

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3600 of 2019

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Sunil Kumar Son of Sri Balbhadra Prasad Singh, Resident of Village-
Hasanpur, P.S.- Lakhisarai, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through, Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The District Education Officer, Lakhisarai.
5. The Head Master, Rajkiya High School, Hasanpur, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar, Advocate,
For the Respondent/s : Mr.Prabhakar Jha (GP-27)

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
CAV ORDER/ JUDGMENT

05-02-2026

Heard Mr. Lalan Kumar, learned counsel for the
petitioner and Mr. Prabhakar Jha, learned counsel appearing for
Respondent State duly assisted by Mr. Shankar Kumar Thakur,
AC to GP-27.

2. The instant writ petition has been filed for the
following relief(s):-

*(i) In the nature of certiorari
for setting aside the order as contained in
memo no. 11/Mu 1-115/2010-1966 dated
08.08.2017 (Annexure -21) whereby and
whereunder the regularization of the*



services of the petitioner as Clerk-cum-Librarian at Rajkiya High School, Hasanpur at Lakhisarai has been rejected.

(ii) In the nature of mandamus directing and commanding the respondent authorities to regularize the services of the petitioner on the post of Clerk-cum-Librarian in the aforesaid school from the date since which the said school has been recognized by the Government.

(iii) In the nature of mandamus directing and commanding the respondent authorities to pay the petitioner his entire salaries from the date of recognition till date as he has not been paid a single farthing for the period he has worked since the date the school has been taken over till date up to when he has been working in the school and was not allowed to mark the attendance after 2010.

(iv) For any other relief for which the petitioners is entitle in the facts



and circumstances of the instant case.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. Learned counsel for the petitioner submits that the petitioner was initially appointed to the post of Clerk-cum-Librarian by the Managing Committee of Rajkiya High School, Hasanpur, Lakhisarai, in accordance with Resolution No. 3 passed in Meeting No. 66 dated 15.03.1982, consequent to this resolution, an appointment letter bearing Letter No. 09 was issued on 15.03.1982 (Annexure-1 and 2), following which the petitioner joined his duties on 21.03.1982, which was duly accepted by the Head Master of the school (Annexure-3). The petitioner's services were subsequently confirmed by the School Managing Committee *vide* Resolution No.70 dated 21.01.1983 (Annexure-4). It is further submitted that the school in question was subsequently taken over by the Government, with formal decision taken *vide* Letter No. 12/0-14/9/205 dated 31.03.1991 (Annexure-5).

4. It is further contended that owing to non-payment of salary after the school's takeover, the petitioner, along with other staff members, approached this Hon'ble Court in CWJC No. 2213/1994, which was disposed of on 31.07.1995 with a direction to the Director, Secondary Education, to take a final



decision in the matter (Annexure-6). Pursuant to which several representations were filed but no decision was taken leading to filing of contempt petition being MJC No. 932 of 1996 and in order to decide the issues of salary, an inspection was conducted on 15.03.1997 by the Deputy Director of Education, and a report was forwarded to the Director, Secondary Education, vide Letter No. 539 dated 09.04.1997, wherein the petitioner's name was explicitly recommended at Serial No. 7 (Annexure-7). However, the petitioner was shocked to find that when the Department of Secondary, Primary, and Adult Education issued Letter No. 639 on 08.05.1997, appending a list of recognized and unrecognized staff, his name was arbitrarily omitted from both categories (Annexure-8).

5. Learned counsel on behalf of the petitioner further highlights that the petitioner continued to discharge his duties with an unblemished record, as evidenced by a character certificate issued by the Head Master on 26.05.1997 (Annexure-9), even after the school was taken over, which would find support from the inspection report prepared by the Deputy Director of Education as contained in letter dated 09.04.1997.

6. Despite his long and continuous service, the petitioner was unilaterally prevented from marking his



attendance after the year 2010. And for the first time, the petitioner moved before this Court in CWJC No. 14082 of 2010 and further MJC No. 1663 of 2012 was also filed for ensuring compliance, and the authorities came out with rejection order rejecting the claim of this petitioner for showing compliance of the order passed by the Co-ordinate Bench issued in the case of CWJC No. 14082 of 2010, for which MJC No. 1663/2012 was filed and by placing the order contained in Memo No. 11 MU 1-56/2010-2104 dated 29.10.2012, the said contempt petition got disposed with liberty to challenge which was subsequently, challenged in CWJC No. 7914 of 2013 which got disposed of with a direction to consider the claim and for showing compliance in MJC No. 2157 of 2017, the impugned order dated 08.08.2017 came to be issued, which is subject matter of challenge in the instant petition. Lastly, the petitioner's claim for regularization was eventually rejected by the respondent authorities through the impugned order contained in Memo No. 11/Mu -115/2010-1966 dated 08.08.2017 (Annexure-21).

7. The petitioner's stand is that the impugned order is arbitrary, discriminatory, and legally unsustainable, as the services of several other similarly situated persons were recognized by the State on the basis of inspection report of the



Deputy Director of Education dated 09.04.1997, in which the petitioner was also found to be working. It is submitted that the exclusion of the petitioner, despite a favorable inspection report at par with others, constitutes a gross violation of the principles of natural justice and Article 14 of the Constitution of India. The learned counsel argues that the petitioner is entitled to the regularization of his service and the payment of all consequential benefits including arrears of salary from the date of the school's recognition, in light of the settled legal position and as also, the directions issued by the Co-ordinate Bench of this Hon'ble Court in similar matters, which may be inferred from the respective orders passed in CWJC No. 4547 of 1998, CWJC No. 15356 of 2006 and CWJC No. 1409 of 2003.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

8. Learned counsel for the respondents, while countering the petitioner's claims through the Counter Affidavit (Respondent Nos. 1 to 3) and the Supplementary Counter Affidavits, submits that the petitioner's prayer for regularization was objectively considered and rejected by the Director of Secondary Education via Memo No. 11/Mu-115/2010-1966 dated 08.08.2017. It is contended that as per the factual report from the District Education Officer, Lakhisarai (Letter No. 2973



dated 13.12.2025), the post of "Clerk-cum-Librarian" was never a sanctioned post in Rajkiya High School, Hasanpur. Although the school was granted recognition via Letter No. 205 dated 31.03.1991 whereas, the sanctioned staff strength only provided for one Principal, eight Assistant Teachers, one Clerk, and two Peons. Since, the petitioner's appointment was made by the Managing Committee against a non-sanctioned post, the State cannot be fastened with the liability to pay salary or regularize his services, as per the settled legal position in ***CWJC No. 4866/2003 (Smt. Mridula Palit Vs. The State of Bihar & Ors.)***, reported in ***2018 (2) PLJR 199***.

9. In the Supplementary Counter Affidavits, the respondents further highlight that the petitioner's induction on 15.03.1982 was *void ab initio*. The Education Department had issued Circular contained in Letter No. 1446 dated 21.07.1980, which imposed a complete ban on any further appointments by the Managing Committees in schools slated for takeover by the State effective from 02.10.1980. Since the petitioner was appointed nearly two years after this ban, his appointment was in direct contravention of the government circular. Furthermore, regarding the Inspection Report dated 15.03.1997, it is submitted that while the then Deputy Director mentioned the



petitioner's name as a "Librarian," the report contained a specific "Mantavya" (Opinion) stating that the appointments in the school were not made in accordance with the "Manak Mandal" (Staffing Pattern). The respondents maintain that the petitioner's earlier challenge in CWJC No. 14082/2010 resulted in a direction to pass a speaking order, which has been duly complied with, through the impugned rejection order, leaving no grounds for further relief.

STAND OF THE PETITIONER IN THE REJOINDER

10. In the Rejoinder, the learned counsel for the petitioner strongly refutes the respondents' reliance on the 1980 circular and the staffing pattern, characterizing these grounds as a belated attempt to deny legitimate claims after decades of service. It is submitted that the Inspection Report dated 15.03.1997 was not a routine exercise but was conducted pursuant to a contempt proceeding (MJC No. 932 of 1996) to identify the working staff after the school's takeover. The petitioner argues that this report unequivocally recognized him as a working employee (Librarian) and recommended his name at Serial No. 7, while his appointment was made on the post of Clerk-cum-Librarian.

11. The petitioner further contends that the



respondents have acted discriminatorily by recognizing the services of similarly situated individuals, such as Rajniti Prasad Singh and others, while arbitrarily omitting the petitioner's name. It is argued that after allowing the petitioner to discharge his duties with an unblemished record for over 30 years, which is further supported by the character certificate issued by the Head Master on 26.05.1997, the question of petitioner's appointment having been made as against the non sanctioned post, may not be legally available with the authorities after almost three decades with his unblemished service. The petitioner maintains that the first order of rejection is of the year 2012 while the impugned order of the year 2017, which fails to address the specific findings of the year 1997 inspection report and thus suffers from a total non-application of judicial mind and a violation of the principles of natural justice.

12. Learned counsel for the petitioner by referring to the order passed by the Co-ordinate Bench in the case of *Meera Sinha vs. The State of Bihar & Ors* in *CWJC No. 1409 of 2003* submits that a similarly situated person had sought for a direction upon the respondents to accord approval of her services as an Assistant Teacher in the same School known as Rajkiya Husanpur High School, Lakhisarai w.e.f



01.01.1991 and this Court recording certain facts related with the School's establishment and his service profile, which were not in controversy that the School was established in the year 1964 and was being managed by Managing Committee constituted for this purpose and the School is said to have been taken over on 31.03.1991 and further at the time of taking over the School, the petitioner was working as Assistant Teacher in the subject of Biology, pursuant to which the joining was given and appointment was within the sanctioned strength of teaching and non-teaching staffs of the School in question and still her services was not being recognized. The Co-ordinate Bench of this Court, taking note of the adjudication made and directions issued in the case of similarly situated persons adjudicated in the case of *Ajay Kumar & Ors v. State of Bihar & Ors (CWJC No. 4547 of 1998)*, allowed the case of *Meera Sinha (Supra)*, directing the Respondents to recognize her services w.e.f 01.01.1991 taking note of the fact that similarly situated persons having been taken in the service, the Writ Petition filed by them was also allowed by setting aside their rejection order. Similarly, in the case of another Assistant Teacher, Rajniti Prasad Singh, who has also preferred the Writ Petition before this Court *vide CWJC No. 15356 of 2006* wherein similar directions were



issued and his case was also duly considered by the Director, Secondary Education by recognizing his services w.e.f 01.01.1991.

13. Learned counsel by referring to the above facts submits that the case of this petitioner is also similar to that of other similarly situated persons, as the appointment of this petitioner was also made as per the staffing pattern by the Managing Committee of the School by issuing the appointment letter for the post of Clerk-cum-Librarian w.e.f. 15.03.1982 and since then, the petitioner has been working on the said post and had been discharging the duties on such post of Clerk-cum-Librarian whereas, in terms of the provisions of the Bihar Non Government Secondary Schools (Taking Over of Management and Control) Act, 1981 (hereinafter referred to as 'the Taking over Act, 1981'), the case of the petitioner was required to have been considered, as the consequences of taking over the Management and Control clearly stipulates that from the date on which the Management and Control are taken over by the State Government, the services of every Headmaster, teachers and other employees working in the nationalized school shall be deemed to have been transferred to the State Government and such persons are deemed to be the employee of the State



Government, holding post as determined by the State Government, as per the eligibility and the qualification of the incumbent, whose services are to be taken over for absorption.

14. Learned counsel for the petitioner further submits that the Full Bench judgment rendered in the case of ***Ram Naresh Prasad Nirala Vs. The State of Bihar & Ors***, as reported in ***1987 PLJR 341***, wherein, the issues pertaining to take over of services of taken over school was considered and it has categorically been held that the eligibility and qualification of the incumbent, whose services are to be taken over are to be tested, as on the date of report by the Screening Committee/Special Board. In paragraph-10 of the aforesaid order/judgment, the following observation was made:-

“It must, therefore, be held in no uncertain terms that the crucial point of time and, indeed, the outer limit for such consideration is the date of the report of the Special Board the consideration of eligibility, qualification and suitability of teachers for absorption.”

15. Learned counsel further by referring to the



judgment of ***Braj Kishore Singh & Ors. Vs. State of Bihar & ors (1997)1 BLJR 625***, submits that the staffing pattern has already been laid down whereby it has been held as follows:-

“30. In view of my interpretation of Section 35 of the Act and conclusion that the staffing pattern has already been laid down which amounts to creation of posts, the abovesaid decisions cannot be said to be correct in law. The Supreme Court rejected the S.L.Ps. summarily and those orders cannot be understood as upholding the judgments/orders on merit. If the appointments are made against posts as per the staffing pattern, i.e. within the sanctioned strength, they cannot said to be violative of Section 35 of the Act and illegal on the ground that the posts have not been sanctioned by the State Government provided, for course, the candidates possess the eligibility and suitability and the selection/appointment process was in conformity with Articles 14 and 16 of the Constitution.

31. Learned Single Judge was referred to Section 10(6) of the Universities Act. That section empowers the vice-Chancellor to make appointment of ministerial staff and other servants of the University. Learned Judge was held that after the College



became constituent in 1979, the impugned appointment could not have been made by the College authorities. However, as stated above, while narrating the foundational facts, the University had already approved those appointments on 2nd March, 1981 and forwarded the same to the Department for approval of the State Government.

32. In the above premises, the judgment of the Learned Single Judge rejecting the claim of the appellants on the ground that they were appointed without prior approval of the Act cannot be sustained. In the ordinary course, in view of my conclusion that it is open to the State Government to consider the validity of appointments already made for the purpose of granting or refusing past facto approval, I would have considered asking the State Government to look into the claim of the appellants afresh. However, having regard to the fact that the appellants have continued in service for more than 17 years, I do not think it would be appropriate exercise of discretion to reopen the matter after such a long lapse of time. In Direct Recruit Class-11 Engineering Officers, Association v. The State of Maharashtra a Constitution Bench of the Apex Court held that where initial appointment is not made according to the.



rules but the appointee continues in service uninterruptedly for long period till regularisation of his service, the entire period as the period spent in service for the purpose of consequential benefits will be counted. The appellants are accordingly entitled to have their services regularised against the posts within the staffing pattern as applicable to the college.

33. In the result, this appeal is allowed. The judgment of the Learned Single Judge under appeal is set aside. The impugned order of the State Government dated June 8, 1983, Annexure-7 to the writ petition, is also set aside. The writ petition stands allowed accordingly. In the circumstances of the case there will be no order as to costs”

16. Therefore, in the light of aforesaid judgment the case of the petitioner is required to be considered and there cannot be any ground for non consideration of the case of this petitioner, whereas, from their own inspection report, it appears that the petitioner is said to have been found to be working as against the post of Clerk-cum-Librarian and the Inspection Report dated 08.05.1997 forms part of the present



writ petition as Annexure-8, did find the petitioner working on the post of Clerk-cum-Librarian, based on which, the other similarly situated persons have been allowed absorption.

17. It is the further case of the petitioner that the inspection report dated 8th of May, 1997 is said to have been prepared by the District Education Officer, Lakhisarai, to show compliance of the order passed in CWJC No. 2213 of 1994 for which contempt petition being MJC No. 932 of 1996, was filed and pursuant to which, the inspection is said to have been made on 15.03.1997. From the said report, it appears that the respondents have found the petitioner to be working on the date of such inspection, which is said to have been done almost after fifteen years of his actual appointment.

18. Learned counsel for the petitioner by referring to letter no. 53 of 2012 dated 10.07.2012, which is said to have been issued by the Principal of the said College addressed to the District Education Officer, Lakhisarai submits that the said letter clearly states that the petitioner's appointment was made by the Managing Committee *vide* letter no. 9 dated 15.03.1982 and the decision with respect to the appointment so made was confirmed in the meeting No. 17 of Managing Committee dated 21.01.1983 and since then, he continued to



discharge the duties on the post of Clerk-cum-Librarian as per the staffing pattern.

CONSIDERATION

19. Having given detailed consideration of the facts obtaining on record, it is quite evident that the petitioner was initially appointed on the post of Clerk-cum-Librarian by the Managing Committee, who submitted his joining on the said post on 21.03.1982 and since then, he had been continuously discharging the duties of the post against which the appointment is said to have been made. It is also not in dispute that subsequently the Managing Committee, who had recommended for petitioner's appointment, confirmed his services *vide* Resolution No. 70 dated 21.01.1983. It is only after almost eight years, the State Government formally granted assent for take over of the School in question *vide* Letter no. 12/0-14/9/205 dated 31.03.1991 (Annexure-5).

20. The whole dispute cropped up only after the said School was taken over by the State Government and before that the petitioner continued on the post peacefully and was discharging his duties to the post with full satisfaction of the Managing Committee and was allowed his salary during such period. The provisions of "the Taking Over Act, 1981" which



specifically provides that the consequences of taking over the management and control from the date on which, such controls are taken over by the State Government, the services of every Headmaster, Teacher and other employees working in the nationalized Schools shall be deemed to have been transferred to the State Government and such persons are deemed to be the employees of the State Government holding post as determined by the State Government, as per the eligibility and the qualification of the incumbent, whose services are to be taken over for absorption.

21. From perusal of the provisions as contained in “the Taking over Act, 1981”, it is quite evident that the State-respondents did not have any power to drop any employee, who are said to be working in the said School on the date of taking over as per the Staffing Pattern, rather their absorptions had to be made by the State Government, as against the post held by them, as per the eligibility and the qualification of the incumbent, whose services are to be taken over for absorption.

22. As the petitioner, who had been undisputedly working since 21.03.1982, and has also been found to be working even after the taken over Notification as per the provisions of “the Taking over Act, 1981” is said to have been



issued on 31.03.1991, which is quite evident from the inspection report, said to have been prepared by the Deputy Director of Education for showing compliance in the contempt petition in being MJC No. 932 of 1996 filed by other similarly situated persons for absorption, and this petitioner having been found to be working on the date of inspection dated 15.03.1997 but his case has not been considered only for the reason that the petitioner was not working against the sanctioned post and the other persons in whose favour the Co-ordinate Bench had directed for taking decision, their cases are said to have been considered on the basis of inspection report dated 15.03.1997, wherein those other similarly situated persons were also found to be working but only distinction drawn with this petitioner is that the petitioner has not been found to be working against a sanctioned post under Staffing Pattern, is wholly misconceived because, the post against which, the petitioner is said to have been appointed denotes the designation of the post of Clerk-cum-Librarian and even in the School, the post of Librarian is a very essential, where the School is having the strength of more than 400 students, although the substantive post of this petitioner was Clerk and the duties of Librarian was in addition to the original post of Clerk and this fact seems to have been



overlooked by the authorities, who are said to have passed the order and as also while giving consideration to the claim of the petitioner for absorption, even the provisions of “the Taking over Act, 1981” have also not been taken into consideration because the provisions of the “the Taking over Act, 1981” do specifically provide for all employees to be treated to be a Government servant after the School in question is taken over and their absorption has to be made as per the eligibility and the qualification being possessed by them on the date of absorption in view of the Full Bench judgment rendered on the subject in issue.

23. Insofar as the issues of non sanctioned post is concerned, admittedly, this petitioner has already worked for more than two decades and, therefore, in view of the ratio laid down by the Hon’ble Full Bench in the case of ***Braj Kishore Singh (supra)*** and as also the law laid down by the Hon’ble Apex Court in the case of ***Yashwant Hari Katakhar v. Union of India & Ors*** as reported in ***(1996) 7 SCC 113***, the petitioner has made out a case for absorption. The relevant extract of the judgment reads as under:-

“.....*The appellant having served the Government for almost two*



decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on 7-3-1980 after serving the Government for 18 1/2 years (more than 10 years of permanent service) and as such his case for grant of pension be finalised within six months from the receipt of this order. The appellant shall be entitled to all the arrears of pension from the date of retirement. No costs.”

24. Taking note of the principles laid down by the Hon’ble Full Bench and as also by Hon’ble Apex Court in



the aforementioned judgments, the petitioner has made a case for absorption, as the petitioner, continued in service uninterruptedly for long period within the staffing pattern and continued to receive salary as against the post applicable in the said School and further with his continuity in service for almost two decades, it would be unfair to treat this petitioner differently and therefore, this Court is of the view that the duties discharged by this petitioner as against the post, on which the appointment was made by the then Managing Committee is required to be recognized for the purpose of all consequential benefits including pensionary benefits.

25. For directing the consequential benefits from the date of absorption till the date of passing of the first order of rejection of his claim for absorption, this Court is persuaded from the facts obtaining on records that petitioner was willfully prevented by the Respondents from discharging his duties and in view of the ratio as laid down by the Hon'ble Apex Court in the case of *State of Uttar Pradesh v. Dayanand Chakrawarty & Ors* as reported in (2013) 7 SCC 595, wherein, it has categorically been held as follows:-

“..... If an employee
is prevented by the employer from



performing his duties, the employee cannot be blamed for having not worked, and the principle of "no pay no work" shall not be applicable to such employee.”

26. Since the authorities do not dispute the eligibility and the qualification of this petitioner as per the provisions of “the Taking over Act, 1981” which issue has been put at rest by the Hon’ble Full Bench in the case of **Ram Naresh Prasad Nirala (supra)** wherein, it has specifically been directed that in no uncertain terms that the crucial point of time and, indeed, the outer limit for such consideration is the date of the report of the Special Board for consideration of eligibility, qualification and suitability of teachers for absorption and in the case of this petitioner, although, such exercise of inspection or special report, which was actually required to have been done by the authorities, are said to have been prepared after almost six years of formal decision of taking over in the year 1991 and this petitioner having been found to be working even after such taking over of School and was only stopped to discharge the duties against the said post in the year 2010, while for no prudent explanation, the claim of this petitioner, is said to have been rejected for the first time only in the year 2012, by passing



the first rejection order as contained in Memo No. 11MU1-56/2010-2104 dated 29.10.2012 (Annexure-17) further with the impugned order as contained in Memo no. 11/Mu 1-115/2010-1966 dated 08.08.2017 (Annexure -21), as such, the petitioner's services are required to be calculated for all the consequential benefits from the date of taking over till the date first rejection order passed in the year 2012.

27. This Court, upon having given anxious consideration to the orders passed by the authorities, finds that the reasons, so assigned for rejecting the claim of the petitioner, does not show the material consideration and due deliberations, which has been discussed above and furthermore, having acted beyond the scope of "the Taking over Act, 1981", therefore, this Court is of the view that the rejection of claim of this petitioner by the impugned order dated dated 08.08.2017 is wholly unsustainable and, accordingly, is set aside as being violative of the statutory scheme and as also the judicial pronouncement made on the subject in issue detailed aforesaid.

28. Consequently, this Court directs absorption of this petitioner from the date of taking over and all consequential benefits, including salaries are required to be paid to this petitioner till the date of passing of the first rejection



order dated 29.10.2012, as for no prudent reason, the authorities sat tight over the matter and did not decide the claim of the petitioner at par with others, and as such, the respondents are, accordingly, expected to proceed for settlement of pension, and pensionary benefits, at par with other similarly situated persons in whose favour, absorption has been made from the said school, and entire exercise are required to be completed within a period of three months from the date of production of a copy of this order.

29. Accordingly, the writ petition stands allowed in the terms aforesaid.

(Ajit Kumar, J)

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