

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16128 of 2019

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Shanti Singh, W/o Late Dhananjay Prasad Singh, Resident of village-
Bhagwanpur, P.O. - Saraiya, P.S.- Sakra, District- Muzaffarpur- 843119.

... .. Petitioner/s

Versus

1. The T. M. Bhagalpur University Bhagalpur, through its Registrar.
2. The Vice-Chancellor T.M. Bhagalpur University, Bhagalpur.
3. The Financial Advisor T.M. Bhagalpur University, Bhagalpur.
4. The Registrar T.M. Bhagalpur University, Bhagalpur.
5. The Finance Officer T.M. Bhagalpur University, Bhagalpur,
6. The Principal B.N. College, Bhagalpur, Town and District- Bhagalpur.
7. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, New Secretariat, Patna.
8. The Director Department of Higher Education, Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate
For the State	:	Mr. Prabhakar Jha, GP-27
For the University	:	Mr. Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 24-10-2024

Heard Mr. Purushottam Kumar Jha, learned counsel
for the petitioner, Mr. Prabhakar Jha, learned counsel for the
State and Mr. Ritesh Kumar, learned counsel for the T.M.,
Bhagalpur University.

2. The petitioner, hapless widow of the erstwhile
employee who attained the age of his superannuation on
31.03.2016 and subsequently died on 12.11.2018, has invoked
the prerogative writ jurisdiction of this Court under Article 226
of the Constitution, seeking a direction upon the respondents



concerned to sanction and pay all the post retiral benefits of her late husband along with other dues after supplying the details of calculation in relation to the said claims to the petitioner in advance. The petitioner also sought a direction upon the respondents to sanction and grant family pension to the petitioner w.e.f. 13.11.2018 and to ensure payment of arrears of family pension till the respondents concerned starts making payment to the petitioner's family pension. The petitioner also seeks a direction to make payment of arrears of salary claim of petitioner's husband, which has been withheld by the respondent-University from May, 2013 in terms of the order dated 21.04.2010 passed in CWJC No. 78 of 2006 duly affirmed by the learned Division Bench of this Court in LPA No. 1324 of 2010.

3. During the pendency of the present writ petition, the petitioner preferred an interlocutory application bearing I.A. No. 1 of 2020 with additional prayer, *inter alia*, seeking quashing of the reasoned order passed by respondent no.7 as contained in Memo No. 1801 dated 18.10.2019, which order is said to be in the teeth of the order dated 12.10.2004 passed by the Hon'ble Apex Court in Civil Appeal No. 6098 of 1997, apart from being contemptuous. The petitioner also sought a



declaration that in view of the statutory provisions as contained in Section 4(1)(14) of the Bihar State Universities Act, 1976 which has been explained by the Hon'ble Apex Court in paragraphs no. 26, 29, 52 and 53 in its order dated 12.10.2004, reported in **(2005) 9 SCC 129**, the authorities of the State Government of Bihar has had no authority/jurisdiction to interfere into the matter of absorption of the Teaching and Non-Teaching Employees of a taken over College.

4. The relevant facts, which led to the filing of the present writ petition are that the husband of the petitioner was duly appointed to the post of Office Assistant in the pay-scale of Rs. 220-815 vide letter no. 96 of 1980 dated 08.10.1980. It is asserted that the appointment of the petitioner's husband was consequent upon following due procedure of selection by the competent authority under the decision of the Governing Body of the erstwhile Bhagalpur Evening College, Bhagalpur (now known as Bhagalpur National College, Bhagalpur). Pursuant to the issuance of the appointment letter, the husband of the petitioner tendered his joining in the College on 08.10.1980 against the post of Library Assistant. Subsequent thereto, the College in question, came to be taken over by the respondent-University w.e.f. 05.04.1982. Consequent whereupon, 13 Class-



III employees and 9 Class-IV employees of the College had been absorbed and many others including the husband of the petitioner were left over and the University started making payment of their salary as daily wagers; thereafter ad-hoc employees. In the meanwhile, the Association of Non-Teaching Employees of the College, who had been regularly agitating the claim of absorption for its left over member and finally in compliance with the order dated 01.10.1997 passed in CWJC No. 7814 of 1997, the Government of Bihar vide its letter no. 172 dated 16.05.1999 had sanctioned additional 66 Class-III and Class-IV post for the college and accordingly, the services of the husband of the petitioner and others had been absorbed by the respondent-University.

5. Further, in compliance with the order of the Hon'ble Court in MJC No. 1538 of 2002 and subsequent order passed in MJC No. 1169 of 2004, the University vide its Office Order No. 146/2004 dated 15.09.2004, regularized the services of the petitioner and others with immediate effect, the copy of which has been marked as Annexure-8 to the writ petition. The name of the husband of the petitioner stands at serial no. 3, whose service was regularized against the post of Librarian in the pay-scale of Rs. 1500-2750.



6. At this juncture, learned counsel for the petitioner drew the attention of this Court to the appointment letter of petitioner's husband as contained in letter no. 96 of 1980 dated 08.10.1980 (Annexure-6), where his name has been shown as Dhananjay Prasad Singh, but on account of inadvertent mistake, in the proceeding book of Governing Body dated 08.10.1980, the name of the husband of the petitioner had incorrectly been mentioned as Dhananjay Singh, for correction of which the husband of the petitioner sworn an affidavit dated 27.08.2004 and submitted before the concerned authority for necessary correction. It is further stated that in the meanwhile as the Association of Non-Teaching Employees of the College was aggrieved with the decision of the respondent-University in absorbing the service of the said 73 Non-Teaching Employees w.e.f. 15.09.2004, preferred CWJC No. 78 of 2006, which came to be disposed off by the order dated 21.04.2010 (Annexure-4) with a direction to the University to examine the service records of the individual employees treating them as regularized/absorbed in the services of the University from the date of take over of the College itself and also to ensure payment of consequential benefits after making proper calculation of arrears.



7. Being aggrieved, the respondent-University had preferred Letters Patent Appeal bearing LPA No. 1324 of 2010 against the order of the learned Single Judge. However, the same came to be dismissed vide order dated 20.12.2011 (Annexure-5 to the writ petition). Thus in compliance with the order dated 21.04.2010 in CWJC No. 78 of 2006 and the order passed by the learned Division Bench in LPA No. 1324 of 2010, the respondent-University vide its Office Order No. 175 of 2012 dated 22.06.2012, absorbed and regularized the services of 73 persons including the husband of the petitioner with effect from the date of take over of the College i.e. 15.04.1982.

8. After due absorption and regularization of the said 73 Non-Teaching employees of the College including the husband of the petitioner, they had regularly been getting their salary but as the respondents concerned were not making payment of arrears of salary for the period of 05.04.1982 to 15.09.2004, the Non-Teaching Employees Association of the College moved before this Court in MJC No. 207 of 2011. Under the order passed by this Court in MJC No. 207 of 2011, the respondent-University made proper calculation of the entitlement of the arrears of salary claim of said 73 Non-Teaching Employees and sent the necessary requisition to the



Government. In response thereto, the Government of Bihar released a total sum of Rs. 5 crores to the respondent-University against demand of Rs. 9,48,15,864/-. On receipt of the amount as afore-noted, it was paid to all the 73 Non-Teaching Employees on proportionate basis.

9. During the proceeding in MJC No. 207 of 2011, the respondent-Principal Secretary Education Department came out with an affidavit containing two different lists. First of 20 persons, cases of whom had been put to doubtful category and the next list was containing the 53 persons, who had declared to be validly absorbed employees.

10. This Court while hearing the said contempt petition had directed for the examination of the cases of said 20 employees to the then Secretary of the Education Department. A report, in this regard has been submitted on 28.07.2014, wherein in relation to the husband of the petitioner, it has been stated that his name differs from the name mentioned in the Conversion Committee Report. The report reveals that as per the claim of the husband of the petitioner, his name is Dhananjay Prasad Singh, whereas in the conversion report, the name of Dhananjay Singh finds place. Similar mistake and variance have also been pointed out with regard to other persons.



11. On submission of the inquiry report, neither the Government of Bihar nor the University had come forward with any order taking action and all the 73 persons, including the husband of the petitioner had been allowed to discharge with their respective duties, but in the case of 20 persons, the then Registrar of respondent-University vide letter no. B/10141 dated 09.07.2015, had directed the Principal of the College to withhold their salary/pension. In the meantime, the husband of the petitioner upon attaining the age of superannuation, retired from the service of College from 31.03.2016 (Annexure-18).

12. Upon being superannuated, No Dues Certificate also came to be issued. The pension paper, leave account of the petitioner, statement of accounts of group insurance claim and welfare fund and all other requisite necessary documents along with the service-book were sent to the Registrar of the respondent-University for payment of all the other retiral benefits and other dues.

13. Adverting to the aforesaid facts in details, learned counsel for the petitioner contended that the husband of the petitioner was duly appointed way back in the year 1980 vide Annexure-6 to the writ petition. The College, in question came to be taken over by the respondent-University w.e.f. 05.04.1982.



The Government of Bihar had sanctioned additional 66 Class-III and Class-IV posts. The service of the petitioner was duly absorbed against the sanctioned and vacant post of Librarian in the College. Later on, in compliance with the order of this Court in MJC No. 1538 of 2002 and MJC No. 1169 of 2004 read with the decision of the State Government as contained in letter no. 172 dated 16.05.1999 and letter no. 588 dated 17.04.2004, the services of the petitioner and others came to be regularized vide Office Order no. 146/2004 dated 15.09.2004. The date of regularization thereafter shifted back to the date of taking over of the College in question by the respondent-University i.e. 05.04.1982. At all the stages, no infirmity has been found and the husband of the petitioner was allowed to pay his admissible salary till objection has been raised in an inquiry conducted by the then Secretary, Education Department. Irrespective of the inquiry report, wherein the name of the petitioner's husband does not match with the conversion report, inasmuch as at one place, the name of the petitioner's husband has been found as Dhananjay Prasad Singh whereas in the conversion report, it is mentioned as Dhananjay Singh, it is the admitted fact that the order of absorption/regularization of the petitioner's husband have never been interfered with by any competent authority nor



the order of this Court passed in CWJC No. 78 of 2006, duly affirmed in LPA No. 1324 of 2010 have been interfered by any superior Court and since all the orders of absorption, orders by Writ Court and Appellate Court are still holding their respective field, the non-payment of retiral benefits and other dues are not only unjustified but wholly illegal and unsustainable in law as well as on facts.

14. Mr. Jha, learned counsel for the petitioner further contended that the inquiry report submitted by the Secretary Education Department suffers from various discrepancies and it has neither been accepted by the State Government/ University nor acted upon at any point of time; all the more the husband of the petitioner was allowed to superannuate unconditionally. The falsity of the inquiry report is also writ large from the show-cause affidavit filed by the University in MJC No. 207 of 2011, the copy of which has also been placed on record as Annexure-38 to the interlocutory application. The show-cause affidavit clearly reveals that on perusal of the relevant documents, it is apparent that all the 20 affected employees were appointed by the Governing Body as per prescribed norms and their names figure in the proceeding book and acquaintance roll as well.

15. Learned counsel for the petitioner has further



taken this Court through the judgment rendered by the Hon'ble Apex Court in the case of **State of Bihar and Others v. Bihar Rajya M.S.E.S.K.K.M. and Others [2005 (9) SCC 129/ 2005 (1) PLJR 464 SC]**, especially in paragraphs no. 26, 29, 52 and 53 to the effect that State Government of Bihar has had no authority/jurisdiction to interfere into the matter of absorption of the Teaching and Non-Teaching Employees of a taken over College. It is further contended that the case of the petitioner is identical to those of Niranjana Kumar, Bucheshwar Mandal, Parmanand Singh, Shashi Kumar and Satyabhama Devi, who have been paid all due claims and on the other hand, respondents concerned have been denying identical and similar benefits to the husband of the petitioner, which is highly illegal, arbitrary, *mala fide*, malicious and discriminatory tantamounting to the violation of Article 14 of the Constitution of India.

16. *Per contra*, learned counsel for the State submitted that primarily the petitioner is aggrieved by the finding reached by an inquiry report submitted in terms of the order dated 01.05.2014 passed in the contempt proceeding of MJC No. 207 of 2011, which was accepted by the Hon'ble Court and the contempt proceeding was dropped. Moreover, it is the Bhagalpur National College Sikshetra Karamchari Sangh,



who had been regularly pursuing the cause of its members, which includes the petitioner, therefore, once the Association has already challenged the order dated 24.08.2017 passed in MJC No. 207 of 2011, the present writ petition is not maintainable.

17. Mr. Prabhakar Jha, learned counsel for the State referring to the averments made in the writ petition, has submitted that the State Government has onerous duty in the matter of release of fund for recurring expenditure of the Universities and the Colleges and proper scrutiny and audit of such fund. From the stage of preparation of budget of the annual estimate to its proper utilization by way of audit of the account of the University and the College, is the responsibility of the State. The Hon'ble Court in its contempt jurisdiction had directed the Registrar University to obtain the details of actual payment made to each and every employee till today from the Principal of the College and make it available to Senior Officer for final calculation of the amount payable to each and every employee. During the scrutiny made by the Department, it came to light that names of 20 employees were not found in the Conversion Committee Report. Hence, further payment of arrears of such employees has been withheld. Pursuant to the



direction of this Court, an inquiry was conducted at the level of the officer to the rank of Secretary with respect to genuineness of the appointment of 20 employees of the College. The inquiry report clearly indicated that there was serious lapses in the report of Conversion Committee submitted in the year 1982. On careful examination, it was found that 6 persons including the name of the husband of the petitioner were considered fit to be absorbed but having found no post against which they could be regularized, therefore, the decision of the State Government of 2013 needed to be modified to the above indicated extent.

18. Refuting the contention of learned counsel for the petitioner, based upon parity, it is candidly urged that the case of the petitioner is not identical to those with whom the petitioner is seeking parity.

19. Learned counsel for the University has supported the contention of the State but failed to controvert the position with regard to the appointment and absorption of the petitioner. It has been apprised to this Court that the salary of the 20 employees, including the husband of the petitioner was withheld in the light of the letter no. 364 dated 14.03.2016 issued by the Director, Higher Education. However, on a query made by this Court with respect to the claim of the petitioner seeking parity



with Niranjan Kumar, Bucheshwar Mandal, Parmanand Singh, Shashi Kumar and Satyabhama Devi, learned counsel for the University contended that all of them have been paid their due claim, though it is admitted that so far Bucheshwar Mandal, Parmanand Singh and Shashi Kumar are concerned, their matters are still *sub judice* before this Court in CWJC No. 1800 of 2018, 2531 of 2018 and 2544 of 2018, respectively.

20. This Court has anxiously heard learned counsels for the respective parties and meticulously perused the materials on record.

21. The appointment letter of the petitioner's husband as contained in Annexure-6, shows his name as Dhananjay Prasad. Singh. Later on, the service of the husband of the petitioner was duly absorbed/regularized in the service of the College/University vide Office Order No. 146/2004 dated 15.09.2004 (Annexure-8 to the writ petition), wherein the name of the husband of the petitioner finds figure at serial no.3, which disclosed his name as Dhananjay Prasad Singh and the post against which his service has been regularized is shown as Librarian. The Committee which was constituted for regularization of the services of the ad-hoc employees of the College in hand, upon examination of the relevant records of the



College, had submitted its recommendation annexing therewith list of ad-hoc employees, who were held entitled for regularization in the services of the College. When the husband of the petitioner came to know that his name has incorrectly been mentioned as Dhananjay Singh, for correction of which he had sworn an affidavit on 27.08.2004 and submitted the same before Regularization Committee of the University, based upon which the correct name of the petitioner's husband was mentioned in the Office Order No. 146/2004. The affidavit sworn by the petitioner's husband has also been placed on record as Annexure-40 to the interlocutory application. Before regularization of the services of the petitioner, the entire records were verified and no objection was raised until the order was passed by this Court on 27.02.2013 in MJC No. 207 of 2011.

22. The aforesaid facts also fortified from the show-cause affidavit filed on behalf of the University in MJC No. 207 of 2011. The copy of the show-cause affidavit which is part of the interlocutory application as Annexure-38, clearly reveals that from the records available in the College, it is apparent that all the 20 affected employees including the husband of the petitioner were appointed by the Governing Body as per prescribed norms and their names figure in the proceeding book



and acquaintance roll as well. In para-6 of the show-cause affidavit, the University disclosed that with regard to the name of Sri Dhananjay Prasad Singh, in the report of Conversion Committee and proceeding book, it appears as Dhananjay Singh. However, in the Educational Certificate, his name appears as Dhananjay Prasad Singh and thus, likewise other employees, he also took an oath through affidavit in the name of Dhananjay Prasad Singh. It is categorically averred that the names have wrongly been entered due to typographical error and thus the College and the University have never found any fault in their claim to be absorbed and regularized.

23. So far infirmity which has been shown in the inquiry report dated 28.07.2014 in relation to the claim of the petitioner is concerned, it only relates to difference of name of the petitioner in the conversion report.

24. Admittedly, this is not the case where any another person in the name of Dhananjay Singh has turned up before the College/University/State Government claiming himself to be appointee in the said College. The inquiry report even if taken to be true, for a moment, but it has never been acted upon. Apart from the fact that neither any cause has been shown to the petitioner with respect to the difference in the name nor the



College and the University has been asked for to explain the position, who is the ultimate custodian of the record.

25. This is also not the case of the respondents that the husband of the petitioner has not been absorbed against sanctioned post, rather infirmity is only to the extent of difference of name. The very absorption and regularization of the petitioner against the sanctioned post of Librarian had taken place in pursuant to the order of this Court passed in MJC No. 1538 of 2002 on 06.05.2004 and subsequent order passed in MJC No. 1169 of 2004 on 09.08. 2004. Subsequently, the date of regularization has been shifted to the date of taking over of the College by the order of this Court in CWJC No. 78 of 2006 and LPA No. 1324 of 2010 and at no point of time, any fault has been found leading to any show-cause notice or initiation of departmental proceeding. The husband of the petitioner was admittedly allowed to discharge his duties and finally he superannuated on 31.03.2016. The College in question where the husband of the petitioner had been discharging his duties has not only issued No Dues Certificate but also sent his service-book, which clearly suggests that he had performed his duties in College uninterruptedly from 05.04.1982 to 31.03.2016. The aforesaid fact is explicit from Annexure-26 to the writ petition.



The College had also sent the required pension papers, leave account, statement of account of group insurance claim and welfare fund to the Registrar of the University for payment of pre and post retiral claim of the petitioner's husband.

26. It would be also noteworthy that the issue with regard to the power of the State Government to examine and interfere in the matter of absorption of teaching and non-teaching employees of taken over college has been explicitly dealt with in the case of **Bihar Rajya M.S.E.S.K.K.M. & Others** (supra), wherein the Hon'ble Supreme Court has opined that the decision on absorption of the existing teaching and non-teaching staff of the affiliated colleges, which are taken over as constituent colleges, is within exclusive jurisdiction of the universities concerned. The Hon'ble Court further observed that Clause 14 of Section 4(I) of the Bihar State Universities Act, 1976 (for short 'the Act, 1976') operates in exclusive field of considering and taking decision on absorption of staff appointed regularly or otherwise in an institution including an affiliated or non-affiliated college which is to be taken over as 'constituent college' under a formal agreement reached between the university and the Governing Body of that college. In the process of taking over of management, assets, liabilities and



staff of the affiliated or non-affiliated college, the university has to take a decision with regard to absorption of existing staff. In this process of consideration for absorption, it may have regard to the provisions of the Act including observance of the provisions of Section 35 of the Act. In the matter of absorbing staff of colleges taken over, any alleged non-observance of alleged mandatory provision of obtaining prior approval under Section 35, before creation of posts and appointments to them, would not be an impediment in the way of university to permit absorption of an employee working against a post. The appointments in affiliated college in normal circumstances has to be with prior approval of State Government in accordance with Section 35 but subject matter of absorption of services of staff taken over shall be within exclusive jurisdiction of concerned university in accordance with Section 4(I)(14) of the Act.

27. The Hon'ble Supreme Court having painstakingly examined the scheme of the Act and the relevant provisions in paragraph no. 53 of the said decision opined that the effect of non-obstante clause in Section 4(I)(14) is that the matter of absorption of staff of such institution/college proposed to be taken over, would be within the sole power and jurisdiction of



the university concerned within whose jurisdiction the affiliated college or institution falls. On matter of absorption of staff of taken over institutions, Section 35 requiring prior sanction or approval of the State Government for creation of posts and appointment, would not be a constraint on the power of the university.

28. In the case in hand, there is no dispute the Government of Bihar vide its letter no. 172 dated 16.05.1999 had sanctioned additional 66 Class-III and Class-IV post for the college and accordingly, the services of the husband of the petitioner and others had been absorbed by the respondent-University on being found the petitioner and others eligible.

29. Further, the facts are also admitted that at no point of time, the husband of the petitioner was put to any show-cause notice or placed on suspension or any departmental proceeding has been initiated till his superannuation or at least the date on which he died.

30. This Court in the case of **Kaushlya Devi v. State of Bihar and Others [2023 (1) PLJR 784]** has held as under:

“16. It is settled proposition of law that judicial enquiry or departmental proceeding against a delinquent totally abates on death of an employee for the simple reason that in order to



punish an employer, there must be subsistence of employer and employee relationship. Once an employee died the said relationship ceases. The defence, if any, is a personal defence available to the employee and no person can be substituted in place of dead employee; and defend the conduct of a dead employee and, as such, no order could have been passed withholding the retirement or any outstanding dues.”

31. In absence of any action taken on the basis of inquiry report, the service of the petitioner’s husband cannot be termed as “illegal”, all the more when he was allowed to superannuate unconditionally and now he is no more alive and, as such, ceased all his connection with the worldly affairs.

32. This Court is also surprised to see that the persons against whom the petitioner is seeking parity, though in their cases the infirmities were in different nature as appeared from the inquiry report but they have been allowed their pre and post retiral benefits. Nonetheless, with respect to Bucheshwar Mandal, Parmanand Singh and Shashi Kumar, the matters are still *sub judice* before this Court in CWJC No. 1800 of 2018, 2531 of 2018 and 2544 of 2018, respectively, but they have been paid their due claim unconditionally as has been informed by the learned counsel for the University.



33. On all the counts, this Court finds force in the submission of learned counsel for the petitioner and accordingly the writ petition stands allowed with a direction to the respondents to ensure payment of all the admissible pre and post retiral benefits payable to the petitioner’s husband as also the family pension to the petitioner and its arrears thereof, preferably within a period of three months from the date of receipt/production of a copy of this order.

34. The interlocutory application also stands disposed off.

35. There shall be no order as to cost(s).

(Harish Kumar, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	19-08-2024
Uploading Date	25-10-2024
Transmission Date	

