

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.554 of 2023
In
Civil Writ Jurisdiction Case No.591 of 2021

1. The L.N. Mithila University, Kameshwar Nagar, Darbhanga through the Vice Chancellor.
2. The Vice-Chancellor, L.N. Mithila University Kameshwar Nagar, Darbhanga.
3. The Registrar, L.N. Mithila University Kameshwar Nagar, Darbhanga
4. The Finance Officer, L.N. Mithila University Kameshwar Nagar, Darbhanga

... .. Appellant/s

Versus

1. Subhash Thakur Son of Late Nagendra Thakur, Resident of Village- Uren Bankatta, Uren, P.S.- Benipatti, District- Madhubani, Retired as Laboratory Incharge, Department of Physics, K.V.S. College, Uchhaith, Benipatti, Madhubani.
2. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Principal, K.V.S. College, Uchhaith, Benipatti, Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Md. Nadim Seraj, Advocate Mr. Shailesh Kumar, Advocate
For the Respondent/s	:	Mrs. Anju Jha, Advocate Mr. Bhavendra Jha, Advocate
For the State	:	Mr. Vinay Kirti Singh, G.A.-2 Mr. Rajan Prakash, A.C. to G.A.-2

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-09-2024

The appellant is the L.N. Mithila University, who
is aggrieved with the impugned judgment directing the writ



petitioner's past services, in the post of Laboratory In-charge (Physics), with effect from 09.03.1990, to be considered for the purpose of retirement benefits, which also was to be paid under the Old Pension Scheme.

2. The learned Single Judge allowed the claim of the petitioner on multiple grounds. It was found that though the petitioner was continuing in the post from 09.03.1990, on which date, the Government had sanctioned the post, there was no attempt to make regular appointments to the said post till the year 2010. Even then, the petitioner was appointed in the year 2012 in a post he was continuing right from the date of sanctioning. It was found that the Chancellor had once granted regularization which was later cancelled. Twice, the petitioner, along with others similarly situated were before this Court seeking regularization; which writ petitions were disposed of directing regular appointment to be carried out, which was delayed indefinitely.

3. Reliance was placed on ***Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra; (1990) 2 SCC 715***, a Constitution Bench decision, wherein it was held that when initial appointment made to substantive vacancies, even if not made according to the rules, but the



appointee continues in service uninterruptedly for long periods till regularization of his service, the entire period ought to be treated as period spent in service for the purpose of consequential benefits.

4. Learned Counsel for the appellant-University Sri Nadim Seraj, contended that twice there was a claim for regularization which was declined. The direction of this Court was only to carry out regular appointments, with age relaxation granted to the petitioner and other similarly situated persons for the period spent in service. The petitioner was appointed in the year 2012 and retired in 2016. Even if the petitioner is entitled to pension, under the Old Pension Scheme, his service after regular appointment is only for 4 years; while the minimum pensionary service is 10 years. It is also contended that petitioner has raised a claim, 5 years after his retirement.

5. The learned Counsel appearing for the 1st respondent Sri Bhavendra Jha relies on a Full Bench decision of this Court in ***Braj Kishore Singh v. State of Bihar; 1997 (1) PLJR 509***, Division Bench decisions in ***Braj Kishore Singh v. State of Bihar; 2004 (3) PLJR 668***, ***Netram Sahu v. State of Chattisgarh and Another; 2018 (2) PLJR 284*** and a Single Judge decision in ***Rajendra Kamti and Another v. L.N.Mishra***



University and Others, 2006 (3) PLJR 83.

6. Admittedly, the petitioner had filed two writ petitions along with others for the purpose of regularization; C.W.J.C. No. 6145 of 1996 and C.W.J.C. No.3377 of 2002. We called for the Judges papers of the said cases and went through the records. C.W.J.C. No. 6145 of 1996 indicates two set of employees having approached the Court; all belonging to K.V.S College, Uchaith, Benipatti, Madhubani, (hereinafter referred to as 'K.V.S. College') which was taken over as constituent college of the appellant-University. On 06.12.1980, at the time of take-over, two lists were prepared of persons working in the different non-teaching Class-III and Class-IV posts in the College. The first of these, who were included in B1 list were employees working in duly sanctioned posts while the B2 list comprised of persons working in non-sanctioned posts.

7. The persons in B2 list had earlier filed C.W.J.C. No. 614 of 1982 against the decision to terminate their services. The Writ Court refused interference and exercise of writ jurisdiction but, made an observation that in case of fresh recruitment, the petitioners would be considered and they would also be granted relaxation in age. It transpires from the judgment that the Principal of the College also had made certain



appointments to different Class-III and Class-IV posts so as to ensure that the work of the College is carried out un-hampered.

8. This gave rise to a third list called the Principals List; who filed C.W.J.C. No. 5545 of 1996. C.W.J.C. No.s 6145 of 1996 & 5545 of 1996 were both rejected by judgment dated 09.05.1997. The members of the Principal's list were found to have absolutely no claim for appointment. Insofar as the persons in C.W.J.C. No. 6145 of 1996 are concerned, it was found that the Chancellor had vacillated on the issue of their regularization. First, they were directed to be regularized by order dated 01.09.2022 but shortly thereafter, by order 17.10.1992 the order of regularization was kept in abeyance. On 27.11.1994, yet again, the regularization claim of employees in the B2 list was accepted subject to and consistent with the rules of reservation, as mentioned in the sanction order of creation of posts by the State Government. Before the said order could be given effect to, by yet another order on 04.03.1996, it was found that the appointments of the persons who seek regularization were made before posts were sanctioned by the State Government. Finding it difficult to decide on the genuineness of their claims, the parties were left remedy to approach a Court of law; which led to the writ petitions being filed in the year 1996.



9. Finding that C.W.J.C. No. 641 of 1982 settled the issue agitated by the persons in B2 list, the very same directions were issued as was done in C.W.J.C. No. 614 of 1982; that all sanctioned posts were to be filled up in a regular manner by issuing advertisement and following a selection process. The petitioners were left with liberty to apply in response to the advertisement and age relaxation was also directed for the period the persons included in B2 list had actually worked in the College.

10. A selection was initiated only in the year 2002 after 5 years, despite the Court having directed such selection to be initiated within six months. It was then the petitioners again moved this Court by C.W.J.C. No.3377 of 2002. A reading of the judgment would indicate the petitioner including the 1st respondent herein, who is the 13th petitioner therein, was continuing as a non-teaching employee of K.V.S. College. The earlier proceedings were noticed and the advertisement dated 18.02.2022 was also referred to; which was challenged in the present writ proceedings, again, raising a claim for regularization. The regularization claim was rejected with a direction to complete the process of appointment to the vacant Class-III and Class-IV posts of the College initiated by the



advertisement. The matter was disposed of on 09.02.2010 and obviously it took another two years before appointment to 43 non-teaching Class-IV employees were made regularly in the College *vide* memo dated 11.08.2012. The 1st respondent is at Serial No.1 in the said memo produced as Annexure-6 in the writ petition. The petitioner also retired on 31.01.2016 from the post of Laboratory In-charge (Physics).

11. True, the claim of regularization was twice rejected by this Court and the only direction was to make appointments after a due selection process. Obviously, the University dragged its feet and it was only after 5 years after the first judgment that an advertisement was issued. By reason of the delay, again the advertisement was challenged and the writ petition was disposed of in the year 2010. For no fault of the 1st respondent and similarly situated persons, the selections were delayed and the appointments were made long after the judgment; flouting the time frame stipulated.

12. In fact, it was in 1997 that the first decision came with a direction to make appointments within a period of six months. It is an admitted fact that the 1st respondent continued all this while in the College as a Laboratory Incharge (Physics). When the selection was completed and the



appointments were made, the 1st respondent was also appointed to the sanctioned post, which indicates that even if the selections were proceeded as directed in C.W.J.C. No.6145 of 1996 within a period of 6 months of 09.05.1997, the 1st respondent would have got an appointment. Hence, at least from 09.11.1997, the 1st respondent should be deemed to have continued in a sanctioned post in the College, though not as a regular employee.

13. In this context, it is pertinent to notice clause (14) in Section II of Statute No.I of Bihar State Universities Act, 1979; which is extracted in the impugned judgment. Qualifying service, according to the said provision means service rendered as a member of the staff of the University in a substantive capacity on a full-time basis, including period spent on probation. It also indicates that all services rendered in the University on a full-time basis on a temporary or officiating capacity, followed; without interruption, by substantive appointment in the same or any other post, shall count as qualifying service, except in respect of periods of service in work charge establishments and period of service paid from contingencies. The petitioner admittedly had continued in the sanctioned post from the year 1990 and had been regularly



appointed in the year 2012. The continuance was in a substantive vacancy, though regularly appointed only in 2012, pursuant to selection conducted as per the orders of this Court in 1997.

14. Insofar as the benefit granted from 09.03.1990; we have to notice that even in the year 1997, when the 1st respondent along with other similarly situated employees had approached this Court, regularization was specifically declined, as per order in C.W.J.C. No.6145 of 1996. Hence, there cannot be a claim for qualifying service for any periods prior to the said judgment delivered on 09.05.1997. We have reckoned the six months period; within which there was a direction to carry out appointments, for the purpose of reckoning the commencement of qualifying service of the petitioner. With this slight modification, the appeal is partly allowed. We make it clear that the petitioner shall be entitled to pension, that too under the Old Pension Scheme considering his qualifying service to have commenced from 09.11.1997.

15. We find no application of the Full Bench judgment in *Braj Kishore (supra)* which only directed that when a staffing pattern is prescribed or laid down, it would be un-reasonable to insist on a prior approval of the State



Government, in the matter of creation of posts within the framework of the staffing pattern. In fact, this specific contention was dealt with in C.W.J.C. No.6145 of 1996. One of the contentions raised, which is seen from the judgment at paragraph 12, is that Section 35 must be interpreted in the light of staffing pattern for a constituent College and even though the posts in question were sanctioned later on, the petitioners must be regularized against those posts. The learned Single Judge was not impressed by the said submission, since in the instant case it was not the contention that there were no sanctioned posts in the College or the College was functioning without any employee on any sanctioned posts. As we noticed from the judgment in C.W.J.C. No.6145 of 1996, there was a B1 list prepared when the College became a constituent unit and those who were included therein were employees who were working in duly sanctioned posts. Hence, the 1st respondent along with the others who were in the B2 list were not appointed against a sanctioned post, which sanction was made only in the year 1990. The claim of regularization was specifically declined and directions were issued to carry out a regular selection; which when carried out the petitioner was appointed to the post, in which he was continuing for long.



16. We also notice that the 1st respondent had retired in the year 2016 and approached this Court only in the year 2021. Hence, going by *Union of India v. Tarsem Singh (2008) 8 SCC 648*, the pension shall be fixed based on the last pay drawn on the date of superannuation, considering the qualifying service from 09.11.1997; but the arrears shall be paid only 3 years prior to the registration of the writ petition, which was registered on 06.01.2021. The arrears of pension shall be paid from 06.01.2018 and he shall be continued with pension in future.

17. Ordered accordingly.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

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AFR/NAFR	
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