

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20903 of 2021

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Bharti Kumari Wife of Arun Kumar Singh resident of Mohalla - Jagdamba
Nagar, Police Station- Ahiyapur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Hemant Kumar Jha
For the Respondent/s	:	Mr. Subash Chandra Mishra (Sc16)
For the L.N.M.U.	:	Mr. Bindhyachal Rai
		Mr. Sunil Karn

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
Date : 23-04-2024

Heard learned counsel for the parties.

2. The petitioner has moved this Court for:-

(i) Issuance of writ, order or direction directing and commanding the respondents to release the fund and to make payment of current and arrear of salary to the petitioner w.e.f. the date of regularization of his service as Cataloger vide memo no.8812-33/18 dated 03.07.2018 (Annexure-4) issued under the signature of the Registrar of the University.



(ii) *For quashing the memo no.1099 dated 13.09.2018 (Annexure-P/6 of I.A. No.1 of 2024), issued under the signature of Additional Secretary, Department of Education, Government of Bihar, Patna which the proposal for regularization of service of 11 persons including the petitioner has been rejected.*

(iii) *For quashing the memo no.C/DR-1/4344-66/21 dated 08.03.2021 issued by the Registrar of the University and individual letter issued to the petitioner vide Memo No.C/Dr-1/12139-46/21 dated 02.11.2021 (Annexure-5 series) by which earlier notification/memo issued by the same authority for regularization of service of 11 employees including the petitioner was cancelled without issuing any notice, without giving any reason or without showing any reason differing with the earlier decision which was taken pursuant to order passed in Writ application, Review application, L.P.A. and the Contempt application.*

(iv) *For quashing letter no.1310 dated 29.07.2019 (Annexure-P/6(A) of I.A. No.1 of 2024), by which the State Government has refused to reconsider the regularization of 11 employees including the petitioner and to release the grant to make payment of salary to the petitioner.*



(v) *For shifting the date of regularization of the service of the petitioner from 18.10.2011 to the date of his initial appointment i.e. 22.11.1993 as has been done in the case of exactly similarly situated employee vide Memo dated 06.03.2020 by the Registrar of the University.*

(vii) *For issuance of writ, order or direction directing and commanding the respondents to grant consequential relief/benefits to the petitioner by regularizing his service from the date of appointment and to make payment of arrear as well as current salary.*

3. Learned counsel for the petitioner submits that the fact of the case is that the petitioner was appointed on the post of Cataloger on daily wages basis by the order of the Registrar of the University vide office order no.25363-68 dated 11.11.1993 issued under the signature of the Registrar of the University. Petitioner, thereafter, continuously worked as Cataloger on daily wages basis to the satisfaction of his controlling authority and was being paid his wages as admissible to him from time to time.

4. By the notification of the University vide memo no.3315-411/97 dated 27.02.1997 applications were invited from the



eligible candidates for regular appointment against sanctioned posts from Class-III and IV employees working in the University on daily wage basis. Petitioner submitted application and appeared in the interview on 02.08.1997 and after interview a list of 274 selected employees including the petitioner was prepared and forwarded to the State Government for approval.

5. In the year 2007, vide order dated 25.11.2007 contained in letter no.1708/07 issued under the signature of the Registrar of the University, claim of the petitioner for regularization of his service was held to be untenable and accordingly rejected.

6. He further submits that petitioner filed C.W.J.C. No.10987 of 2008 for quashing the letter dated 25.11.2007 and for a direction to the respondents to consider his claim for regularization of his service as Cataloger in the University w.e.f. the date of initial appointment on daily wages in the same way as the services of 196 daily wages employees were regularized and further to give all consequential benefits of service to the petitioner arising out of regularization of his service.

7. Vide order dated 04.08.2011 in C.W.J.C. No.10987 of 2008, the High Court was pleased to dispose of the writ application with direction to the University to consider the cases of the petitioners for their regularization in terms of the



direction of the Apex Court and to complete exercise positively within three months from the date of receipt of order (Annexure-1 of the writ application).

8. Against the aforesaid orders dated 04.08.2011, the State of Bihar filed Civil Review No.197 of 2016 and the High Court, vide common order dated 18.10.2017 was pleased to dismiss the review applications (Annexure-2 of the writ application).

9. Against the order dated 08.09.2010, the University filed L.P.A. No.365 of 2014 and 500 of 2014 and the High Court vide order dated 19.01.2018, was pleased to dismiss the appeal (Annexure-3 of the writ application).

10. In compliance of order passed in C.W.J.C No.9831 of 2009 and other analogous cases and also in contempt application, the services of eleven employees including the petitioner working on daily wage basis were regularized under L.N.M. University w.e.f. 18.10.2011 subject to approval of the State Government and payment of their salary to release of fund by the State Government (Annexure-4 of the writ application).

11. That unfortunately, instead of considering the claim of regularization of the service of the petitioner, the State Government has rejected the claim of the petitioner finding the service of the petitioner as illegal (Annexure-P/6 and P/6/A of



the I.A. No.1/2024).

12. The finding of the aforesaid rejection of the claim of the petitioner for regularization is highly illegal, contemptuous and improper, the University has again written to the State Government requesting the High Court to consider the claim of the petitioner, so that order of the Court will be complied with (Annexure-B of the counter-affidavit filed by the University).

13. That the State Government has failed to take into consideration, the reply of the University to the query made by the Government stating therein that the appointment of the petitioner was made against vacant sanctioned post after following due procedure of law i.e. advertisement; interview; recommendation of the selection committee; appointment by competent authority and continuous payment on the basis of continuous discharge of duty. In such situation, it is highly illegal, arbitrary and whimsical attitude of the authorities (Annexure-P/7 and P/8 of the I.A. No.1/2024).

14. That the authorities ought to have taken into consideration the fact that services of so many employees, much juniors to the petitioner i.e. appointed in the year 1996, 1995, 1994 have been regularized from their initial date of appointment but the recommendation in favour of the petitioner appointed in the



year 1993, was rejected.

15. He, next submits that the action of the authorities is illegal, arbitrary and contemptuous because against the identical order of the High Court, the University filed L.P.A. No.365/14 and L.P.A. No.500/14 and the State Government filed Civil Review Applications but all the Letters Patent Appeal as well as Civil Review Applications were dismissed on 19.01.2018 and 18.10.17, respectively with a direction upon both the State and University to carry out necessary exercise and complete the formality within three months.

16. He, lastly submits that similarly situated persons have preferred writ before this Court and those writs were allowed in favor of the writ petitioners in C.W.J.C. No.2510 of 2019, 2883 of 2019 and 3281 of 2019.

17. A counter affidavit is filed on behalf of the respondent no.3 and 4, in which it is stated that the dispute as to the regularization of non-teaching employees in L.N. Mithila University particularly after judgment of the Apex Court in **Secretary, State of Karnataka vs. Uma Devi 2006 (4) SCC 1**. Prior to to the judgment of the Apex Court in Uma Devi case, the State Government framed a policy decision contained in Letter No.1820 dated 17.11.1998 for scrutiny of cases of non-



teaching employees for regularization in the light of the Judgment of the full bench passed in Braj Kishore Singh case.

18. He submits that several writ petitions were filed in this Court viz. CWJC No.9809 of 1998, 1112 of 1998 and analogous cases, seeking regularization of their services. In the aforesaid application, the Court observed that University had already issued an advertisement and number of persons had applied and therefore, the selection process be gone into but persons working for a long period be given weightage of service and relaxation of age. The Court further directed that after completing the process taking into consideration the number of vacancies, recommendation be made to the State Government for approval.

19. That L.N. Mithila University at the relevant time invited application for regular appointment, however, the University, instead of completing the process of regular appointment by completing selection against the sanctioned posts and posts calculated under the staffing pattern resorted to the limited interview and selection of only those appointed upto 10.05.1986 and working in University on daily wages/casual basis as the University did not adopted selection by open selection of approximately 33,000 candidates applied for open selection.



20. That after various round 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 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 wager employee of the University vide memo no.21 dated 05.01.2005.

21. That 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 court on the writ petitions filed for regularization, issued directions in various writ applications. In batch of 84 cases of various Universities including of L.N. Mithila University on 13.04.2007 the then Hon'ble Chief Justice, 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 case.

22. That vide order dated 13.04.2007 passed in CWJC No.5774/2000 and analogous case, this court directed the Vice



Chancellor of the Universities to constitute three men committee to examine, whether the petitioner seeking regularization were irregularly appointed or illegally appointed.

23. That in terms of the direction of this Court, a three men committee was constituted by the University and after hearing each individual claimants, the committee came to a conclusion that the claimants appointment was illegal as they were appointed without observing the recruitment rules. The three men committee report along with the conclusion and proforma of statement showing consideration of details of individual claimants is enclosed in the counter-affidavit of respondent no.2.

24. Pursuant to the report of the three men committee, the University took decision to terminate the services of all such claimants including the petitioner vide order dated 25.11.2007. The order dated 25.11.2007 was assailed by the petitioners in CWJC NO.10987 of 2008. The CWJC No.10987 of 2008 was allowed by this Court and the impugned order dated 25.11.2007 and the report of the three men committee dated 02.11.2007 was quashed by this Court and the University was directed to hold an exercise or get an exercise held in terms of observation of the Apex Court in the constitution bench to examine whether the claimants are falling in the category of illegal appointees or



irregular appointees and in case the University finds the appointment only irregular, then University shall consider their cases for regularization as one time measure.

25. That in another writ application for regularization filed by one Md. Badre Alam of M.K. College, Lehariasarai, Darbhanga vide CWJC No.7677 of 2008, this Court noticing the fact that large number of cases regarding absorption, the Court constituted one man committee to examine such matter. The said writ application was disposed of with liberty to the petitioner to move the said committee for consideration of his case. Mr. Justice Uday Sinha (Retd.) Committee on consideration of the entire facts and circumstances of Badre Alam Case held out that his appointment was illegal as he was not appointed on sanctioned and vacant post and as such his case for regularization was dismissed vide order dated 04.11.2011.

26. In view of the order dated 18.10.2011 passed in CWJC No.4352 of 2009, the University vide its notification dated 02.12.2011 constituted three men committee. The three men committee in its report dated 11.04.2012 noted that all these daily wagers including petitioner have worked for much more than ten years however, records for continuous service is not available.



27. He further submits that from the perusal of the aforesaid annexure, it is evident that the petitioner was not working against the sanctioned post which is condition precedent for considering the case for regularization.

28. The Full Bench of this Court in **Ram Sewak Yadav Case 2013 (1) PLJR 964**, upon scrutiny of the various judgments of the Apex Court noticed that open competitive process against sanctioned vacant post is precondition for consideration of case for regularization which was conspicuously absent in the case of the non-teaching employees of L.N. Mithila University.

29. That on scrutiny of the record made available on 07.10.2013 by the University, it transpired that the University while calculating 199 posts for regular appointment/regularization has considered the entire sanctioned post as well as post admissible under staffing pattern. On scrutiny of the chart of calculation of such posts it transpired that 34 sanctioned posts of Class-III was available in the University on 20.09.2004 and 28 Class-III was calculated as per the staffing pattern. Similarly, 49 Class-IV sanctioned post was available and 88 Class-IV posts was calculated under staffing pattern. Thus, 83 sanctioned posts and 116 post under staffing pattern , total 199 post were found available.



30. He further submits that the University has no jurisdiction to create post even for regularization and only the State Government under Section 35 of the Bihar State Universities Act, 1976 is competent to take decision but unfortunately at no point of time any direction was issued to the State Government by this Court to consider the case as to post creation for regularization and in the absence of existence of post regularization can't be made by the University.

31. The State Government preferred Civil Review No.197 of 2016 which was dismissed vide order dated 18.10.2017 as contained in Annexure-3 to the writ application.

32. The University also preferred LPA, which were disposed of vide order dated 19.01.2018 as contained in Annexure-3 to the writ application with direction to the State as well as the University to carry out the necessary exercise as per direction of learned Single Judge dated 18.10.2011.

33. Thereafter, the University regularized the services of 11 employees including the petitioner w.e.f. 18.10.2011 vide notification dated 03.07.2018 (Annexure-4 to the writ application) subject to the approval of the State Government as required under Section 35 of the Bihar State Universities Act.

34. The order of regularization as contained in Annexure-5 to



the writ application was considered by the State Government and documents and records were made available by the University relating to 11 employees in view of the Uma Devi case. It was found that they were engaged without following the selection process against the unsanctioned post. No evidence was found regarding payment of remuneration to such employees in order to prove their continuous service for more than 10 years. Accordingly, the State Government vide reasoned order as contained in memo no.1099 dated 13.09.2018 refused to approve the regularization made by the University (Annexure-A of the counter-affidavit).

35. 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.

36. It is also admitted fact that the petitioner was appointed on 11.11.1993 on daily wages 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 cataloger 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.

37. 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.

38. 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.

39. 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.

40. 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 Kishor 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.

41. Considering that the case of the petitioner is squarely covered by order passed in C.W.J.C. No.2510 of 2019, 2883 of 2019 and 3281 of 2019 and in view of the foregoing discussion, I set aside the order passed in memo no.1099 dated 13.09.2018 issued by the State Government by which the regularization of service of 11 employee including the petitioner on post of Cataloger w.e.f. 18.10.2011, issued earlier under memo no.8812-33/18 dated 03.07.18 were cancelled and memo no.C/DR-1/10884-900/19 dated 21.09.2019, issued by the Registrar of the concerned University is hereby quashed.

42. 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. 22.11.1993 and also give all



consequential benefits to the petitioner within six months from today.

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

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2024
Transmission Date	NA

