

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16140 of 2021

Ashok Kumar Son of Shri Ram Vilas Prasad, resident of Chanmari Motihari,
Motihari, District - East Champaran, Pin Code - 845401.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. Director, Higher Education, Bihar, Patna.
3. B.R. Ambedkar Bihar University, Muzaffarpur through its Registrar.
4. Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
5. Registrar, B.R. Ambedkar Bihar University, Muzaffarpur.
6. Principal, L.N.D. College, Motihari, District - East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Adv.
For the State	:	Mr.Madhukar Mishra, AC to SC 16
For the BRABU	:	Mr.Rakesh Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 10-09-2024

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the University.

2. The present writ application has been filed for the
following relief/s:-

“(i) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Education Department of the State Government as well as B.R. Ambedkar Bihar University, Muzaffarpur (hereinafter referred to as “the University”) to take steps towards regularizing the services of petitioner against a Class-IV post of L.N.D. College



(hereinafter referred to as “the College), which is a constituent unit of the University.

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the University to take steps towards making payment of current salary along with arrears of salary in favour of the petitioner after regularizing his services against a Class-IV post in accordance with law;

(iii) Issuance of a declaration holding that the petitioner is entitled for regularization of his services against a Class-IV post under the University and extension of all consequential benefits as may be admissible to him subsequent upon regularization of his services in the University;

(iv) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”

3. The fact of the case in brief is that on 28.11.1979, the petitioner was appointed vide letter bearing memo no.403-79 (Annexure-1 to the writ petition) and on 01.12.1979, by Annexure-2 to the writ petition, the petitioner submitted his joining against the post of Peon at LND College, Motihari, Muzaffarpur (“the College”) which is a constituent unit of B.R. Ambedkar University, Muzaffarpur, and thereafter, the petitioner has continuously discharged his duty against the said



post in accordance with law.

4. In terms of agreement dated 05.11.1980, the College was taken over as a constituent unit of erstwhile University of Bihar, Muzaffarpur, w.e.f. 01.11.1980 and in terms of a decision arrived at by the concerned authorities under the State Government on 29.04.1999, in accordance with existing staffing pattern, post of peons were sanctioned in favour of the College.

5. Thereafter, by office order bearing no. B/406 dated 14.04.2006 issued by the Registrar of B.R. Ambedkar University, Muzaffarpur (“the University”), recommendations were made, inter alia, for the creation of permanent posts and regularization of the services of such employees who were appointed in Class-IV posts in the services of the University and its constituent colleges during the period between 15.08.1976 and 10.05.1986 and in which the name of the petitioner was also present (Annexure-3 to the writ petition).

6. Thereafter, by a letter dated 18.05.2006, the Principal of the College, referring to a University letter bearing No. B/848 dated 19.04.2006, updated a comprehensive list of persons working against Class-III and Class-IV posts along with the existing vacancies as per the sanctioned posts under existing staffing pattern was sent to the University for filling up of



vacancies and absorption/regularisation of services of different employees in light of their continuous discharge of duties along with the need of the University. The name of the petitioner was also recommended therein for regularization of his services (Annexure-4 to the writ petition).

7. The State Government considered the case of non-teaching employees appointed between 15.08.1976 to 10.05.1986 for regularization, but to look into certain anomalies, a committee was constituted by order of the Vice-Chancellor of the University to submit a report of employees appointed in Class-III and Class-IV posts in the services of the University, whose services were entitled to be regularised.

8. Thereafter, the said committee submitted its report for the perusal before the Syndicate of the University, following which a resolution of the Syndicate dated 29.05.2007 was passed and, in furtherance of the same, by a letter bearing memo no.B/243 dated 19.09.2007 issued by the Registrar of the University to the erstwhile Human Resource (Higher Education) Department (HRD), Bihar, and after highlighting that recommendations had twice been made earlier, another recommendation was made, inter alia, for regularization of services of the petitioner against the post of peon in the College and for the purpose of payment



of regular salary (Annexure-5 to the writ petition).

9. On 19.12.2019, referring to the above facts, the petitioner submitted a detailed representation to the University and forwarded a copy to the erstwhile HRD department but no action was taken.

10. Learned counsel for the petitioner submits that services of other similarly situated persons, who were working against various non-teaching posts under the University have been regularized against the said Class-III & IV posts in different colleges under the University and as such, they have been extended the consequential benefits including benefits of pay fixation, financial progression under the ACP Scheme etc. Therefore, the action on the part of the concerned respondent authorities in denying the said benefits in favour of the petitioner is impermissible in the eyes of law and violation of Articles 14, 16 and 21 of the Constitution of India.

11. Learned counsel for the petitioner further submits that considering the case of petitioner in terms of section 4(1)(14) of Bihar State University Act on take over of the college, since the petitioner was appointed before take over, his case deserves consideration in terms of Section 4(1)(14) of the Act. In the alternative, learned counsel for the petitioner submits that since



the petitioner is regularly working and in view of the judgment of the Full Bench in **Braj Kishor Singh's** case **1997 (1) PLJR 509** and the scheme formulated by the State Government vide letter no.1820 dated 17.11.1998, the respondents were obliged to consider the case of the petitioner for regularization with all consequential benefits.

12. A counter-affidavit has been filed on behalf of the State Government where the stand was taken that after the decision of the State contained in letter no.888 dated 17.11.1980, appointment of the petitioner is unsustainable as the appointment after 24.07.1980 could not have been made. Petitioner was appointed by the ad hoc Committee of the college on 28.11.1979, whereas the college was converted as constituted unit on 04.11.1980. In the counter-affidavit, State has taken the plea that petitioner has not approached any Authority for a direction for regularization of his service and only after more than 35 years, he has approached this Court. The plea of the petitioner for consideration of his case on the staffing pattern is totally misconceived as the petitioner was appointed in the college in question by the ad hoc Committee before the take over cannot claim benefit of Full Bench judgment in terms of staffing pattern.



13. In the counter-affidavit, reference has also been made to the judgment of the Full Bench in **Ram Sevak Yadav & Anr. Vs. State of Bihar & Ors.** reported in **2013(1) PLJR 964** and the judgment of the Apex Court in the case of **Secretary, State of Karnataka vs. Uma Devi**, reported in **(2006) 4 SCC (1)**.

14. Learned counsel for the petitioner has also referred the judgment of the Apex Court passed in the case of **Amar Kant Rai v/s State of Bihar and Ors.** reported in **(2015) 8 SCC 265** to contend that the Apex Court has considered the case of **Amar Kant Rai (supra)** for regularization after the judgment of **Ram Sevak Yadav (supra)** and the judgment of the Apex Court in the case of **Uma Devi (Supra)**.

15. In view of the Apex Court in **Amar Kant Rai (supra)**, the case of petitioner deserves to be regularized as there is no denial of the fact in the counter-affidavit that the petitioner is regularly working. This Court is constraint to dispose of the writ application with a direction to the University to examine the case of the petitioner for regularization in terms of the judgment of the Apex Court in **Amar Kant Rai (supra)** and if it is found that the case of the petitioner is covered by the judgment of the Apex Court in **Amar Kant Rai (supra)**, the University will recommend the case of the petitioner for regularization and the



State is obliged to take appropriate decision in relation to the claim of the petitioner for regularization in light of the decision in **Amar Kant Rai (supra)**.

16. Final decision on the claim of the petitioner for regularization will be taken by the respondent University as well as the State within a maximum period of four months from the date of receipt/production of a copy of this order.

17. The University is also required to consider the case for grant of consequential benefits to the petitioner, considering the fact that the petitioner has worked in the University for more than three decades.

18. With the aforesaid, the writ petition stands disposed of.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.09.2024
Transmission Date	NA

