

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7592 of 2024

Dr. Manjari Thakur, W/o Nawal Kishore Thakur, resident of Laxmi Colony,
Near Leprosy Mishan Hospital, Kanhauli, R.K. Ashram, District-
Muzaffarpur, retired Associate Professor, Department of Political Science,
Uma Pandey College, Pusa, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary Education
Department, Govt. of Bihar, Patna.
2. Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
4. The Vice-Chancellor, L.N. Mithila University, Darbhanga.
5. The Registrar, L.N. Mithila University, Darbhanga.
6. The Finance Officer, L.N. Mithila University, Darbhanga.
7. The Principal, Uma Pandey College, Pusa, District- Samastipur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7403 of 2024

Dr. Md. Asrar Sadri, S/o Late Hafiz Abdur Rahman Sadri, resident of New
7A, Ward No.2, Dharmpur, District- Samastipur, retired Associate Professor,
Department of Urdu, Womens College, Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Education
Department, Govt. of Bihar, Patna.
2. Additional Chief Secretary, Education Department, Govt.of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
4. The Vice - Chancellor, L.N. Mithila University, Darbhanga.
5. The Registrar, L.N. Mithila University, Darbhanga.
6. The Finance Officer, L.N. Mithila University, Darbhanga.
7. The Principal, Women's College Samastipur.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8426 of 2024



Dr. Chaudhary Abhya Nath Ray, S/o Late Chaudhary (Chandrakant) Nunu Rai, resident of Shivram, Semraon, District-Darbhanga, retired Associate Professor, Department of Commerce, J.N. College, Nehra, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
4. The Vice-Chancellor, L.N. Mithila University, Darbhanga.
5. The Registrar, L.N. Mithila University, Darbhanga.
6. The Finance Officer, L.N. Mithila University, Darbhanga.
7. The Principal, J.N. College, Nehra, District-Darbhanga.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8719 of 2024

Deo Narayan Mishra, S/o Late Parsuram Mishra, resident of village -Hisar, Hisardeorhi District - Madhubani, retired Associate Professor, Department of English, B.M. College, Rahika, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
4. The Vice- Chancellor, L.N. Mithila University, Darbhanga.
5. The Registrar, L.N. Mithila University, Darbhanga.
6. The Finance Officer, L.N. Mithila University, Darbhanga.
7. The Principal, B.M. College, Rohika, District- Madhubani.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 11015 of 2024

Dr. Mirza Shabbir Ahmad Baig, S/o Late Mirza Abdul Aziz Baig, resident of Village and Post- Garhi, Panchayat-Jale Purvi, Gadri, District - Darbhanga,



retired Associate Professor, Department of English, K.V.Sc. College,
Uchchaith, Benipatti, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna.
4. The Vice-Chancellor, L.N. Mithila University, Darbhanga.
5. The Registrar, L.N. Mithila University, Darbhanga.
6. The Finance Officer, L.N. Mithila University, Darbhanga.
7. The Principal, K.V.Sc. College, Uchchaith, Benipatti, District- Madhubani.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 7592 of 2024)
For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the Resp-State : Mr. Prem Ranjan Raj, AC to SC-7
For the L.N.M.U. : Mr. Manoj Kumar Singh, Advocate
(In Civil Writ Jurisdiction Case No. 7403 of 2024)
For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the State : Kumar Manish, SC-5
Mr. Kumar Pankaj, AC to SC-5
For the L.N.M.U. : Mr. Bindhyachal Rai, Advocate
(In Civil Writ Jurisdiction Case No. 8426 of 2024)
For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the State : Mr. Anant Pd. Singh, SC-15
For the L.N.M.U. : Mr. Santosh Kumar, Advocate
(In Civil Writ Jurisdiction Case No. 8719 of 2024)
For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the State : Mr. Sheo Shankar Prasad, SC-8
Mr. Anil Kumar, AC to SC-8
For the L.N.M.U. : Mr. Santosh Kumar, Advocate
For the Respondent/s : Mr.Standing Counsel 8
(In Civil Writ Jurisdiction Case No. 11015 of 2024)
For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the State : Mr. AAG-9
Mr. Anil Kumar Verma, AC to AAG-9
For the L.N.M.U. : Mr. Apurva Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

4 29-10-2024 Heard the parties.

2. The petitioners in all the batch of these writ



petitions are the retired Readers of different Colleges under the L.N. Mithila University, Darbhanga. On being aggrieved by the Memo No. 594 dated 20.02.2023 issued under the signature of respondent, the Director, Higher Education, Government of Bihar, by which the appointment of the petitioners along with others have been held illegal; They have preferred the present writ petitions. The petitioners also sought quashing of the consequential letters issued by the respondent/the Registrar, L.N. Mithila University, Darbhanga, whereby the payment of pension and other benefits have been stopped in view of the letter of the State Government.

3. Learned counsels for the petitioners have submitted at the Bar that the legality of the impugned Memo No. 594 dated 20.02.2023 was tested by this Court in C.W.J.C. No. 9131 of 2022 and another analogous case, and this Court in its decision dated 12.01.2024, has been pleased to set aside the impugned order contained in Memo No. 594 dated 20.02.2023 qua the petitioners of the afore-noted writ petitions.

4. Taking this Court through the decision dated 12.01.2024 passed in the afore-noted C.W.J.C. No. 9131 of 2022 and another analogous case, learned counsels for the petitioners thus submitted that the claim of the petitioners are identical to



those of the writ-petitioners of C.W.J.C. No. 9131 of 2022 and thus they prayed for disposal of the present writ petitions in terms of the judgment passed in C.W.J.C. No. 9131 of 2022 and another analogous case.

5. Learned counsels for the State and learned counsels for the L.N. Mithila University, did not confront the settled position with regard to passing of the decision of this Court in **Dr. Uday Chandra Mishra v. The State of Bihar and Others [C.W.J.C. No. 9131 of 2022 and another analogous case]**. However, they submitted that the facts are different in some of the present writ petitions.

6. Having gone through the materials available on record, this Court finds that the petitioners in batch of these writ petitions are aggrieved by the Memo No. 594 dated 20.02.2023, whereby the appointment of all the petitioners and other similarly circumstanced Readers were held to be illegal.

7. While considering the submissions advanced on behalf of the parties, in the earlier round of litigation, this Court has held in para 32 to 36, which is as follows:

“32. In the aforesaid legal premise, it can be said that petitioners, who are equally identically situated to those of Devendra Rai and Shashi Kant Prasad Singh, cannot be treated differently than



too when the authorities never objected to the petitioners' working and made payment to them from the government fund and also promoted them during their service period. The petitioners have rightly made reliance upon the judgment rendered by this Court in **Ranju Devi (supra) and Dr. Naw Kant Thakur (supra)**, where in identical situation, this Court had held that subsequent to the retirement, the respondents both the State and the University cannot take a plea that the petitioners had worked on a non-existing post(s) when the services of the petitioners were duly regularized by the University and they have also promoted and being paid from the government funds and allowed to superannuate unconditionally.

33. If an employee has been accorded all the benefits of a regular employee, viz, regular salary in the prescribed pay-scale, increment, promotion leading to regularization and unconditional superannuation with all the retiral benefits, he is obviously a regular holder of the post. If their services is to be terminated or regularization is to be cancelled, State Government should have resorted to statutory rules and regulation, applicable to them. Thus, once a right has been created or vested in favour of the petitioners, that cannot be divested unilaterally, in such a casual and cavalier manner without giving any show cause notice or proper



opportunity of hearing.

34. So far the reliance of the State respondents on the judgment rendered by the learned Division Bench in the case of **Dr. Shiv Narayan Yadav (supra)** is concerned, the same is quite distinguishable with the present case as in the present case, the regularization took place in the light of the Constitution Bench judgment, in the case of **Uma Devi (supra)**, specially para-44, basing upon which services of other identically situated persons have been regularized. Moreover, the provision regarding regularization of the services of the petitioners had the support of law and now it cannot be termed their appointment/regularization *void ab initio* after five years of their retirement. The other judgments relied upon by the State respondents are on similar line of illegal appointment, thus not applicable in the facts of the present case.

35. Time without number, the highest Court of the land in a catena of judgments has held that the right to pensionary benefit is a constitutional right and as such cannot be taken away without proper justification. It would be proper to quote paragraphs-15 and 16 of the judgment rendered in the case of **The State of Jharkhand (supra)**.

"15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognized that even when, after the repeal of Article 19(1)



(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death- cum Retirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court.

16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property"...Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision



and under the umbrage of administrative instruction cannot be countenanced."

36. Admittedly, the impugned order holding the regularization of the petitioners to be illegal after five years of their retirement, when there was obvious severance of employer and employee relationship, in no stretch of imagination, can be said to be justified under any law, all the more when the same has been passed without there being any proceeding or in compliance of the principles of natural justice. It is a trite law that no person can be condemned unheard. Any order causing prejudice to the right and entitlement, leading to civil and evil consequences must be in consonance with the principles of natural justice.

37. In view of the submissions advanced on behalf of the parties and the aforesaid settled legal position, this Court has no hesitation to set aside the impugned order(s) as contained in Memo No. 594 dated 20.02.2023 issued by the Director Higher Education, Government of Bihar, Patna, so far it relates to the petitioners as also the letter no. 249 dated 07.02.2022 (Annexure-14 to the C.W.J.C. No. 9131 of 2022) issued by the University."

8. Considering the positions afore-noted, the impugned order(s) as contained in Memo No. 594 dated 20.02.2023 issued by the Director Higher Education, Government of Bihar, Patna, so far it relates to the petitioners,



as also the consequential letters issued by the respondent/the Registrar, L.N. Mithila University, Darbhanga, are hereby set aside, so far it relates to the petitioners.

9. The concerned respondents are directed to consider the claim of the petitioners and accord all the benefit(s) after proper examination of their claim and facts of the case, preferably within a period of twelve weeks from the date of receipt/production of a copy of this order, in accordance with law.

10. The writ petitions stand allowed in terms of the judgment passed in **Dr. Uday Chandra Mishra** (supra).

(Harish Kumar, J)

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