

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1273 of 2019

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Binay Kumar Jha Late Bhubneshwar Jha Resident of Village- Nava Nagar,
P.O.- Harsinghpur, P.S.- Bahera, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. Lalit Narayan Mithila University through its Registrar, Kameshwarnagar, Darbhanga.
3. Vice Chancellor, Lalit Narayan Mithila University, Kameshwarnagar, Darbhanga.
4. Registrar, Lalit Narayan Mithila University, Kameshwarnagar, Darbhanga.
5. Finance Officer, Lalit Narayan Mithila University, Kameshwarnagar, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gyanand Roy, Adv.
For the State	:	Mrs.Abhanjali, AC to Ex G.A.-12
For the University	:	Mr.Iqbal Asif Niaz, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 18-03-2024

Heard learned counsel for the petitioner and learned
counsels for the respondents.

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

*(i) To quash the memo no.14/M7-160/14/1099
dated 13.09.2018 (Annexure-P/35) issued by the
State Government by which the services of 11
employees including the petitioner was canceled.*

*(ii) To quash the memo no.C/DR-1/10884-
900/19, dated 21.09.2019 (Annexure-P/37) under
the signature of Registrar of the said University by*



which the notification of regularization of the service of the petitioner on the post of Routine Clerk w.e.f. 18.10.2011, issued earlier under memo no.8812-33/18, dated 03.07.2018 (Annexure-P/1) has been canceled in the light of the order of the State Government dated 13.09.2018.

3. Thereafter, further reliefs were added for commanding the respondent State Government and its Authorities to accord approval of regularization of the petitioner on the post of Routine Clerk with effect from 18.02.1985 and make available necessary fund to the University for payment of salary to the petitioner pursuant to his regularization in service in the post of Routine clerk.

4. The brief fact of the case in order to persuade the issue involved in this writ application is that the petitioner was appointed on the post of Routine Clerk on daily wages basis till further order by the order of the Vice-Chancellor of the University issued under Memo No.23-34/85 dated 18.02.1985 (Annexure-P/2 to this writ application). A list of non-teaching employees engaged prior to 10.05.1986 and working in the University under staffing pattern was forwarded by the Registrar of the University to the State Government. In the aforesaid list, the name of the petitioner has been placed at Serial No.105 by



memo no.3315-411/1997 dated 27.02.1997, applications were invited from the eligible candidates for regular appointment against sanctioned posts in constituent colleges, post graduate departments and the University Office by 12.03.1997 from Class-III & IV employees working in the University on daily wages basis. The petitioner has also applied for appointment in pursuance to the aforesaid notification of the University.

5. The Registrar of the University by letter No.12749 dated 06.08.1997 has directed the petitioner to appear for interview in his office at 10:00 A.M. on 14.09.1997 along with his original certificates. The petitioner has appeared for interview on the date and time in the office of the Registrar of the L.N. Mithila University. After interview, a list of 274 selected employees was prepared and forwarded to the State Government by the University under letter no.664 dated 29.05.1998. The name of the petitioner in the aforesaid list was included at serial no.5. A sub-committee was constituted by the University. After scrutiny and examination of cases of daily wages non-teaching employees by the aforesaid sub committee, a list of 270 employees was prepared and forwarded to the State Government by letter No.VCR-210/03, dated 29.03.2003. The name of the petitioner also figured in the aforesaid list of 270 employees. On



defects pointed out by the State Government revised list of 199 employees was forwarded by the University to the State Government by letter No.VCR-02/04 dated 04.01.2004. In the aforesaid revised list was also not accepted and approved by the State Government.

6. As per decision of the Syndicate of the University dated 05.01.2004, decision was taken to provisionally notify the regularization of 199 employees by Notification No.VCR-890-1189/04 dated 16.06.2004, subject to the approval of the State Government with the stipulation that they will get their salary on receipt of fund from the State Government. Subsequently a seven members Enquiry committee was constituted by the University under Memo No.8306-8407/04 dated 03.07.2004 for the purpose of scrutiny of the left out daily wages employees. The University vide its Notification contained in Memo No.2240-2569 dated 24.02.2005 regularized 196 non-teaching employees and authorized payment of salary in the prescribed scale with effect from 01.01.2005 with the stipulation that the arrears of the salary will be paid on receipt of the fund from the State Government. The above mentioned 7 members of Enquiry committee submitted report to the Vice-Chancellor on 14.03.2005 which was placed for consideration in the meeting of



the syndicate of the University held on 20.03.2005, authorized the Vice-Chancellor of the University to take decision in respect of report submitted by the seven member committee.

7. The matter regarding regularization of remaining daily wages employees was again placed in the meeting of the syndicate of the University held on 15.05.2005 and 16.09.2005, whereafter a high level committee was constituted for examining the matter of regularization of non-teaching employees under the Chairmanship of the Pro-Vice Chancellor. On the recommendation of the High Level Committee constituted by the syndicate of the University in its meeting held on 16.09.2005 a four member committee under the Chairmanship of the Pro-Vice Chancellor and the Registrar as its Convener and Dean, Students Welfare and Proctor as its member, was constituted to re-scrutinize the names of 277 daily wages employees.

8. Several writ petitions were filed before this Hon'ble Court on behalf of the non-teaching employees for regularization of their services, which were disposed of by common order dated 13.04.2007, reported in 2007 (Supp.) PLJR 375 with the direction as mentioned in para-30 of the order passed. In accordance with the direction of this Hon'ble Court, passed in



the above mentioned case, a three member committee was constituted by the University to examine the manner, mode and type of appointment and whether such appointments have been made in consonance of the provisions of the recruitment rules on regular posts or irregularity or illegality was made in such appointments. The Registrar of the University by letter no.13159-133226/07 dated 16.06.2007 called for report from all the Heads of Postgraduate Departments, Principals of constituent colleges and the Deputy Registrar I & II of the University in respect of the non-teaching employees working either on daily wages/ casual/ temporary/ contractual or ad-hoc basis in their institution/offices in the enclosed prescribed proforma within three days. In pursuance to the aforesaid letter of the Registrar of the University, statement showing the details of the services of the petitioner was furnished by the Deputy Registrar-I, who is Incharge of the Establishment of the Examination Department of the University, in the prescribed proforma.

9. Thereafter the Deputy Registrar-I of the University orally directed to the petitioner to appear before the three member committee on 07.07.2007 along with all the supporting papers. In response to the aforesaid direction the petitioner has appeared



before the committee along with all the supporting papers on 07.07.2007. The three member committee constituted by the University has submitted a cryptic report to the University on 02.11.2007 to the effect that the claim of the petitioner for regularization of his service is not tenable. In accordance with the aforesaid report of the three member committed the claim of the regularization of the petitioner was rejected by letter No.VCR-1708/07 dated 25.11.2007. The Registrar of the University by Memo No.VCR-2236-77/07 dated 13.12.2007 informed all concern not to take work from the persons, whose claim for regularization have not been found to be tenable and it was also directed that their services stand terminated forthwith.

10. The petitioner filed C.W.J.C. No.9831 of 2009 before this Hon'ble Court against the order issued under Memo No.VCR-1708/07 dated 25.11.2007 (Annexure-P/15 to the writ petition) by which the claim of the petitioner for regularization was rejected as well as the order issued under Memo No.VCR-2236-77/07 dated 13.12.2007 (Annexure-P/16) by which the daily wages engagement has been terminated. The aforesaid writ application was allowed by the order of this Hon'ble Court dated 08.09.2010 (Annexure-P/19) by which the aforementioned two orders of the University were quashed and University was



directed to hold a fresh exercise in terms of observation of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka vs. Uma Devi**. By the aforesaid order, University was directed to clearly distinguish as to whether the claim of the petitioner falls in the category of illegal appointee or in the category of irregular appointee. In case it is found that the services of the petitioner falls in the category of irregular appointee, the University will consider his case for regularization as one time measure as directed by the Constitution Bench. When the order of this Court dated 08.09.2010 (Annexure-P/19) was not complied by the respondent University, a contempt application bearing M.J.C. No.11/2012 was filed by the petitioner before this Hon'ble Court. The Syndicate of the University in its meeting held on 21.05.2012 resolved that the petitioner and other similarly situated persons for the time being be allowed to join against the sanctioned and vacant posts as daily wages employees and payment to them should be made after receipt of fund from the State Government. By the aforesaid resolution it was also resolved by the Syndicate of the University that the cases of the petitioner and similarly situated other persons be sent to the State Government for approval of the regularization of their



service against the sanctioned and vacant posts as has been earlier done in the case of 196 similarly situated other employees.

11. In pursuance to the resolution of the Syndicate dated 21.05.2012, the University by its Notification No.83468/12 dated 26.05.2012 directed the petitioner and others to join on the post as indicated against their names as daily wages employee, in pursuance whereof the petitioner joined on the post of Routine Clerk and started discharging his duties. In accordance with the decision of the Syndicate of the University dated 21.05.2012, the Registrar of the University by his Letter No.10289/12 dated 24.07.2012 requested the Principal Secretary, Higher Education Department, Government of Bihar, Patna to accord approval in the joining of the petitioner and others as daily wages employees and also to accord approval for regularization/absorption of their services. Respondents State Government has filed Civil Review No.496 of 2017 for the review of the order dated 08.09.2010 passed by the Writ Court in C.W.J.C. No.9831 of 2009. Aforesaid Civil Review Application was dismissed by order of this Hon'ble Court dated 18.10.2017. L.P.A. No.500 of 2014 has been filed by the L.N. Mithila University, Darbhanga against the order dated



08.09.2010 passed in C.W.J.C. No.9831 of 2009, which was also dismissed by order dated 29.01.2018 (modified by order dated 19.01.2018). The order dated was modified by order dated 18.02.2018 (Annexure-P/29, P/29-1). By the order of Division Bench passed in L.P.A. No.500 of 2014, the respondent-University was directed to carry out necessary exercise as per the direction of the learned Single Judge and to complete the formalities preferably within a period of three months. After the disposal of the Civil Review No.496 of 2013 and L.P.A. No.500 of 2014, the contempt application being M.J.C. No.11 of 2012 filed by the petitioner was listed before the then Chief Justice of this Hon'ble court and by order dated 21.02.2018 passed in M.J.C. No.11 of 2012 two weeks time was granted to the respondents (opposite parties) to submit a compliance report of the order of the Writ court failing which coercive steps shall be taken against them. Only after passing of the aforesaid order by this Hon'ble Court being M.J.C. No.11 of 2012 (Annexure-P/1) the respondent University has issued the order of regularization of the service of the petitioner on the post of Routine Clerk w.e.f. 18.10.2011 subject to the approval of the State Government as required under section 35 of the Bihar State Universities Act, 1976 and also with a rider that the payment of



salary as well as arrears of salary will be subject to the release of fund by the State Government.

12. A notification of regularization of the service of the petitioner was issued by the University under Memo no.8812-33/18 dated 03.07.2018. M.J.C. No.11 of 2012 was disposed of by the order of this Hon'ble Court dated 09.10.2018 passed by a co-ordinate Bench of this Court. By the aforesaid order dated 09.10.2018 view was taken that the writ court has only directed for regularization of the service of the petitioner and has not passed any order for granting the consequential benefits. Therefore, the Court cannot initiate contempt proceeding against the State inspite of the fact that the State is not making available the fund for payment of the benefits, which are part of the Notification as contained in Annexure-A to the show cause of the University. The Hon'ble Court in the aforementioned order dated 09.10.2018 has however, observed that this Court is not expressing any opinion that the State is not liable to make available the fund. In the facts and circumstances mentioned above, the contempt application was disposed with the observation, if it so advised, the petitioner may seek appropriate legal remedy to seek enforcement of the Notification as contained in Annexure-A to the show cause of the University in



an appropriate jurisdiction. In the background the facts and circumstances stated hereinbefore the petitioner has filed a fresh writ application being C.W.J.C. No.1273 of 2019 before this Hon'ble Court.

13. Learned counsel for the petitioner submits that the respondents State Government as well as the L.N. Mithila University were party respondents in C.W.J.C. No.9831 of 2009. The State of Bihar has filed Civil Review Application No. 496 of 2017 against the order of the writ court dated 08.09.2010 passed in C.W.J.C. No. 9831 of 2009 (Annexure-P/19 of the writ petition). The Civil Review application filed by the State of Bihar was dismissed by order dated 18.10.2017 (Annexure- P/26 of the writ petition). The State of Bihar did not challenge the aforesaid order of rejection of the Civil Review Application and the order has attained finality. L.P.A. No. 500 of 2014 filed by the L. N. Mithila University, Darbhanga against the order of the writ court dated 08.09.2010 passed in C.W.J.C. No. 9831 of 2009 was also dismissed by the order of the Division Bench on 19.01.2018 (modified by order dated 08.02.2018) (As contained in Annexure- P/29 and P/29-1) with direction to implement the order of the writ court within the period of three months. The aforesaid order of the Division Bench passed in L.P.A. No. 500



of 2014 was also not challenged by the University or the State of Bihar before the Higher Court and the order has attained finality. After the disposal of the Civil Review Application being Civil Review Application 496 of 2017 by order dated 18.10.2017. The respondent State Government has sought for information regarding the petitioner and others from the University in response to which the Registrar of the L. N. Mithila University, Darbhanga by his letter No. 175-76/18 dated 13.03.2018 (Annexure P/31) has forwarded all the relevant information relating to the petitioner by Letter No. 8392/18 dated 12.06.2018 (Annexure-P/32-1) which clearly shows that the appointment of the petitioner was not illegal as daily wages employee.

14. The committee setup by the University has also submitted report dated 29.08.2011. In the aforesaid report it has been mentioned that the appointment of the petitioner cannot be categorized as illegal appointment in the light of the decision of the Hon'ble Supreme Court passed in the case of **Secretary, State of Karnataka Vs. Uma Devi** and taking into consideration the duration of his services as daily wages employees as well as the fact that the services of the persons, junior to him as daily wages employees have already been regularized, the case of petitioner deserves to be considered for



regularization of his services in light of the judgment of Hon'ble Court. The report of the aforesaid committee consisted of the Proctor and inspector of Colleges, Arts and Commerce L.N. Mithila University, Darbhanga dated 29.08.2011 (which is contained in Annexure- P/22). In view of the fact that the respondents State Government and the respondent L.N. Mithila University and its authorities were parties in writ petition, civil review application as well as L.P.A., the order which have been passed in the writ petition, civil review application, L.P.A. as well as the contempt petition are binding upon the respondents State Government and its authorities and L.N. Mithila University and its authorities and they are not legally entitled to question the orders which have been passed.

15. In view of the fact that the order passed in Civil Review Application No. 496/ 2017 and L.P.A. No. 500 of 2014 having not been challenged by the respondent State Government and its authorities and respondent L. N. Mithila University and its authorities before the Higher Court. The said orders are binding upon them and cancellation of the order of the regularization of the University following the order of the State Government is defiance of the order passed by this Hon'ble Court and is a clear cut case of Committing contempt of the order passed by this



Hon'ble Court. It is further submitted that the case of the petitioner is similar to the case of 196 employees, whose services were earlier regularized and approved by the State Government and as such no discrimination can be made by the respondents in matter of regularization of the service of the petitioner. The petitioner is also entitled to get similar treatment as has been granted by the University and the State Government to 196 employees whose services were regularized. In 196 employees several daily wages employees were junior to the petitioner which is evident from the Notification dated 26.12.2009 of the respondents L.N. Mithila University (As contained in Annexure P/33 of the writ petition). From perusal of the aforesaid notification it will appear that the date of regularization of the service of the persons' names mentioned in the aforesaid notification has been shifted from their date of initial engagement. From perusal of the aforesaid Notification it also appears that several persons whose services have been regularized were engaged on daily wages basis much after the engagement of the petitioner. The petitioner is legally entitled to the reliefs he has prayed in the writ petition as well as in the amendment petitions. The writ petition should therefore be allowed and his service should be regularized w.e.f. date of



initial engagement i.e. 18.02.1985 and the order of the non approval of the regularization of the petitioner issued by the State Government as well as the order of the cancellation of the regularization of the service of the petitioner issued by the University following the order of the State Government should be set aside with direction to respondents to immediately make payment of arrears as well as the current salary of the petitioner.

16. Learned counsel for the State submits that a detailed counter-affidavit has been filed on behalf of the State, wherein, at para-6, it is stated that CWJC No.9831 of 2009 was filed by the petitioner for quashing of letter No.VCR-1708/07, dated 25.11.2007 by which the claim of the petitioner and others for regularization of their daily wages appointment on Class-III post under the University has been rejected as well as for quashing of the order of termination of their services issued under Memo No.VCR-2236-77/07 dated 13.12.2007 as well as for commanding the respondents to reinstate and regularize them in services on Class-III post under the University and to grant them all consequential benefits including payment of arrears of salary. CWJC No.9831 of 2009 was allowed vide order dated 08.09.2010 as contained in Annexure-19 to the writ application. The operative portion of the order is as follows:



“In the circumstances, the order passed by the University, as contained in Annexure-1/1 in respect of the petitioner is quashed. The report of the Committee as contained in Annexure-14 is also quashed. The University is directed to hold an exercise or get an exercise in terms of the observations of the Apex Court in the Constitution Bench to clearly distinguish the case of the claimants falling in the category of illegal appointee and those falling in the category of irregular appointee. In case the incumbents whose cases, the University finds to be only irregular in terms of the law laid down by the Constitution Bench, the University shall consider their cases for regularization as one time measures as directed by the Constitution Bench.”

17. The State of Bihar had filed Civil Review No.496 of 2013 for review of the order dated 08.09.2010 passed by this Hon'ble Court in CWJC No.9831 of 2009 which was dismissed vide order dated 18.10.2017. Thereafter the Education Department vide its letter no.1461 dated 16.12.2017 called for certain information from the University regarding the services of the petitioner and others so that the appropriate decision may be taken by the Department regarding approval of the adjustment/regularization of the services of the petitioner in compliance of order passed by this Hon'ble Court. The



Education Department vide its letter no.253 dated 01.03.2018 again requested the University to make available the information regarding the services of the petitioner as called for earlier through the aforesaid letter. Thereafter the University vide its letter no.175 and 197 dated 23.03.2018 and 13.04.2018 respectively made the report regarding service of the petitioner and others but the same was not clear and accordingly a meeting was held on 06.06.2018 and 13.06.2018 with the officials of the University. Thereafter, the University vide letter no.8392 and 8096 dated 12.06.2018 and 04.06.2018 made available the report to the Education Department regarding service of the petitioner along with supporting documents. In the meantime the University vide its notification bearing no.8812-33/18 dated 03.07.2018 has regularized the service of 11 employees including the petitioner subject to approval of the State Government in utter violation of the Rules under Section 35 of the Bihar State Universities Act, 1976, which reads as follows:-

“35. No post for appointment shall be created without the prior sanction of the State Government.- (1) Notwithstanding anything contained in this Act; no University or any College affiliated to such a University; except such College
(a) as is established; maintained or
governed by the State Government; or



(b) as is established by a religious or linguistic minority;

(i) After the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government.

(ii) Shall either increase the pay or allowance attached to any post, or sanction any new allowance;

Provided that the State Government may, by an order, revise the pay scale attached to such post or sanction any new allowance.

(iii) Shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) Shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no College other than one mentioned in clauses (a) and (b) of Sub-Section (1), shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government.

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by a candidate possessing



the prescribed qualification.

(3) Any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules or Regulations made there under or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall be realized from the officer making such appointment or promotion as a public demand under the provisions of the Public Demands Recovery Act, 1914.

18. Relevant section 10(6) of the Bihar State Universities Act, 1976 provides that :

“(6). The Vice-Chancellor shall subject to the provisions of this Act, the Statutes and the Ordinances have power to make appointment to posts within the sanctioned strength of the ministerial staff and other servants of the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants.”

19. The matter of regularization of daily wage/casual worker has been decided by the Full Bench of this Hon’ble Court in a case reported in **2013(1) P.L.J.R. 964 (Ram Sevak Yadav vs. The State of Bihar)**. In para-43 of the said judgment this Hon’ble Court has held as follows:-



(a) Uma Devi (supra) prohibits regularization of daily wages, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(b) An illegal appointment void ab initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(c) Irregular appointment can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(d) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court order.

20. In compliance of order passed by this Hon'ble Court, the proposal of the University has been examined by the Education Department in the light of judgment passed by Hon'ble Supreme Court in case of **Uma Devi (supra)** and judgment passed by Full Bench of this Hon'ble Court in **Ram Sewak Yadav (supra)** and accordingly a reasoned order has been passed by the Department



as contained in memo no.1099 dated 13.09.2018 whereby the claim of the petitioner and others for regularization has been rejected. In this connection it is stated that the petitioner was appointed in violation of Article 14 of the Constitution of India as the appointment was made against the unsanctioned post without providing equal opportunity for participation to others eligible by competitive selection and against the unsanctioned post. It is further submitted that the L.N. Mithila University vide its notification dated 26.12.2009 has shifted the date of regularization of 185 non-teaching employees from the date of initial appointment. In this connection it is stated here that the State Government vide its letter no.201 dated 29.01.2019 has cancelled the notification of the University dated 26.12.2009 (Annexure-B of the counter-affidavit). The State Government has not approved the proposal of the University and rejected the claim of the petitioner and others for regularization of their services as aforesaid, therefore, the writ petition is fit to be dismissed.

21. It is submitted that the L.N. Mithila University at the relevant time invited application for regular appointment, but instead of completing the process of regular appointment, the L.N. Mithila University by completing selection against the



sanctioned posts and posts calculated under the staffing pattern, resorted to limited interview and selection of only those appointed up to 10.05.1986 and working in University on Daily Wages/casual basis as the University did not adopt selection by open selection of approximately 33,000 candidates applied for open selection. After various rounds of litigation and scrutiny and rejection of the list submitted by the University by the State Government on different occasion, it appears that the State Government after the order of this Hon'ble Court in MJC No.2301/2000 and 734/2001 dated 16.12.2004 and 17.12.2004, approved the recommendation of the University for regularization of 196 Daily Wages employee of the University vide memo no.21 dated 05.01.2005. In relation to absorption/regularization of the services of non-teaching class-III and class-IV employees of L.N. Mithila University and other universities after the judgment in ***Secretary, State of Karnataka Vs. Uma Devi 2006 (4) SCC 1***, this Hon'ble Court on the writ petition filed for regularization, issued directions in various writ applications. In batch of 84 cases of various Universities including L.N. Mithila University on 13.04.2007, the then Hon'ble Chief Justice, Patna High Court and one Hon'ble Judge, Patna High Court, issued direction for consideration of the cases



of non-teaching employees of different Universities for regularization as one time measure in the light of the judgment of Apex Court in *Uma Devi (supra)* case. He further submits that on the basis of Apex Court order and on the basis of Full Bench judgment of this Court, the claim of the petitioner was rejected.

22. Learned counsel for the University submits that after various orders passed by this Hon'ble Court, the University has issued order regularization of the service of the petitioners and by Annexure-P/1, the Registrar of the University wrote to the Director, Higher Education Department, Government of Bihar, regarding the same and regarding the payment of arrear of salary to the petitioner subject to release of the fund by the State Government but the State Government has dismissed the claim of the petitioner for regularization, considering that the same is not in accordance with law. Therefore, the service of the petitioner was not regularized.

23. Considering the argument of the parties and on perusal of the records, it is an admitted fact that the respondent State Government as well as the L.N. Mithila University, were party respondent in C.W.J.C. No.9831 of 2009. A civil review application No.496/2017 filed by the State Government against



the order passed in the writ application No.9831 of 2019 was dismissed. L.P.A. No.500 of 2014 filed by the University, against the order passed in CW.C.J. No.9831 of 2009 was also dismissed with direction to implement the order of writ court within the period of three months. The State of Bihar or the University have not challenged the order passed in the L.P.A No.500 of 2014 before the higher court and the order attained finality. It is also important to mention that junior to the petitioner as daily wage employees have already been regularized.

24. It is also admitted fact that the petitioner was appointed on 18.02.1985 on daily wages i.e. engaged prior to 10/5/1986 and working in the University/College as within a staffing pattern. Admittedly by various judicial order passed in favour of the petitioner and in view of order passed in the M.J.C. 11/2012 dated 21.02.2018, the University has issued order for regularization of service of the petitioner on the post of clerk with effect from 18.10.2011 subject to approval of the State Government as required under section 35 of the Bihar State University Act, 1976 with a rider that the payment of salary as well as arrear of salary will be subject to the release of fund by the State Government.



25. The Full Bench of this Court in *L.P.A. No.36 of 1994 Braj Kishore Singh And Ors. vs State Of Bihar And Ors* in para-9 has held that if the appointment of a person is found to be illegal for want of sanction of the posts by the State Government in view of the provisions of the Section 35 of the Universities Act. Para-21 of the said judgment is that the point for consideration is whether appointments made by the College/University authorities against sanctioned posts, i.e., posts within the staffing pattern are to be accepted as final. As noticed above, Section 35 of the Universities Act provides for prior approval both in the matter of creation of posts as also in the matter of appointment. Creation of post is the earlier stage, actual appointment comes next. As noticed above, there cannot be a College without the teachers and without teachers the College cannot be granted affiliation, the relevant part of, Section 35 requiring prior approval in the matter of appointment has to be read down to include 'post facto' approval otherwise the provision may become unworkable and lead to anomalous or absurd situations. One of the objects underlying Section 35 is that appointments are made of persons possessing necessary eligibility and qualifications and in accordance with law. This object can be achieved even without insistence on 'prior



approval' in each and every case. In appropriate cases, appointment can be made subject to 'post facto' approval of that State Government after such scrutiny of the qualifications and the recruitment process as may be necessary and appropriate. Such appointments, made by the College/University authorities, should not be treated as final; they shall have legal effect and sanctity only after approval of the State Government.

26. Para-22 of the said judgment states that the above discussion may be summed up in these words. By reason of the approval of the staffing pattern proposed by the Bihar Inter University Board non-teaching class III and IV posts will be deemed to have been created with the prior approval of the State Government i.e. sanctioned. Appointment can be made against those posts in accordance with the staffing pattern without seeking further approval regarding post (s). Merely on the ground that prior approval of the State Government was not obtained, the appointment cannot be said to be illegal. The College/University authorities are competent to make appointment of eligible and suitable persons against such posts. Ordinarily, this should be done with the prior approval of the State Government. In exceptional cases, in exigency of service of situation, provisional appointment can be made subject to



approval of the State Government within the stipulated time-frame. It is open to the State Government to examine the eligibility and suitability of even those who have already been appointed against the sanctioned posts as per the staffing pattern.

27. Para-25 of the said judgment states that in the present case also, in view of the inherent 'unworkability' of the impugned provisions regarding prior approval of the State Government, the provisions can be read down in the manner indicated above. The soul of the provisions is not violated and the purpose is also achieved. The purpose in making these provisions is to pre-empt illegal and uncalled for appointments. Large scale illegal appointments without availability of posts have been made in different establishment/organisations in this State in recent times and the legislature thought it appropriate to intervene and make the provisions which would deter the College/University authorities from making illegal appointments because, more often than not, it is the State which was to bear the financial burden of the appointments. The purpose underlying the provisions, therefore, has not only to be lauded but also achieved. If Section 35 is interpreted in the provisions would be substantially complied with but the purpose also would be fulfilled.



28. Considering this fact and in view of order passed in the ***Braj Kishor Singh (supra)***, admittedly, there is no requirement to take prior approval of the State Government, when the post is already sanctioned and the petitioner can be said to be legally appointed as the post was advertised and he was appointed after facing the interview for daily wages. In view of Full Bench judgment, ***Braj Kishore Singh (Supra)*** ‘post facto’ approval of the State Government is not required. It is admitted fact that the service of petitioner was regularized by the University. The Apex Court time and again held that even a temporary employee is entitled to domestic enquiry, if the allegation is made against such temporary employee before the termination of his or her service at present. The petitioner’s service is regularized by the University on sanctioned post.

29. In view of the for going discussion, I set aside the order passed in memo no. 14/M7-160/14/1099 dated 13.09.2018 (Annexure-P/35) issued by the State Government and memo no.C/DR-1/10884-900/19, dated 21.09.2019 (Annexure-P/37) issued by the Registrar of the concerned University by which the regularization of service of 11 employee including the petitioner on post of Routine Clerk w.e.f. 18.10.2011, issued earlier under memo no.8812-33/18 dated 03.07.18 (Annexure-P/1) were



canceled.

30. The State Government as well as the University are directed to regularize the service of the petitioner from the date of his initial appointment i.e. 18.02.1985 and also give all consequential benefits to the petitioner within six months from today.

31. With the aforesaid directions, this writ application is allowed.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.04.2024
Transmission Date	N.A.

