

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18782 of 2016

Dr. Mamta Kumari D/o-Ram Naresh Chaudhary, Assistant Professor,
Industrial Fish and Fisheries, Ramdayalu Singh Colle

... .. Petitioner/s

Versus

1. The Babasaheb Bhim Rao Ambedkar Bihar University and Ors
2. The Vice-Chancellor, the Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur
3. The Pro Vice-Chancellor, the Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur
4. The Registrar, Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
5. The Financial Advisor, the Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur
6. The Finance Officer, the Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur
7. The Principal, R.D.S. College Muzaffarpur, District-Muzaffarpur
8. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New
9. The Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna
10. The Director, Department of Higher education, Govt. of Bihar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Avanindra Kumar Jha, Advocate
For the Respondent/s	:	Mr.Madanjit Singh-Gp20
For the University	:	Mr. Zaki Haider, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 01-09-2025

1. The present writ application has been filed seeking direction in the nature of mandamus commanding the respondent authorities particularly the Department Of Education, Government of Bihar to sanction or create the posts of Lecturers in the Department of “Industrial Fish and



Fisheries” in Ramdayalu Singh College, Muzaffarpur (hereinafter referred to as “the College”), a constituent unit of Babasaheb Bhim Rao Ambedkar Bihar University, Muzaffarpur and to take over the financial liability of the said Department. It has further been prayed that consequent to such creation of posts a direction be issued for granting approval for the regularization of the petitioner’s services as Lecturer in Industrial Fish & Fisheries (vocational subject) in the said College. Alternatively the petitioner has prayed for a direction to the respondent authorities to accord sanction and approval for her regularization on the sanctioned and vacant post of Lecturer in the Department of Zoology in the said College.

2. The brief facts giving rise to the present writ application is that the University Grants Commission (for short “U.G.C.”) vide letter dt: 14.06.1996 granted approval for introducing the vocational subject namely “Industrial Fish & Fisheries” in the College with effect from the academic session 1996-1997.

3. It has further been informed by the U.G.C. that the College may appoint staff on contract basis for the said course which would include two Lecturers, one Instructor, one Lab Technician and two Peons. The said letter further clarified that recurring financial support would be provided by U.G.C. for a



period of five years only i.e. from 1996-2000 there after the institution was to take steps to meet the expenditure either through support from the State Government or from other sources pursuant to the cessation of U.G.C. assistance as aforesaid.

4. The Vice Chancellor of the Babasaheb Bhimrao Ambedkar Bihar University (for short “the University”) permitted the commencement of B.Sc. Hons. (vocational course) in Industrial Fish & Fisheries for the academic session 1996-1997 in the Department of Zoology of the College. The decision of the Vice Chancellor was communicated to the Principal of the College by the Registrar of the University vide Memo No. B / 2334 dated 31.07.1996. The College invited application for the post of Lecturers, Instructors and Lab Technicians on contract basis and advertisement to this effect was published in the Daily Newspaper on 02.04.1997. The petitioner applied pursuant to the aforesaid advertisement for the post and on the basis of recommendation of the Selection Committee she was appointed as Instructor with effect from 25.04.1997.

5. Learned counsel for the petitioner argued that from the scheme of the U.G.C. communicated through letter dt:



14.06.1996 it appears that after cessation of U.G.C. assistance from 2000-2001 onward the course may continue with support of State Government. When the U.G.C. assistance was about to cease the Registrar of the University vide letter dated 17.08.2001 requested the Joint Secretary, Department of Higher Education, Govt. of Bihar to grant permission to continue teaching in vocational subject namely “Industrial Fish & Fisheries” and further to provide financial assistance for meeting the recurring expenditure. The University administration has permitted continuation of vocational course in “Industrial Fish & Fisheries” even after expiry of five years and has taken over liability of recurring expenditure from the academic year 2000-2001 following the cessation of U.G.C. assistance and till date the State Govt. has never raised any objection to the University taking over such liability or to the continuation of the said vocational course.

6. The contractual appointment of the petitioner was extended from time to time at regular intervals. The petitioner’s services continued until the year 2006. The persons who were appointed as Lecturer to teach the vocational subject “Industrial Fish & Fisheries” resigned in the year 2004 as such an advertisement was published in the year 2004 for filling up the



post of Lecturers in which the petitioner applied and on the basis of recommendation of the Selection Committee she was appointed as lecturer vide Office Order dt: 13.04.2006. The petitioner submitted her joining on 15.04.2006.

7. It has further been submitted that since her appointment as Instructor in the year 1996 and thereafter as Lecturer in the year 2006 the petitioner has been discharging her duties to the full satisfaction of the respondents concerned. Despite her satisfactory performance she has not been paid her legitimate remuneration of Lecturer due to the fact that her services remained contractual in nature. The petitioner filed a representation before the Minister, Department of Fish and Animal Resources and also filed a representation before the Hon'ble Chancellor, University of Bihar in the year 2014. In both the representations the petitioner has stated that she has been serving on a fixed salary basis from 1997 to 2006 as an Instructor and thereafter as a Lecturer from 2006 onwards. She prayed that two posts of Lecturers in the subject - "Industrial Fish and Fisheries" be sanctioned at R.D.S. College, Muzaffarpur and thereafter against one of the sanctioned posts her services be regularized however in the said representation petitioner failed to achieve any desired result.



8. Learned counsel has relied upon two letters. Firstly a letter dated 23.05.2015 written by the Principal of the College to the University in which the Principal requested that a direction be issued by the Governor's Secretariat to the State Government for taking over the financial liability of the concerned Department along with the sanctioning of the requisite posts. The Principal further requested that the services of the petitioner be regularized as Lecturer in the services of the University. Secondly reliance has been placed on a letter dated 19.02.2016 written by the Registrar of the University to the Additional Secretary, Department of Human Resource Development, Higher Education, Govt. of Bihar wherein the Registrar requested the State Govt. to grant consent inter alia for creation of at least two posts of Assistant Professor, one post of Associate Professor, one post of Instructor and to take over the financial liability of the expenditure of the "Industrial Fish and Fisheries" Department which has been started with the approval of the U.G.C. under 9th Five Year Plan.

9. Learned counsel next submits that in identical matter relating to Patna University wherein two new courses namely Biochemistry and Rural Studies were approved by the U.G.C. under the 9th Five year Plan and has been running with U.G.C.



assistance and when the U.G.C. assistance ceased the State Government in order to facilitate the continuity of the said courses by its letter dated 16.01.2015 sanctioned two posts of Professor, two posts of Assistant Professor, two posts of Associate Professor in the concerned Department and also undertook the financial liability thereof. The State Government cannot accord step motherly treatment to the petitioner, the College or the course in which the petitioner is teaching inasmuch as this course too has been approved by the U.G.C. and also the “Industrial Fish and Fisheries’ course has been highly responsive since its introduction and has remained popular among the students of North Bihar.

10. The Government of Bihar understanding the importance of development of fisheries has created posts vide letter dt. 23.08.2007 for appointment of Fisheries Supervisors vide “Bihar Animal & Fisheries Resources (Fisheries) Service Appointment Rules, 2007”. The qualification so fixed for appointment on the said post is Graduate / Post Graduate level degrees & diploma.

11. In support of his argument learned counsel has relied upon the judgment of the Hon’ble Supreme Court in the case of Nihal Singh & Ors. versus State of Punjab & Ors. reported in



(2013) 14 SCC 65 and judgment of the Hon'ble Supreme Court in Sabha Shankar Dube versus Divisional Forest Officer & Ors. reported in (2019) 12 SCC 297.

12. Lastly he submits that the petitioner at the very least should be granted minimum of the regular pay scale on the ground that she is performing the same duties as those discharged by persons engaged on regular basis against sanctioned post.

13. On the other hand, learned counsel for the State argued that from perusal of Annexure – 1 of the writ application i.e. letter dated 14.06.1996 issued by the U.G.C. granting approval for the vocational course in the College it appears that U.G.C. has categorically stipulated that the recurring support would be available for a period of five years only i.e. from 1996-2000. After completion of five years the institution was to make efforts to take over the liability of the recurring expenditure through support from the State Government or other sources. After 2000 i.e. after the cessation of assistance the College has been running the course from its internal resources through the fees collected by the College from the students. The State Government has neither given any consent to run the said vocational course nor undertook the liability of the recurring



expenditure of the said course after the cessation of U.G.C. assistance. The vocational course in question is being run by the institution from its own or other sources and not from any financial support of the State Government. He further submits that after lapse of about sixteen years the University vide letter dated 19.02.2016 requested the Education Department to provide financial assistance and to create / sanction various posts including two posts of Assistant Professor and one post of Associate Professor in the said College. In response to the aforesaid letter of the University; the Education Department vide its letter dt: 30.05.2016 called upon the Registrar to furnish an explanation along with supporting documents as to the basis on which the Registrar had stated that the State Government has agreed to take over the liability of expenditure on staffs salaries and to make such evidence available to the Department. It has further been submitted that petitioner was appointed on a contractual basis on a fixed remuneration and being a contractual appointee she cannot claim regularization of her services as a matter of right in absence of any scheme or statutory provision.

14. Learned counsel for the University argued that in terms of section 35 of the Bihar State Universities Act, 1976 the power



of creation of posts vests in the State Government while appointment to such posts once created is vested in the University and is to be made only after following the prescribed rules of recruitment, roster and reservation. It has further been argued that approval for regularization or absorption of services can be granted only in respect of duly created and sanctioned posts. Since the petitioner was engaged purely on a contractual basis as a Lecturer in the Department of Industrial Fish and Fisheries in the concerned college and such posts have not been sanctioned by the State Government the services of the petitioner cannot be regularized.

15. Upon hearing learned counsel for the parties and going through the material on record the following facts emerged for consideration by this Court.

16. The petitioner seeks two fold relief. Firstly a direction upon the respondent / State to create post of Lecturer in the Department of Industrial Fish and Fisheries and secondly upon creation of such post a consequential direction be issued for regularization of the petitioner on the said post of Lecturer.

17. From the letter of the U.G.C. dt: 14.06.1996 it is evident that U.G.C. approved the commencement of the vocational course of Industrial Fish & Fisheries in the College



stipulating therein that recurring financial support would be provided by U.G.C. for a period of five years only thereafter the institution was to take steps to meet the recurring expenditure either through support from the State Government or from other sources.

18. Admittedly, the College has been running the course after cessation of U.G.C. support in 2000 on its own sources and through the fees collected by the College from the students studying in the said course.

19. The U.G.C. communication further provided that institution should aim at financial self sufficiency through productive commercial ventures on subject to subject basis after cessation of U.G.C. assistance. It was also indicated that the institution could enhance its resources by levying specific development charges on students enrolled in vocational subjects and could levy charges on users for services offered. Such resources were to be kept separately as time deposits to ensure continuation of the programme. The U.G.C. also clarified that College could appoint staff on contractual basis but there would be no liability on the part of the U.G.C. for their salaries.

20. The State has categorically denied having consented to running the said course or undertaken any liability towards the



recurring expenditure of the course. In fact in response to the University's letter dated 19.02.2016 requesting creation of posts the State Government on 30.05.2016 called upon the University to explain the basis for its assertion that the Government has agreed to take over the salary liabilities of the staffs of the College and to produce supporting evidence. No such evidence has been produced by the University showing that State Government has agreed to take over the financial liability of the vocational course in question running in the college.

21. The reliance placed by the petitioner on the case of Nihal Singh (supra) is misplaced as the same is not applicable in the facts of the present case. In Nihal Singh case due to large scale disturbance in the the State of Punjab in 1980s and in order to handle the prevailing law and order situation the State of Punjab resorted to recruitment under Section 19 of the Police Act, 1861 which enabled the State to appoint Special Police Officers. All the appellants therein were Ex-Servicemen and were registered in the Employment Exchange and were appointed as Special Police Officer. The appointees approached the High Court of Punjab & Haryana from time to time seeking appropriate direction for regularization of their services. The Hon'ble Supreme Court taking into consideration the fact that



the process of selection was sanctioned by law under section 17 of the Police Act, 1861 and viewed in context of the situation prevailing at that point of time in the State of Punjab when need was to appoint the services of persons who had some experience and training in handling extraordinary situation in dealing with armed miscreants and the peculiar facts involved in the case while observing that the creation of posts necessarily means additional financial burden on the exchequer of the State but in the instant case creation of new posts would not create any additional financial burden to the State as the various Banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden directed the absorption of the appellants into the services of the State.

22. The Hon'ble Supreme Court in the case reported in (2008) 1 SCC 683 Divisional Manager, Aravali Golf Club & Anr. versus Chander Hass & Anr has held that that creation and sanction of posts is the prerogative of the executive or the legislative authorities and the court cannot take upon itself the power of creation of posts.

23. In the case of Maharashtra State Road Transportation Corporation versus Casteribe Rajya Parivahan Karmachari Sanghatana reported in (2009) 8 SCC 556 it has been reiterated



that creation of posts is beyond the domain of judicial functions and permanency cannot be granted by the courts where no sanctioned post exists.

24. Recently, in the case of Government of Tamil Nadu and Anr. versus Tamil Nadu Makkal Nala Paniyalargal and Ors. reported in 2023 LiveLaw (SC) 294, the Hon'ble Supreme Court has held that in absence of sanctioned post, the State cannot be compelled to create posts and absorb persons to continue in service.

25. Considering the above mentioned discussion upon facts and law and in view of the settled legal position that Court while exercising jurisdiction under Article 226 of the Constitution of India cannot direct the State Government for creation and / or sanction of posts and cannot arrogate to itself this purely executive or legislative function and direct for creation of posts. Creation of posts is exclusive to the domain of executive and legislative function and is a matter of policy of the State Government having financial implication. The petitioner is working on contract basis as a Lecturer and admittedly the petitioner is not working on sanctioned post as such this Court cannot compel the State Government to create post and then regularize the petitioner and / or direct the State



Government to pay minimum of the pay scale of Lecturer to the petitioner. Accordingly I do not find any merit this writ application. The same is rejected.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
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