

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1150 of 2023

In

Civil Writ Jurisdiction Case No.1087 of 2023

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Anil Kumar son of Bindeshwari Prasad Yadav, resident of village -
Shakarpura, P.S. and District - Madhepura.

... .. Appellant/s

Versus

1. Kamlesh Kumar Thakur Son of Late Nagendra Thakur, at present working as Laboratory Incharge, Department of Chemistry, Parwati Science College, Madhepura, District - Madhepura.
2. The State of Bihar through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Bhupendra Narayan Mandal University, Laloo Nagar, P.S. and District - Madhepura through its Registrar.
4. The Vice-Chancellor, Bhupendra Narayan Mandal University, Laloo Nagar, P.S. and District - Madhepura.
5. The Registrar, Bhupendra Narayan Mandal University, Laloo Nagar, P.S. and District - Madhepura.
6. The Principal, Parbati Science College, Madhepura.
7. Sunil Kumar Yadav, Parbati Science College, Madhepura.
8. B.N. Bibeka, Proctor, B.N. Mandal University, Laloo Nagar, Madhepura.
9. Arun Kumar Yadav, Inspector of College (Science), B.N. Mandal University, Laloo Nagar, Madhepura.
10. Ashok Kumar Singh, Nodal Officer, B.N. Mandal University, Laloo Nagar, Madhepura.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Amaresh Kumar Singh, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh (AAG-13)
		Mr.Raja Kumar Tiwary (AC to AAG-13)
		Mr. Subodh Kumar Jha, Advocate
		Mr.Krishna Kumar, Advocate
For the BNMU	:	Mr.Ritesh Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-05-2024

The controversy is in a narrow compass as to who is to be regularized. The appellant herein who was the 10th respondent in the writ petition or the 1st respondent, who is the writ petitioner. The status of the parties are referred to from the writ petition. The petitioner and party respondent were said to be working in the Parwati Science College, Madhepura. The petitioner claimed appointment as a Laboratory In-Charge in the Department of Zoology on 29.10.1985, while the 10th respondent claimed appointment as a Laboratory In-Charge in the Department of Chemistry on 14.03.1981. The College was taken over with 39 other colleges in the erstwhile State of Bihar and a three-man committee was appointed for verification of the genuine appointments made to the teaching and non-teaching posts in the colleges. The petitioner was found to be working as Laboratory In-Charge in the Department of Zoology in place of Chemistry.

2. There were controversies regarding the number of sanctioned posts of teachers which was agitated before this Court and finally reached the Hon'ble Supreme Court. In Civil Appeal No. 6098 of 1997, the Hon'ble Supreme Court appointed a retired Supreme Court Judge as a Commissioner to



examine the case of teaching and non-teaching staffs of the college. The Hon'ble Mr. Justice S.C. Agrawal Commission submitted a report showing the sanctioned posts and the recommended posts. The petitioner's name figured in the report of the Agarwal Committee and the 10th respondent's name did not figure in it. The Hon'ble Supreme Court accepted the Committee report in *State of Bihar & Ors. v. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.; (2005) 9 SCC 129*.

3. The specific portion where the Hon'ble Supreme Court accepted the Justice Agrawal Commission's report; paragraph numbered as '73' was extracted by the learned Single Judge. We would not extract it, but it would be useful to refer to some of the conclusions relevant to the present case. While accepting the report of the Commission of Enquiry, the members of staff appointed to the sanctioned posts in the affiliated colleges were noticed as available in List (i); while List (ii) figured appointees against posts, for which recommendations were sent by the Universities to the State, up to the cut-off date in accordance with the decision of the State Government. It was directed that in considering the question of absorption of appointees named in List (ii), the Universities shall rely on the contents of the report of the Enquiry



Commission. As we noticed herein above, the writ petitioner's name was available in the Justice Agrawal Commission's report, under List (ii). The University recommended the petitioner for absorption in the Department of Chemistry as a Laboratory In-Charge which occurred as early as in 2006.

4. The respondent for the first time moved this Court in CWJC No. 1967 of 2012 where the writ petitioner herein was made the 6th respondent. There was no specific challenge made to the appointment of the petitioner or the absorption made in the year 2006. The petitioner sought only consideration of a representation by the University, which was allowed. It was admitted in the writ application that the 10th respondent did not figure in Justice Agrawal Commission's report. The University in compliance with the judgment of this Court considered the representation of the 10th respondent and rejected it by Memo No. 1557 of 2012 dated 03.10.2012.

5. The entire order of the University is extracted in Paragraph 14 of the impugned judgment. Suffice it to notice that the Vice-Chancellor found that the 10th respondent's name does not figure in the list of persons found eligible for absorption by the Commission of Enquiry. The claim to absorb the services of the 10th respondent against the R-1 post of Laboratory In-charge



in Chemistry, fallen vacant due to death of Late Kumar Krishnanand, was found to be unsustainable. The said order was not challenged immediately by the 10th respondent and in the year 2015, CWJC No. 15601 of 2015 was filed against the order of the Vice-Chancellor passed on 03.10.2012. The said writ application when taken up for consideration, the University submitted that there was a Committee appointed to look into the aspects agitated in the writ petition. The University sought for disposal of the writ petition with a direction to the Committee to consider the claim raised and leaving the parties to further remedies, if prejudice occurred to any of them. The rejection of the claim of the 10th respondent which was challenged in the writ petition was left untouched. An appeal was filed from the judgment in CWJC No. 15601 of 2015 which was rejected since it was a consent order. The writ petitioner herein who was a party therein had consented to the consideration by the Committee.

6. The Committee appointed by the Universities considered the issue and accepted the claim of the 10th respondent against which the instant writ petition was filed in which the Committee's order allowing the claim of the 10th respondent was challenged. The learned Single Judge allowed



the writ petition against which the present appeal is filed by the 10th respondent.

7. Before us, it was vehemently argued by the learned counsel for the appellant- 10th respondent that many of the government orders issued by the State were not considered at the earlier instance.

8. The learned counsel for the respondent specifically pointed out Annexure-4 of the writ petition in which Justice S.B. Sinha Commission had specifically rejected the claim of the 10th respondent as against the claim raised of absorption by the writ petitioner. The learned counsel for the petitioner, however, referred to Annexure-R10/8 produced in the counter affidavit of the 10th respondent wherein by order dated 24.06.2015, Justice S .B. Sinha Commission in the application of the 10th respondent directed that he would have the liberty to question the validity of the order rejecting his absorption. The said order is dated 24.06.2015. We cannot, but notice that the Commission's role is only of fact finding and it does not have the binding nature of a judgment passed by a Court. On facts it is to be noticed that Justice Agrawal Commission's report contains the name of the petitioner while the 10th respondent's name was absent.



9. In fact, the 10th respondent's claim was that he was appointed in 1981 while the petitioner claimed appointment only in year 1985; despite which his name did not figure in the Justice Agrawal Commission's report. The petitioner had challenged the denial of absorption by CWJC No. 1967 of 2012 in which the claim was directed to be considered by Annexure-3 to the writ application. The claim of the petitioner was specifically rejected by the University. A further challenge was made after three years against the order of rejection in which again there was a direction to another Committee to consider his claim. The Committee then appointed, as found by the learned Single Judge, did not refer to the earlier rejection order which was on the ground of the name of the 10th respondent not having figured in the Justice Agrawal Commission's report.

10. The learned Single Judge also found that one of the issues framed by Justice S.B. Sinha Commission was the effect of filling up posts on superannuation or on death of concerned employee which is not relevant to the present case. The absorption made in the year 2006 is in a vacancy which arose on the death of the Laboratory In-charge, but at that point of time the name of the 10th respondent did not figure in Justice Agrawal Commission's report and he was not qualified to be



regularized in a sanctioned post or in a recommended post. We find the learned Single Judge having correctly analyzed the decision to find that the petitioner's absorption cannot be disturbed to accommodate the 10th respondent, whose claim was not at all established.

11. Despite the learned counsel for the petitioner having vehemently argued that there was a regularization made of the 10th respondent, which was categorically stated in the memorandum of writ petition; not denied by the respondents, there was nothing produced to indicate such an absorption and in any event if such an absorption was made, it would not have been proper since the 10th respondent's name did not figure in List (i) or List (ii) of the Justice Agrawal Commission's report.

12. The cited decision accepted Justice Agarwal Commission's report and rejected all objections against it. The Hon'ble Supreme Court also declared that the right of absorption is available only to those who were working against posts for which proposals had been received from the Universities, before the cut-off date. The appellant having claimed an appointment prior to the Commission's report and his name having not figured in the report, cannot then raise a claim.



13. We find absolutely no reason to interfere with the
impugned judgment and reject the appeal.

Harish Kumar, J I agree

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/-

AFR/NAFR	
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