

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11371 of 2015

Yugal Kishore Prasad Gupta, Son of Ram Deni Prasad, resident of Court no 3,
Purnea, Police Station- Purnea, District- Purnea

... .. Petitioner/s

Versus

1. B.N. Mandal University Laloo Nagar Madhepura through its Registrar.
2. The Vice-Chancellor, B.N. Mandal University, Laloo Nagar Madhepura
3. The Registrar, B.N.Mandal University, Laloo Nagar Madhepura
4. The Principal, Purnea College, Purnea
5. Purnea University, Purnea through its Registrar.
6. Vice-Chancellor, Purnea University, Purnea.
7. Registrar, Purnea University, Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satya Prakash, Advocate Mr. Radha Mohan Singh, Advocate
For the State	:	Mr. Kameshwar Kumar, Advocate Mr. Arbind Kumar, AC to GP-17
For the University	:	Mr. Shashi Bhushan Singh, Advocate Mr. Bipin Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 01-03-2024

1. Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant application for
the following relief(s):-

*“1. (i) For issuance of writ in the nature of certiorari
or any other appropriate writ for quashing the letter no
17/15 dated 07.01.2015, communicated to the
petitioner by the Registrar, B. N. Mandal University,
Laloo Nagar Madhepura hereinafter referred as
'University only whereby the fresh representation of the*



petitioner dated 10.09.2014, filed in pursuance of order dated 05.08.2014 passed in CWJC No. 8096 of 2013, for regularization of his service on the post of Account Assistant in Purnea College, Purnea has been rejected.

ii) For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondents authorities to absorb/regularize the service of the petitioner on the post of Account Assistant in Purnea College, Purnea as several efforts had been initiated at the university and state Govt. level to regularize the services of petitioner and others IIIrd & IVth grade daily wages employees of the University time to time.

iii) For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondents authorities to initiate steps for regularization of the services of daily wages employ on class III & IV post of University who have been worked more than 10 years on duly sanction post as a one time measure by waving the age restriction and weitage for their earlier engagement in the light of constitutional bench judgment rendered in Uma Devi case by the Apex Court.

iv) For issuance of writ in the nature of mandamus or any other appropriate writ for restraining the respondent authorities from filling up the sanction post of class III & IV post of the University by way of out sourcing basis in stead of regular basis by advertising the said post and waving the age restriction and weitage to the daily wages employ of the University.

v) For holding that the petitioner is entitle for his



regularization of his service on the post of account assistant in Purnea College, Purnea in the terms of constitutional bench judgement of the Apex Court render in Secretary State of Karnataka Vs Uma Devi reported in 2006 (2) PLJR (SC) 363 and order dated 05.08.2014 passed in CWJC 8096 of 2013 as he has been continuously working on the sanction post of account assistant in Purnea College Purnea herein after refer as 'College' only since year 1986 and he has completed his service more than 10 years.

vi) For issuance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

vii) For quashing of the Notification contained in Letter no. 112 dated 28.06.2018, issued under signature Registrar, Purnea University, Purnea whereby all the contractual help sanctioned by B.N.M.U, Madhepura in past and are working presently in the constituent colleges of Purnea University has been cancelled w.e.f 01.07.2018.”

3. The case of the petitioner in brief is that he was appointed by the Principal of the Purnea College, Purnea on 23.4.1986 for doing accounting work though without any remuneration. His appointment letter brought on record as Annexure-1 provides that payment of remuneration may be considered in future on his work being found to be satisfactory. Subsequently, the payment of daily wage was allowed on 20.12.1988. Learned counsel for the petitioner submits that the



Principal of the College sent a letter dated 21.8.1998 to the Registrar of the University to regularise the service of the non-teaching staffs mentioned therein which included the petitioner. It was stated therein that the petitioner was working since the date of his joining on 24.4.1986 and the request was made to regularise him on the post of Account Assistant. Further from the certificate issued by the Principal of the college it would transpire that the petitioner worked against a sanctioned post in the college from 24.4.1986 to 30.8.2002. Not having received any relief, the petitioner moved this Court in CWJC no. 8096 of 2013 which was disposed of by order dated 5.8.2014 giving liberty to the petitioner to file a representation which was to be considered and decided by the Vice-Chancellor within three months.

4. The petitioner filed a representation and the learned Registrar by his order dated 6.1.2015 was pleased to reject the same against which the instant application has been preferred.

5. Learned counsel for the petitioner submits that the petitioner having worked for considerable period, he should have been considered for regularisation in view of the judgment of the Hon'ble Supreme Court in the case of Uma Devi.

6. Though a counter affidavit was filed on behalf of



the B.N Mandal University, no counter affidavit was filed on behalf of the Purnea University.

7. It is the case of the respondents that while the name of the petitioner is Yugal Kishore Prasad Gupta, a letter dated 21.8.1998 of the Principal contains the name Y.K Prasad. Further the letter of appointment as contained in Annexure-1 to the writ application would clearly show that there was no advertisement prior to the appointment of the petitioner who started working without any wage for future gain. The Principal of a college is neither empowered nor competent to make any appointment in the college. Only the Vice-Chancellor is competent to make appointments of Class III and Class IV employees against the vacant sanctioned posts. It is further case of the respondents that even as per the judgment in the case of Secretary State of Karnataka & Ors. vs. Uma Devi (3) reported in 2006 (2) PLJR 363 (SC), only those persons were required to be considered for regularisation as a one time measure who were appointed against vacant sanctioned posts after following the due process of recruitment. The prayer of the petitioner for regularisation of his service was dismissed vide order dated 1.2.2006 passed in CWJC no.4465 of 2004 and even the LPA no.188 of 2006 was dismissed on 21.2.2007. It was subsequent



thereto that the petitioner on once again filing CWJC no.8096 of 2013 that the same was disposed of vide order dated 5.8.2014 giving liberty to the petitioner to file a fresh representation before the Vice-Chancellor of the University which on being filed came to be rejected by the Registrar of the University on 6.1.2015. It was submitted that there is no merit in the writ application and the same be dismissed.

8. Having heard learned counsel for the parties and having perused the material on record, it transpires that the petitioner was engaged by the Principal on 23.4.1986 to work in the Accounts section, but without any wages. Subsequently as per the petitioner's case, inspite of the Principal writing letter to the Vice-Chancellor of the University with respect to the petitioner and others, no steps was taken by the respondent-University which led to the petitioner's filing CWJC no.4465 of 2004 which was dismissed vide order dated 1.2.2006 and even the appeal preferred from the same being LPA no.188 of 2006 was dismissed vide order dated 21.2.2007.

9. In spite of the prayer for regularisation made in the earlier case having been dismissed by this Court and even the appeal preferred there from not having been entertained, the petitioner once again preferred CWJC no.8096 of 2013 which



was disposed of vide order dated 5.8.2014 giving liberty to the petitioner to file a fresh representation before the Vice-Chancellor of the University. A perusal of the said order would show that the Court took note of the submission made by learned counsel for the petitioner that subsequent to the earlier orders passed in the petitioner's writ petition and LPA, the judgment of the Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi (3) reported in 2006 (2) PLJR 363 (SC) had come and as such the direction that the Vice-Chancellor was to consider all the materials produced by the petitioner in accordance with law.

10. The University considered the case of the petitioner and rejected the representation by the order impugned dated 6.1.2015. The Registrar of the University observed that the petitioner was neither engaged nor appointed as a daily wage earner, the appointment was not by the competent authority nor after following the due process as required under the Constitution. The petitioner having been engaged illegally and the engagement being of contractual/outsourcing basis, the petitioner could not be considered for regularisation even as per the judgment of the Hon'ble Supreme Court. Confronted with the reasons given by the Registrar of the University in the



order impugned, though learned counsel for the petitioner tried to impress upon the Court from the communications/letters between the authorities of the University brought on record that the petitioner was subsequently engaged as a daily wager, however the reasonings given in the order impugned with respect to the petitioner not having been appointed by the competent authority nor after following the due process could not be answered.

11. In view of the facts and circumstances stated hereinabove, the Court finds no merit in the instant application and the same is dismissed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	N/A
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