4 along with a copy of this order within a period of six weeks from today and the Vice Chancellor of the said University (respondent no.4) is directed to consider the representation of the petitioner to regularise his service, taking a sympathetic view, in accordance with law, within a period of three months from the date of filing of such representation by the petitioner.

17. With the aforesaid observations and directions, this writ application is disposed of.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	15-02-2024
Uploading Date	21-02-2024
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