

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15262 of 2016

Dr. Suresh Prasad Srivastava Son of Late Brij Bihari Srivastava Resident of
Rajendra Nagar, Opposite Moti Cinema, P.S.- Ara Nawada, P.O.- Ara,
District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Veer Kunwar Singh University, Ara, Bhojpur through its Registrar.
3. The Registrar, Veer Kunwar Singh University, Ara, Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Brisketu Sharan Pandey
For the Respondent/s : Mr. Ashutosh Ranjan Pandey-Aag15

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 10 26-09-2024 1. The petitioner has challenged the order, dated 24.06.2016, passed by the One Man Committee, headed by Hon'ble Mr. Justice S.N. Jha (Retired) passed in Review Case No. 08 of 2016 and further order, dated 22.12.2015, passed in Case No. 33/BKSU, whereby the claim of the petitioner to reckon his seniority with effect from the initial date of appointment i.e., 17.01.1976 has been rejected and his services has been reckoned on the basis of the cut off date prescribed in Second Absorption Statute with effect from 01.01.1981.
2. The petitioner has further prayed for a direction to the respondents to consider his claim for absorption/regularization with effect from 17.01.1976 instead of 01.01.1981.



3. Learned counsel for the petitioner submits that an advertisement for appointment was published by Maharaja College, Ara, in the Indian Nation newspaper, on the post of temporary Lecturer in various subjects including Zoology on 21.09.1975. In pursuance of the said advertisement, the petitioner submitted his application along with necessary documents. A Selection Committee was constituted and the petitioner appeared before the Selection Committee pursuant to the letter dated 03.12.1975 for interview. By its resolution dated 13.12.1975, the Selection Committee selected the petitioner and other teachers as temporary Lecturer in the College in various subjects including Zoology. The appointment letter was issued to the petitioner after recommendation of the Selection Committee on 17.01.1976 and appointment of the petitioner has been approved by the Adhoc Committee on 08.02.1976. The recommendation of the Selection Committee was approved by the Adhoc Committee on 08.02.1976.

4. The Governor Secretariat, by letter, dated 19.02.1982 (Annexure 8), informed the Vice-Chancellor, Magadh University, that Chancellor of the University decided to permanently absorb the temporary Lecturers in regular service who have completed twenty four months of



continuous service on 31.12.1980. The College was unit of the Magadh University at that point of time which came out with the notification dated 28.08.1982, and absorbed the petitioner as Lecturer in the services of the University in the pay scale of Rs. 700/- to Rs. 1600/-. The petitioner was subsequently promoted as a Reader upon completion of ten years of service. The petitioner was also given time bound promotion as Professor *vide* notification, dated 13.12.2010, with effect from 01.11.1993.

5. Learned counsel further submits that seniority of the petitioner for grant of promotion and other benefits was being reckoned from the date of his appointment as Lecturer on 17.01.1976 but now the University has changed the date of seniority of the petitioner reckoning it with effect from 01.01.1981 being the cut of date as per the Second Absorption Statute.

6. Learned counsel relies upon the judgment of this Court **Reported in 2001 Vol. 4 PLJR 776 Dr. Kishore Kumar and Another v. The State of Bihar and Others** in which the High Court has held that in case the teacher was holding the post of Lecturer validly and legally on the date of his absorption, he would be entitled to the benefit of entire period of service. Assailing the impugned order, learned counsel submits



that the claim of the petitioner has been rejected on the ground that there is no evidence regarding the continuity of employment of the petitioner as the petitioner was appointed for a period of three months only. He relied upon Annexures 4 to 10 of the writ application and submits that the services of the petitioner was extended from time to time and he was being paid the salary continuously and subsequently as per the direction of the Hon'ble Chancellor, the petitioner was absorbed as Lecturer by reckoning his date of appointment as 17.01.1976. The documents regarding continuity of service of the petitioner could not be placed before the Commission, however, the petitioner filed a review application bearing Review Case No. 08 of 2016 seeking review of the impugned order dated 22.12.2015 but the same has been disposed with observation to approach the Hon'ble Court for redressal of his grievance.

7. On the other hand, learned counsel for the State argued that no evidence was produced by the petitioner regarding his continuity of service and that his initial appointment was valid, as such, there is no infirmity in the order passed by the One Man Committee.

8. Learned counsel for the University submits that though at the initial stage, the petitioner could not produce the



documents regarding his continuity but review was filed along with all the documents and since the Commission was to submit its final report, it granted liberty to the petitioner to approach the Hon'ble High Court.

9. I have heard learned counsel for the parties and have gone through the materials on record. The copy of the advertisement has been annexed by the petitioner at *Annexure 14* of the writ application published in the Indian Nation on 21.09.1975 for appointment of temporary teacher in the subject of Zoology and other subjects. The petitioner has also brought on record the interview letter requiring him to appear before the Selection Committee along with the recommendation of the Selection Committee for appointment of the petitioner as temporary Lecturer in the College. The copy of the appointment letter, dated 17.01.1976, has also been produced by the petitioner as *Annexure 3*. The Adhoc Committee of the College approved the appointment of the petitioner on 08.02.1976. The appointment of the petitioner was extended by the University *vide* letter, dated 26.06.1976 (*Annexure 5*). The petitioner has produced the documents at *Annexure 6, 7, 8, 9, 10*, showing the continuity of the service and salary received by him. The Hon'ble Patna High Court, while considering the case of



University, took a view that if the initial appointment of the person was valid, he would be entitled to retrospective seniority from the date of initial appointment. If the initial appointment of a teacher is not found valid and the temporary employee is absorbed in regular service under some policy like absorption statute containing a cut off date, his seniority is reckoned from such cut off date.

10. The claim of the petitioner is that he was duly appointed after following the due process and also received the salary continuously. The petitioner has substantiated the claim with supporting documents. As such, reckoning the date of seniority/absorption of the petitioner as per the cut off date mentioned in the second absorption statute with effect from 01.01.1981 is not sustainable. The petitioner has been able to show that his initial appointment was valid with effect from 17.01.1976 and further he continued to work as lecturer and was subsequently absorbed by the Chancellor reckoning his service with effect from 17.01.1976. In similar circumstances, this Court in the case of **Dr. Kamala Kumari v. The State of Bihar and Others (CWJC No. 10202 of 2019)** and **Indra Nath Jha v. The State of Bihar and Others (CWJC No. 3464 of 2017)**, decided the issue regarding the date of absorption of the



Lecturer.

11. In the backdrop of the aforesaid fact, this Court is satisfied that the petitioner was duly appointed on the vacant post after following the process of selection by the Selection Committee and was being paid regular salary from the date of his initial appointment and got time bound promotion on due dates reckoning his service with effect from 17.01.1976. In **Dr. Kishore Kumar and Another v. The State of Bihar and Others (supra)**, this Court has held that in case the teacher was holding the post validly and legally on the date of his absorption, he would be entitled to the benefit of entire period of his service. If the initial appointment of the person concerned is valid, he/she would be entitled to retrospective seniority from the date of initial appointment notwithstanding the prescribed cut off date fixed in the absorption statute.

12. Accordingly, I am of the considered opinion that the finding arrived at by the Commission that there is no evidence to show the continuity of the petitioner as Lecturer in the facts of the case is not sustainable.

13. In the result, order, dated 24.06.2016, passed by the One Man Committee, headed by Hon'ble Mr. Justice S.N. Jha (Retired) passed in Review Case No. 08 of 2016 and further



order, dated 22.12.2015, passed in Case No. 33/BKSU, are set aside.

14. The respondents are directed to reckon the service of the petitioner with effect from 17.01.1976 i.e., from the date of his initial appointment and to pay all admissible consequential benefits in accordance with law.

15. Accordingly, the present writ application is allowed with the aforesaid direction.

(Anil Kumar Sinha, J)

HarshPandey/-

U			
---	--	--	--

