

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4730 of 2020

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Rajiva Narayan Prasad Son of Shri Badri Narayan Prasad, Resident of Lah
Bazar, Chapra, Disriect-Saran, Pin-841301

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education
Department, Bihar, Patna.
2. Director, Higher Education, Education Department, Bihar, Patna.
3. Hon'ble Chancellor of Universities of Bihar, Raj Bhawan, Patna.
4. Jai Prakash University, Chapra through its Registrar
5. Vice Chancellor, Jai Prakash University, Chapra.
6. Registrar, Jai Prakash University, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Sr. Advocate
For the Respondent/s	:	Smt. Binita Singh (SC28)
For J.P. University	:	Mr. Manoj Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL JUDGMENT

25-08-2025

Heard Mr. Abhinav Srivastava, learned Senior
Counsel for the petitioner, Smt. Binita Singh, learned SC-28 and
Mr. Manoj Kumar Singh, learned counsel for the University.

2. The present writ petition has been filed with a
prayer for grant of the following reliefs:

*“(i) Issuance of a direction, order or
writ, including writ in the nature of certiorari
quashing letter dated 27/01/2018 bearing Letter
No. 100-LO issued by the Registrar of Jai
Prakash University, Chapra (hereinafter
referred to as "the University"), by which in
purported compliance of the directions*



contained under the order dated 30/11/2017 passed in C.W.J.C. No. 17252/2017 by this Hon'ble Court, the claim of the petitioner for revocation of suspension while treating his case to be identical to that of one Dr Saroj Verma and other similarly situated persons has been rejected;

(ii) Issuance of a direction order or writ, including writ in the nature of certiorari quashing letter dated 05/01/2016 issued by the Registrar of the University, by which the petitioner has been placed under suspension:

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities to take steps towards making payment of all admissible dues in favour of the petitioner after revoking his suspension, including salary as well as subsistence allowance that have remained unpaid since May, 2015 and accordingly, post him in the capacity of a Demonstrator in Physics in the services of the University in accordance with law;

(iv) Any other relief/reliefs that the petitioner/petitioners may be found to be entitled to in the facts and circumstances of the present case.



3. Learned Senior Counsel for the petitioner submits that the petitioner is presently under suspension and prior to issuance of impugned order of suspension, he was posted and discharging the duties in the capacity of a Demonstrator in the Department of Physics at Rajendra College, Chapra which is a constituent unit of University. It has next been submitted that the order passed by the Principal of Rajendra College Chapra, during the relevant time, it was a unit of erstwhile University of Bihar, Muzaffarpur, and the petitioner was appointed against the post of Computer Programmer-cum-Laboratory In-charge in the P.G. Laboratory of Physics Department of the said College *vide* letter dated 30.08.1988. Upon such posting, the petitioner submitted his joining in the said capacity and started discharging his duties in accordance with law. It is next submitted that the petitioner was continuing in the services of the Rajendra College, Chapra, *vide* an office order dated 17.11.1989, which was issued by the concerned authorities under the erstwhile University of Bihar, Muzaffarpur by which the engagement of the petitioner at Rajendra College, Chapra was approved as a daily wager. Pursuant to the issuance of the said office order dated 17.11.1989, the petitioner continued to discharge his duties in the services of Rajendra College, Chapra in accordance



with law to the satisfaction of all concerned. It has further been submitted that notwithstanding the fact that the petitioner had been continuously discharging his duties in the aforesaid college, and no action was taken for regularization of the services while the petitioner was assigned several functions and duties connected with the said Rajendra College, Chapra as well as the University in the capacity of Laboratory In-charge in the Department of Physics at the College.

4. Mr. Srivastava, learned Senior Counsel has next submitted that in the meantime in furtherance of the orders passed by the Hon'ble Supreme Court in Civil Appeal No. 4215-16/2002 with respect to redesignation of Laboratory In-charge/Laboratory Technician/Laboratory Assistants as Demonstrators, on the information sought for, by the concerned authorities under the University with respect to persons working against the post of Laboratory In-charge at Rajendra College, Chapra, *vide* a letter dated 22/01/2007 written by the then Professor In-charge of the College, the details with respect to different persons working against the post of Laboratory In-charge at the College were published and amongst other persons, the name of the petitioner was also included in the said letter and as such, the petitioner was shown to be working against the post



of Laboratory In-charge in the Department of Physics at Rajendra College, Chapra. The persons including the petitioner were working in the capacity of Laboratory In-charge in the services of the said college were requested to be redesignated as Demonstrators vide letter dated 22.01.2007 appended with the writ petition as Annexure-2.

5. The petitioner filed several representations before the concerned authorities under the University as well as before the Hon'ble Chancellor of Universities of Bihar for taking necessary steps towards regularization of the services of the petitioner in the capacity of Laboratory In-charge in the Department of Physics at the College. Pursuant to the advertisement dated 10/05/2006 issued by the University inviting applications from eligible candidates for consideration of the cases for appointment against different class-III posts, amongst other persons, the petitioner also participated in the written examination and other connected tests in the year 2007 but the said process of selection was aborted midway and did not reach any logical conclusion. But in the meantime, an office order dated 10/12/2007 was issued by the concerned authorities under the University, by which on the recommendation of the pay fixation committee of the University, by the orders of the



Vice Chancellor of the University, the monthly salary of the petitioner was fixed at Rs. 4000/- along with admissible D.A.

6. It is the case of the petitioner that several correspondences were exchanged between the concerned authorities under the Governor's Secretariat, Bihar & the University as well as the State Government with respect to the matter of regularization of the services of the petitioner. From the pleadings made in the writ petition, it is apparent that by a Notification dated 04/06/2010 bearing memo no. 815 (R) issued by the University, pursuant to the orders of the Vice Chancellor of the University, the services of the petitioner were regularized in the capacity of Laboratory In-charge in the Department of Physics at the College and accordingly, in furtherance of the decision of the State Government as communicated vide a letter dated 14/06/2006 bearing Letter No. 1115, the petitioner was redesignated as a Demonstrator in Physics working at the College in the services of the University. It is submitted here that in the manner as aforesaid, on the basis of due deliberations and consideration of the case of the petitioner, by the aforesaid notification dated 04/06/2010 bearing Memo No.- 815(R) issued by the University, the services of the petitioner were regularized in the capacity of Laboratory In-charge in Physics at the College



in accordance with law.

7. Learned Senior Counsel has further submitted that in the meantime, the matter with respect to redesignation of different persons working as Laboratory In-charge in the services of the University as Demonstrators was placed before the promotion committee of the University during its meeting held on 21/08/2010, which also included the aforesaid notification dated 04/06/2010 bearing Memo No.-815 (R), by which the services of the petitioner has been regularized and he has been redesignated as Demonstrator in Physics in the services of the University, as such, having taken note of the various aspects of the matter, the Promotion Committee of the University duly approved the said decision of the University which would be apparent from the minutes of the meeting of the Promotion Committee of the University dated 21.08.2010 as appended with the writ petition *vide* Annexure-5.

8. Learned Senior Counsel has submitted that subsequently, by a letter dated 04/08/2011 issued by the concerned authorities under the University, necessary information, *inter alia*, with respect to issuance of the aforesaid notification dated 04/06/2010 bearing Memo No.- 815 (R) was furnished to the concerned authorities under the then Human



Resource Development Department of the State Government.

9. It is submitted that the manner in which the entire sequence of event has taken place, it establishes beyond all reasonable doubts that pursuant to the decision taken by the concerned authorities under the University, petitioner's services in the capacity of Laboratory In-charge in Physics at the College were regularized and in furtherance of the directives issued by the concerned authorities under the State Government by the aforesaid letter dated 14/06/2006 bearing Letter No.-1115, amongst other persons, the petitioner was redesignated as a Demonstrator in Physics in the services of the University and as such, the same did not suffer from any infirmity. It is further the case of the petitioner that *vide* letter dated 28/11/2011 issued by the concerned authorities under the then Human Resource Development Department of the State Government, the concerned authorities under the University were directed to furnish explanation with respect to the manner in which two persons namely, Smt. Sudha Mehta working against the post of Storekeeper and Shri Harihar Mohan working as an Assistant in the Department of Zoology at Rajendra College, Chapra had been absorbed/posted on the post of Demonstrator, against which, no query whatsoever had ever been asked/raised by the



concerned authorities under the State Government and similarly in relation to the matter of absorption and redesignation of the petitioner in the capacity of Demonstrator in Physics at the said college and as such, the same establishes beyond all reasonable doubts that even the concerned authorities under the Education Department of the State Government had conveyed their tacit approval in relation to the matter of the absorption and redesignation of the present petitioner as Demonstrator.

10. In response to a Letter dated 27/01/2012 issued from the University, the Principal of the College by his letter dated 24/02/2012 sent description of the persons working against the post of Laboratory Assistants in different subjects at the College and amongst other persons which would show that the name of the petitioner also found place in the said letter and it is in this background, the pay fixation chart was prepared by the concerned authorities under the University, by which, amongst other persons, the present petitioner was also extended the benefits of revision of his salary, while working in the capacity of Demonstrator at the College.

11. Learned Senior counsel has further submitted by referring to the details of expenditure for the University for the financial years 2011-12 and 2012-13 issued by the concerned



authorities under the Education Department of the State Government to show that the post of Demonstrator against which the present petitioners had been working in the Department of Physics at the College, had been duly recognized by the concerned authorities under the State Government and accordingly, necessary funds had also been allotted in favour of the University for making payment of salary against the said posts and the chart containing details of expenditure for the University has also been appended as Annexure-10 Series to this writ petition.

12. Learned Senior Counsel has further submitted that for the financial year 2011-12 in relation to different employees working at the College and amongst other persons, the name of the petitioner also finds place in the said chart containing the budget of the University, which also establishes the fact that the services were regularized and his redesignation as Demonstrator in the Department of Physics at the College was not under dispute.

13. The decision taken by the Statutory Pay Fixation Committee of the University, by a notification dated 10/10/2013 issued by the University, amongst other persons, the fixation of the salary of the petitioner was also approved, which goes to



show that the petitioner continued to discharge the duty in the capacity of Demonstrator in Physics in the services of the University and to support his contention the notification dated 10/10/2013 has been annexed as Annexure-12 to this writ petition.

14. Learned Senior Counsel has taken this Court to S.L.P. No. 9234-9237 of 2014 having been filed before the Hon'ble Apex Court against an order and judgment dated 06/01/2014 passed in one C.W.J.C. No. 7644/2013 and other analogous cases in relation to the matter of status of redesignated Demonstrators working in the services of different universities within the State of Bihar and the petitioner having been redesignated as Demonstrator in the Department of Physics in the services of the University also filed one intervention application before the Hon'ble Apex Court in the said S.L.P. and the said intervention application was allowed. Upon intervention application having been allowed and the intimation to this effect have been placed before the authorities concerned, requesting them not to revert back the persons redesignated as demonstrator from the post that they were occupying was considered by the authority, owing to the matter being sub-judice before Hon'ble Apex Court for further deliberations.



15. It is the submission of the Senior Counsel that a detailed enquiry with respect to various aspects relating to the services of the present petitioner was carried out by the aforesaid committee constituted by the University *vide* its letter dated 25/03/2014 bearing letter No.- 5037(R) as mentioned above and on detailed examination of the various aspects relating to the case of the present petitioner, the aforesaid committee submitted its report on 25/11/2014 categorically recommending that the salary of the petitioner and another person to be fixed afresh in the pay scale in which their services had been utilized, which would be apparent from the enquiry report dated 25/11/2014 as appended as Annexure-16 to this writ petition.

16. It has next been submitted that during the meeting of the Finance Committee of the University held on 07/01/2015, *inter alia*, by agenda no. 6, proposal for making payment of salary in favour of the petitioner and another person was duly approved by the Finance Committee of the University.

17. The said minutes of the meeting of the Finance Committee of the University dated 07/01/2015 has also been annexed as Annexure-17 to this writ petition.

18. From the records, it also appears from the



meeting of the Syndicate of the University held on 15/09/2015, *inter alia*, by agenda no. 3, the decision taken by the finance committee of the University during its meeting held on 07/01/2015 as indicated above was duly approved by the Syndicate and furthermore, the report submitted by the committee constituted by the University in relation to the matters of payment of salary in favour of the petitioner and other person was also approved by the Syndicate, which leaves no doubt that the petitioners continuance in the capacity of the redesignated Demonstrator at Rajendra College, Chapra suffers from any infirmity.

19. It has next been submitted that while continuing in the capacity of Demonstrator in Physics at Rajendra College, Chapra, from time to time, the petitioner had also been deputed under the University to discharge certain functions and vide a letter dated 30/05/2014 issued by the University, the petitioner was appointed to act as the Secretary to the Vice Chancellor of the University in addition to the responsibilities of administration of computer-related issues and development of the website of the University. The petitioner also served as Secretary to the then Vice Chancellor of the University on deputation and due to certain controversies cropped up with



respect to the matters pertaining to purchase of answer sheets for the purposes of conducting examinations, the then Vice Chancellor of the University was removed and the Pro-Vice Chancellor of the University working during the relevant time was given the charge of the office of the Vice Chancellor of the University, following which, a letter dated 28/12/2015 was issued by the Registrar of the University, by which along with another person, the petitioner was directed to submit his explanations with respect to the allegations of his involvement in the matter of handling the file pertaining to purchase of the answer sheets. While asking an explanation no documents in support of the allegations had been provided to the petitioner, Still, the petitioner upon receipt of the letter dated 28.12.2015 submitted his explanation refuting the charges levelled against him and sought to demonstrate that the petitioner had worked in the capacity of the Secretary to the earlier Vice Chancellor of the University upon his deputation and not in the capacity of Personal Assistant and accordingly requested to accept his explanation and exonerate him of the charges levelled against him.

20. It has been informed that the First Information Report was instituted against the former Vice Chancellor,



Registrar, an Assistant and the present petitioner and in the said F.I.R., the petitioner was shown to be working in the capacity of an Assistant and subsequently the petitioner was put under suspension by the University *vide* impugned letter dated 05/01/2016 and his headquarters during the period of suspension were fixed at Jaglal Choudhary College, Chapra. The petitioner was granted Anticipatory bail in connection with FIR bearing Chapra Mufassil PS Case No. 346 of 2015 lodged in relation to the allegations of purchase of answer sheets for conducting examination and accordingly granted bail *vide* an order dated 22.07.2016 passed by this Hon'ble Court in Cr. Misc No. 15924 of 2016.

21. Learned Senior Counsel has further drawn attention of this Court towards the provision as incorporated under the Article 10 of the Service Statutes prescribing that the suspension period of a University servant should not to exceed one year from the date of suspension except in circumstances beyond the control of the University and as such, the suspension of the petitioner being clearly in violation of the Service Statutes, the Learned Senior Counsel for the petitioner seeks revocation in view of the fact that after expiry of the one year period, the same should have been revoked by the authorities



themselves but unfortunately, no action is taken.

22. It is the case of the petitioner that despite petitioner having worked continuously and having discharged his duties in the services of the University from the month of May, 2015, had not received any payment of salary. After the issuance of the aforesaid letter dated 05/01/2016, by which the petitioner had been placed under suspension and even no subsistence allowance was also paid in his favour.

23. Because of the inaction of the respondents, the petitioner was constrained to move this Hon'ble Court by filing CWJC No. 17252 of 2017 with a prayer to revoke the suspension of the petitioner and the said application was disposed of by order/judgment dated 30.11.2017 by which, taking note of the order passed by the Hon'ble Chancellor of University by which suspension of other similarly situated persons had been revoked, the Hon'ble Court was pleased to direct the Vice Chancellor of the University to examine the case of the petitioner and if found to be identical to the case of one Dr. Saroj Kumar Verma and others, the Vice Chancellor was directed pass an order in light of the order passed by the Hon'ble Chancellor within the stipulated period, for which a representation dated 14.12.2017 was submitted with a copy of



the order passed in the aforesaid writ petition but instead taking action with regard to revocation of suspension, the petitioner was directed to submit certain details pertaining to his initial appointment for which a letter dated 08.01.2018 was issued which has been appended with this writ petition as Annexure-26.

24. Learned Senior Counsel further submits that upon receipt of the aforesaid letter dated 08.01.2018 seeking details pertaining to his initial appointment, the petitioner by a letter dated 16.01.2018 furnished necessary orders passed by the University in relation to the matter of regularization of the services of the University on the basis of the decision taken by the Senate/Syndicate of the University as well as on the basis of the report submitted by the Enquiry Committee constituted by the University. The request of the petitioner before the concerned authorities to allow him to submit his joining, was not allowed and the petitioner was stopped from marking his attendance at the headquarters fixed by the University during period of suspension.

25. Unfortunately, at a subsequent stage, *vide* letter dated 27.01.2018, the University finding that the case of the petitioner was not identical of the case of Dr. Saroj Kumar



Verma & Ors, rejected the claim of the petitioner.

26. It has next been submitted that when no action was taken by the concerned respondents-authorities/University with regard to revocation of suspension and further for payment of subsistence allowance, the petitioner submitted representation dated 18.12.2018 but no action was taken despite Governor's Secretariat, Bihar *vide* Letter dated 14.03.2019 having directed the Vice Chancellor of the University to consider the representation.

27. On the contrary, learned counsel for the State has also filed counter affidavit and has taken a stand under paragraphs 7, 8, and 9 which are as follows: -

“7. That it is relevant to mention here that in view of several judgments passed by this Hon'ble Court, the State Government vide letter no. 1820 dated 17.11.1998 directed the Universities to consider the regularization of the services under the staffing pattern of those employees only who fulfill the following criteria: -

(i) The post on which the employee is working was admissible under the staffing pattern at the time of appointment.

(ii) The employee was having requisite qualification at the time of appointment.

(iii) The employee was appointed



by the competent authority

(iv) The employee was appointed by following the Act and Rule (iv) as well as in terms of Articles 14 and 16 of the Constitution of India or the appointment was made on the basis of interview by the selection committee after publication of the vacancy in the newspaper.

(v) After appointment whether the employee is continuing in service. This aspect is to be verified by examining the attendance register and payment register.

Report is to be sent by the University in the format attached to the said letter.

8. That it is stated and humbly submitted that in view of the aforesaid letter i.e. letter no. 1820 dated 17.11.1998, the final decision regarding regularization of non-teaching employees under the staffing pattern is to be taken by the State Government, if the University recommends the case of such employee in terms of letter no. 1820 dated 17.11.1998.

9. That it is further stated and submitted that from the counter affidavit filed by the University, it is evident that the University vide letter no. 3662 dated 07.07.2020 sent a recommendation to the State Government for regularization of service of the petitioner in view of letter no. 1820 dated 17.11.1998.

28. On the other hand, the Counter affidavit on



behalf of Respondents No.4, 5 and 6 has also been filed and the entire responsibilities have been shifted upon the State Government and with regard to payment of salary & subsistence allowance, it has been stated that the approval of the services of the petitioner would be required from the State Government, only then, the University will be in a position to pay the salary and subsistence allowance as prayed by the petitioner in this writ petition.

29. One supplementary counter affidavit has also been filed on behalf of the Respondents No.1 and 2 (The State of Bihar and Director, Higher Education, Education Department, Bihar, Patna) wherein specific stand has been taken at paragraph- 6 and 7 which are follows:

“.....6. That it is pertinent to mention here that in view of letter of the state Government dated 17.11.1998 the final decision regarding regularization of non-teaching employees under the staffing pattern is to be taken by the State Government, if the University recommends the case of such employee in terms of the letter of the letter of the State Government dated 17.11.1998.

7. That it is stated and submitted that the university vide its letter no. 3662 dated 07.07.2020 sent report for approval of



regularization of the petitioner made by the University under the staffing pattern in view of letter no. 1820 dated 17.11.1998.”

30. Subsequently, the Respondents No.1 and 2 (The State of Bihar and Director, Higher Education, Education Department, Bihar, Patna) have also filed second supplementary Counter affidavit, in which the report was sent by the University with regard to regularization of the services of the petitioner, and the stand of the Department of Education was that the petitioner was appointed against the unsanctioned post and the approval of the University has not been granted on which the petitioner was appointed. The contentions made in the affidavit at paragraphs-7 and 8 read as follows: -

“7. That it is stated that the report of the University has been considered by the Education Department of the State Government and it has been found as follows:-

a) Petitioner was appointed against the unsanctioned post.

b) Approval of University has not been granted on the post on which the petitioner was appointed.

c) No advertisement was published for the post on which the petitioner was appointed.

d) Reservation policy has not been



followed in the appointment of the petitioner.

e) University has no information about constitution of Selection Committee in appointment of the petitioner.

f) Petitioner was appointed on the post of Computer Installer on the recommendation of Principal, Rajendra College, Chapra purely on daily wages whereas post of Computer Installer does not exist in the University.

g) Provision under section 35(2) of the Bihar State Universities Act has not been followed by the University.

8. That it is stated that in view of the above stated facts, the recommendation of the University for regularization of the petitioner has been rejected by the State Government by its order as contained in letter no. 739 dated 15.03.2021. A show cause has also been asked from the University vide letter no. 738 dated 15.03.2021 as to how the service has been regularized with condition that the financial benefits could be provided after getting approval of the State Government in spite of the fact that the University found the appointment of the petitioner as illegal.

31. Learned Counsel of the University has further



taken this Court to the stand taken by the Respondents/University in its counter affidavit wherein the specific stand of the University reveals that the petitioner's service was approved as a daily wager by the B.R. Ambedkar Bihar University, Muzaffarpur on 17.11.1989 and he continued as Lab In charge in Physics. On 04.06.2010, his service was regularized as Lab In-charge in Physics in Rajendra College, Chapra and as such, the record reveals that the petitioner somehow managed to continue in the services without sanction of the competent authority by taking advantage of the judgment of the Hon'ble Apex Court and he managed to get fixed salary and got himself redesignated as Demonstrator in connivance with the then authorities of the college and the University. He further contended that after due deliberation and consideration, the State Government rejected and disapproved the recommendation of the University for regularization of the services of the petitioner vide letter No. 739 dated 15.03.2021 which has not been challenged by the petitioner till date.

32. On the contrary, learned Senior Counsel by taking to the contentions made in the rejoinder to the affidavits having been filed by the University, has tried to impress upon this Court by referring to various letter issued by the University



and the Notification dated 04.06.2010 as contained in Annexure-4 of the main petition whereby the services of the petitioner was regularized in light of direction passed by the Hon'ble Apex Court amongst other persons pursuant to which the petitioner was redesignated as Demonstrator in the services of the University which is in accordance with law. It has further been submitted that the stand taken by the University is completely misconceived and as such, the same is fit to be rejected as the counsel is alleging the conduct of his own officers for the purpose of opposing the relief and defeating the cause and such stand of the University is hit by the doctrine of estoppel. whereas, the entire action of the University was as per the directions having been issued from time to time was the factum of staffing pattern being applicable during the time has not been denied.

33. While assailing the order impugned, learned senior counsel for the petitioner, has further relied upon the judgment rendered by this Court passed in ***CWJC No. 16539 of 2016 (Birendra Kumar Mishra v. The Jai Prakash University Chapra & Ors)*** wherein it has been stated that a similarly situated person of J.P. University had moved this Hon'ble Court in which the following orders were passed: -



“In view of the Apex Court judgment in the case of State of Bihar and others vs. Abdus Salam mentioned, the State is required to consider the case of the petitioner for all benefits to which the petitioner may be found entitled to in terms of the order of the Apex Court. Necessary decision in this regard may be taken by the respondents within a period of six months from the date of receipt/production of a copy of this order. It is needless to state here that consequential benefits including monetary benefit in terms of the decision of the Apex Court shall be made available to the petitioner within a further period of two months from the date of such decision.

With the aforesaid, the writ petition stands disposed of”.

34. After the order was passed the J.P. University preferred Letters Patent Appeal No. 619 of 2018 against the said order dated 26.03.2018 passed in CWJC No. 16539 of 2016. The Letters Patent Appeal was heard and relying upon various judgments passed by Full Bench of this Hon’ble Court in the case ***Braj Kishore Singh v. State of Bihar reported in 1997(1) PLJR 509 and Upendra Singh v. State of Bihar (Civil Appeal No. 2356 of 2018*** decided on 23rd of February, 2018. The Hon’ble Division Bench made serious deliberations of the



dispute raised in the said case and the stand of the University as well as the State Government, being similar to that of the instant case, was examined referring to various orders and minutes of the University as well as letters issued by the Government. The relevant extract of the order passed in the aforesaid LPA is reproduced herein-below for ready reference and letters so relied may be referred from the order dated 23.02.2018, which is not being reproduced for the sake of brevity: -

“.....9. The University in response to a query made by the Principal of the Institution wrote a letter on 20th December, 1997 that the appointment of the respondent-petitioner was within the staffing pattern and the norms prescribed and therefore his appointment was in accordance with the same.

10. A dispute was raised with regard to the payments to be made to the respondent-petitioner along with some other employees and in the meantime in view of certain judicial pronouncements the designation of the post as that of Demonstrator ensued. The Principal of Rajendra College, Chapra, where the respondent-petitioner was working, wrote a letter to that effect to the Registrar along with the details of his appointment. This was to be done pursuant to the notification dated 14th June, 2006, copy whereof has been filed as Annexure-28 to the writ petition. Consequently, a notification was issued by the University on 15th July, 2010 indicating the re-designation of the respondent-petitioner as Demonstrator. The notification of re-designation was approved by the University that is on record. The University while submitting this pay-fixation recommendations to the Government included



the name of the respondent-petitioner showing his designation as Assistant Demonstrator in the College. Thus, the University itself continued to treat the respondent-petitioner within the staffing pattern of Rajendra College, Chapra as an Assistant Demonstrator in the Laboratory of the College. While showing the details of expenditure, the charts which were filed by the University and the budget demanded indicated the expenditure to be incurred which included two lab personnel based on the staffing pattern of the University. This entire chart is Annexure- 30 to the writ petition. The petitioner had represented his entire matter on 15th of June, 2016 where he had entailed his entire journey having served in the college and his service having been recognized by the appellant-University.

11. The matter of designation as Demonstrators became subject matter of litigation before this Court in C.W.J.C. No. 12967 of 2012 after the Government had withdrawn the resolution dated 14.06.2006 referred to above. This withdrawal on 10th April, 2012 became subject matter of challenge in the said writ petition.

12. The State Government had issued a letter on 16th of March, 2012 informing the Accountant General of payments being made to the staff appointed based on the staffing pattern of the Institution, particularly with regard to the Laboratory Staff working in colleges for which a budget of Rs. 10,74,27,432/- was released. This document of 16th March, 2012 is Annexure-40 to the writ petition. This is one of the documents which indicates the release of payments by the Government as against the post, one of which was being occupied by the respondent-petitioner.

13. A perusal thereof would indicate that at Serial No. 3 the College in which the respondent-petitioner is working as a



Laboratory Personnel is included and which also indicates the designation as a Demonstrator together with the salary admissible to the respondent-petitioner.

14. It is in this background that the respondent-petitioner filed a writ petition giving rise to the present controversy and claimed payment of salary at par with the benefits extended to Abdus Salam and others.

15. During the course of the arguments in the present appeal, learned counsel for the respondent-petitioner has also invited the attention of the Court to the notification of the Education Department dated 17.08.1979 to contend that the continuance of the respondent-petitioner after appointment is in conformity with the norms prescribed in the staffing pattern of Laboratory Staff in the Universities including the Bhagalpur University.

*16. Shri Anjani Kumar, learned senior counsel for the appellant-University while advancing his submissions has urged that the respondent-petitioner was not appointed after due advertisement etc. as his appointment was not in conformity with law. The second argument is that any relief relating to the re-designation on the post of Demonstrator is inadmissible. The third argument is that there was no sanctioned post by the State Government and, therefore, the directions issued by the learned Single Judge drawing parity with the case of Abdus Salaam is unfounded. The 4th argument is that even if in the case of Abdus Salam any directions were issued, the said judgment is based on the two earlier Full Bench decisions in the case of **Braj Kishore Singh Vs. The State of Bihar & Ors.**, reported in 1997 (1) PLJR 509 and again in the same case **Braj Kishore Singh Vs. State of Bihar & Ors.**, reported in 2004 (3) PLJR 668.*

17. The submission is that these decisions were rendered extending the benefit



by treating such employees to have become regular, but the ratio of the said decisions now stands diluted with the Constitution Bench judgment in the case of **Secretary, State of Karnataka Vs. Umadevi (3)**, reported in (2006) 4 SCC 1. He has further relied on the Full Bench decision in the case of **Ram Sevak Yadav & Anr. Vs. The State of Bihar & Ors.**, reported in 2013(1) PLJR 964 to contend that such a benefit cannot be extended in the background aforesaid. He has further relied on the judgment in the case of **Veer Kunwar Singh University Ad Hoc Teachers Association and others Vs. Bihar State University (C.C.) Service Commission and others**, reported in (2009) 17 SCC 184 and the judgment in the case of **Nand Lal Bhagat & Ors. Vs. The State of Bihar & Ors.** decided on 25th July, 2013 that has been affirmed in the case of **Upendra Singh Vs. State of Bihar**, reported in (2018) 3 SCC 680. These judgments have been cited to contend that to treat employees on regular basis would be permissible only if the initial appointments were valid and against sanctioned posts. He has submitted that even now there is no such sanctioned post and, therefore, the direction issued by the learned Single Judge cannot be sustained.

18. To begin with, we may first point out that from the letter dated 17.08.1979, extracted hereinabove, the creation and appointment on the post of Demonstrators had been banned with effect from 18.09.1975 that had resulted in a lot of difficulties being faced by the laboratories in the various departments of the University and Colleges. The Government, therefore, resolved that for the purpose of science laboratories, an Assistant to be now appointed in the laboratories would be known as Laboratory-In-charge with his specific qualification of Intermediate in science and would be a Class-III post. The duties and responsibilities were defined therein and the



norms fixed thereunder are that if a laboratory is attended by a minimum of 32 students, then there would be one Laboratory-In-charge to assist the laboratory on this strength. If there are several shifts of such students, there would only be a total of two Laboratory Assistants.

20. The petitioner, respondent herein, admittedly was the only Laboratory Attendant in the Chemistry lab of the College. There is no dispute that the University did continue to treat him as such which is evident from the resolutions that were passed by the University from time to time including the resolution for designating him as a Demonstrator. The appellant-University, therefore, itself had never disputed this fact about the continuance and the services of the respondent-petitioner being taken by Rajendra College, Chapra. The argument raised by Shri Anjani Kumar on this score is that the Chancellor had annulled the administrative and financial decisions of the University on 22nd of February, 2011. We may point out that the University itself had been sending the claim of the petitioner for payment of salary and it kept it under consideration. This is further fortified by the document dated 16th March, 2012 which was based on the information given by the University and had been sent by the State Government through a Secretary of the Education Department informing the Accountant General with regard to the availability and the appointments made in Rajendra College, Chapra for which a certain amount of budget had been released. This document of 16th March, 2012 is subsequent to the decision of the Chancellor dated 22.02.2011 and, therefore, the argument that the decision of the University had been annulled gets contradicted by the said evidence. The University, therefore, cannot be allowed to take a stand different than its own documents which is now being advanced on the



ground as if the University had committed mistakes earlier and was seeking to rectify the same at this stage.

(Emphasis supplied by the undersigned)

21. It is for this that the argument now advanced is that the respondent-petitioner was not working against a sanctioned post and his appointment had not been made in accordance with the procedure prescribed. We may point out that with regard to the procedure adopted for the appointment of the respondent-petitioner, the document available on record is the letter of appointment issued by the University itself and which is dated 9th of May, 1985, extracted hereinabove. It is correct that the said letter itself indicates the appointment being in anticipation of a sanctioned post, but at the same time the appellant-University has been unable to dispute the position taken by the respondent-petitioner that his appointment was within the staffing pattern as prescribed by the State Government in the notification dated 17.08.1979. This aspect of an appointment being valid, if it is within the sanctioned strength was subject matter of the two Full Benches in the case of **Braj Kishore Singh Vs. State of Bihar (supra)** where it has been held that if the post is being held by a person within the staffing pattern, the same cannot be held to be a non-sanctioned post. To the contrary, the sanction will be deemed and presumed to have been made if it is within the staffing pattern. The said decision has been relied on in the case of Abdus Salam (supra) and which matter has now attained finality up to the Apex Court. It is for this reason that the learned Single Judge under the impugned judgment has extended the benefits of payment of salary and other pecuniary benefits to the respondent-petitioner in the light of the law laid down therein. This is further fortified by the fact that on the basis of the information tendered by the appellant University, the State Government had sent the



documents to the Accountant General acknowledging the fact of the existence of the post for which salary was being claimed including the post of the respondent-petitioner.

22. It is the appellant-University which has come up in appeal questioning the services of almost 34 years spent by the respondent-petitioner being the only Laboratory-In-charge in the College, and not the State. This additional feature, therefore, also goes in favour of the respondent-petitioner that the appellant-University which had itself allowed the induction of the respondent-petitioner is now disputing his claim when it comes to monetary benefits. The University is estopped by its own conduct throughout in now disputing the claim of respondent-petitioner after he has discharged more than 33 years of service. This would not only be unjust but also amongst equity and fair play. It is well settled that law is good but justice is better. This is one of the cases where the employer in spite of having acknowledged the continuance of the respondent-petitioner for more than 33 years and there being no effort to withdraw the letter of appointment of 1985, has questioned the claim of the respondent-petitioner but the issues were legally answered against the University referred to hereinabove.

*23. We, therefore, do not find any force in the submission of the learned counsel for the University on the issue of the manner of appointment and the post occupied by the respondent-petitioner in the above given circumstances. The argument based on the judgment in the case of **Umadevi (supra)** and the case of **Ram Sevak Yadav (supra)** that the same dilutes and takes away the impact of the earlier Full Bench judgment in the case of **Braj Kishore Singh (supra)** is an argument that would not apply logically, inasmuch as, the case of **Umadevi (supra)** or **Ram Sevak Yadav (supra)** or even for that matter **Upendra Singh***



(supra) all relate to regularization of services where it has been held that regularization can be extended if the appointment was irregular, and not illegal, that too even against a sanctioned post.

24. In our opinion, the present is not a case of regularization as is being claimed by the appellant, inasmuch as, the respondent-petitioner has taken the stand of having been appointed in accordance with the staffing pattern and to that extent the judgment of **Braj Kishore Singh (supra)** laying down the law in favour of the respondent-petitioner has not been diluted by any subsequent judgment nor it has been overruled. The said judgment is on the issue of staffing pattern and not on the issue of regularization.

25. The instant is also a case where the claim is based on having continued in service and treated as such by the appellant-University for long without having withdrawn any benefits that were extended to the respondent-petitioner including his continuance in service. The University has never withdrawn the letter of appointment issued in favour of the respondent-petitioner way back in the year 1985. His appointment was neither cancelled nor was it held to be unlawful or beyond the sanctioned strength prescribed in the staffing pattern. There being no material to contradict this aspect, the law relating to regularization would not affect the respondent-petitioner as urged on behalf of the appellant-University.

(Emphasis supplied by the undersigned)

26. Learned counsel for the appellant Shri Anjani Kumar urged that the judgment in the case of **Abdus Salam (supra)** does not take into consideration these issues and, therefore, the same cannot be treated to be good law so as to bind this Court to follow the same.

27. We may only point out that the



learned Single Judge has noted these facts and which have also been noticed by us while recording the submissions on 26th April, 2019 extracted hereinabove. The Special Leave Petition in the said matter was dismissed on 27th of February, 2012 and we can safely presume that this argument which is now being advanced was very much available then and yet it did not find favour in the decision of Abdus Salam. Consequently, the case of the respondent-petitioner cannot be distinguished from the case of Abdus Salam Vs. State of Bihar (supra). We, therefore, do not find any merit in this appeal, which is accordingly rejected.

(Emphasis supplied by undersigned)

35. Learned Senior Counsel has pointed out that the said judgment rendered by the Hon'ble Division Bench of Patna High Court in LPA No. 619 of 2018 was challenged by J.P. University & Ors by filing Special Leave to Appeal © No. 29162 of 20169, which was dismissed by Hon'ble Apex Court *vide* order dated 09.09.2022.

36. Upon careful consideration, this Court is of the view that the appointment of the petitioner was within the staffing pattern and the payments were also being made to the petitioner by taking a conscious decision and further in view of certain judicial pronouncement as referred above, the redesignation of the post of Demonstrator was also ensured and the Notification of re-designation was also approved by the



State Government and further pay fixation recommendation to the Government in the name of this petitioner was also done and was recognized by extending the said benefits, which would be apparent from the documents appended by the petitioner of the instant writ petition.

37. From the materials available on record, it is apparent that the State Government recognized the staffing pattern of the institution and particularly with regard to the laboratory staff working in the colleges by informing the Accountant General for making payments to them appointed on the basis of said pattern by redesignating him on the post of Demonstrator.

38. The stand of the University as well as the State Government that the petitioner was not appointed after due process of law and issuance of advertisement and his appointment is not in conformity with law and further argument on their behalf that any relief relating to the redesignation on the post of demonstrator is inadmissible as there was no sanctioned post approved by the State Government, is not tenable as the same is in the teeth of judgment rendered in the case of *State of Bihar and others vs. Abdus Salam (CWJC No. 2002 of 2010)*, which is passed relying upon two earlier full Bench decisions in



the case of *Braj Kishore Singh v. State of Bihar* reported in *1997(1) PLJR 509* and again in the same case *Braj Kishore Singh v. State of Bihar* reported in *2004(3) PLJR 668*.

39. From the Judgment of the Division Bench, it is quite clear that the issue raised with regard to appointment, not having been made against the sanctioned post, has categorically been answered by the Hon'ble Division Bench in Letters Patent Appeal No.- 619 of 2018. From the documents available on record and the appointment letter issued by the University goes to show that the said appointment were made in anticipation of the sanctioned post and the University has not been able to dispute the said legal position. The appointment of the petitioner was within the staffing pattern as prescribed by the State Government *vide* Notification dated 17.08.1979 and as such, the appointment is valid in view of dictum of Full Bench Judgments as mentioned above, and further, if it was within the sanctioned strength, and in the aforementioned judgments, is categorically been held that if the post is being held by a person within the staffing pattern, the same cannot be held to be a non-sanctioned post.

40. Taking cue from the findings recorded in the aforementioned judgments, it goes without saying that the



sanction will be deemed and presumed to have been made, if the same is within the staffing pattern as per the findings recorded in the case of ***Abdus Salam*** (*supra*), which has now attained finality up to the Hon'ble Apex Court. From the factual position obtaining on record, the post held by the petitioner was within the staffing pattern, the same cannot be held to be a non-sanctioned post. This fact further fortifies by the fact that on the basis of information rendered by the University to the State Government, the State Government sent the document to the Accountant General acknowledging the fact of existence of the post, for which the salary was being claimed by the petitioner and other similarly situated persons, which fact is not denied by the respondents in their Counter Affidavit.

41. It is in this background, it can safely be concluded that a party cannot be allowed to take advantage of its own wrong (*"commodum ex injuria sua nemo habere debet"*) and any such stand purposely being made to defeat the cause of justice and much less, when it comes to grant of monetary benefits to the person, who has served the said establishment throughout his life and has discharged his duties for more than three decades, is wholly unacceptable and unwarranted and deserved to be interfered with.



42. In such view of the matter, the University is estopped by its own conduct displayed throughout, by recognizing the service of the petitioner under staffing pattern, by granting appropriate pay scale and redesignating him on the post of Demonstrator in the light of orders passed by the Hon'ble Court from time to time. The attempts having been made to dispute the *bona fide* claim of the petitioner by keeping the petitioner suspended by issuing show cause is in the teeth of the dictum of Hon'ble full Bench of Patna High Court and further issues having been put at rest at the level of Hon'ble Apex Court, is highly deprecated.

43. This court holds that issuance of such notice by incorporating such issues which have judicially been given quietus, is completely derogatory and shows thorough non-application of mind, and therefore, the impugned Order as contained in Letter No.-100-LO dated 27.01.2018 issued by the Registrar of Jai Prakash University, Chapra, by which the petitioner has remained under continued suspension till the date of superannuation, owing to his appointment having been found to be made against the Non-sanctioned post and rejection of the claim of the petitioner being contrary to their own stand taken before Hon'ble Court in the aforementioned judgment, is set aside and



the petitioner is directed to be reinstated back in service with all consequential benefits.

44. It is worth to note that the present litigation remained unnecessarily pending and has burdened the docket of this Court because the issuing authority did not examine the settled law before issuing the show cause questioning the nature of service and his appointment against the non-sanctioned post, while it was already settled by Hon'ble court in different cases referred above. To utter surprise, the said appeal was preferred by the same University to ventilate the issues in question and in this background, this court finds it deem fit and proper to award cost to be deposited in Patna High Court Legal Services Committee for unnecessarily keeping the docket of Hon'ble Court burdened and wasting Hon'ble Court's time for all these years.

45. The mistake committed in law by the authorities under the University could have corrected during these years by making an attempt to put their house in order. Having not done so and allowed the litigation to continue in derogation of the settled legal position, this court directs the University to pay cost to the tune of Rs. 5000/- to be deposited in Patna High Court Legal Services Committee, which may be recovered from



the person having issued the impugned letter by following due process of law.

46. The writ petition stands allowed in the aforesaid terms.

(Ajit Kumar, J)

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