

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 5107 of 2017

... ... **Petitioner**

Versus

1. The State of Jharkhand
 2. Principal Secretary, Higher Technical and Skill Development Department, Government of Jharkhand having his office at Project Building, P.O. & P.S. Dhurwa, District Ranchi
 3. Kolhan University through its Registrar, Chaibasa, P.O. & P.S. Chaibasa, District West Singhbhum
 4. Vice-Chancellor, Kolhan University, Chaibasa, P.O. & P.S. Chaibasa, District West Singhbhum
 5. Registrar, Kolhan University, Chaibasa, P.O. & P.S. Chaibasa, District West Singhbhum
 6. Principal, Kashi Sahu College, Seraikela, P.O. & P.S. Seraikela, District Seraikela-Kharsawan, Jharkhand, Ranchi
 7. Chancellor of the Universities, through its officer on Special Duty (O.S.D.) Universities/Higer Education as well as the Under Secretary, Hon'ble Governor Secretariate, Jharkhand **Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner	: Mr. Atanu Banerjee, Advocate
For the Resp. Nos.1 & 2	: Mr. Suresh Kumar, SC (L&C) II
For the University	: Dr. Ashok Kr. Singh, Advocate
	: Mr. Prabhat Kumar, Advocate
For the Resp. No. 7	: Mr. Prashant Pallav, ASGI
	: Mr. Parth Jalan, Advocate

31/23rd April 2024

Lastly heard on 23rd February 2024.

1. Heard the learned counsel for the parties.
 2. This writ petition was initially filed for the following reliefs: -

“(a) For issuance of an appropriate writ, order or direction commanding upon the concerned respondents to extend the consequential monetary benefits to the petitioner, who has retired on 31.07.2016 from the post of Lecturer in English, K.S. College, Seraikela, after rendering 39 years of continuous satisfactory service by allowing the benefits of enhanced pay scales. Time Bound

Promotions of the 5th and 6th revised UGC scale from the respective dates of application and implementation of the said 5th and 6th revised UGC pay scale in the corresponding higher pay scale of Rs. 8,000-13,500/- and thereafter Rs. 15,600-39,100/-, in pursuance of a fresh decision as required to be taken in the light of order dated 27.03.2014 passed in W.P. (S) No. 2200 of 2003 by Hon'ble Mr. Justice Aparesh Kumar Singh whereby and whereunder, in the said writ petition filed by the petitioner for confirmation/regularization of his service on the post of Lectures in English, for Time Bound Promotions, arrears of salary on implementation of the UGC pay scale, the impugned order dated 25.04.2009 was quashed in the aforesaid writ petition and the matter was remanded to the respondents for taking afresh decision in accordance with law and further the respondents may be directed to pay all such consequential monetary benefits including arrears of revised pay in UGC pay scale with up-to-date interest;”

3. During pendency of the writ petition, the claim for regularization of the services of the petitioner was rejected and rejection order was communicated to the petitioner vide letter No. KU-04/2020 1490 dated 25.08.2021 issued under the signature of the Under Secretary, Hon'ble Governor's Secretariat, Jharkhand, Ranchi and writ petition was amended seeking further relief as follows: -

“For issuance of an appropriate writ for quashing the letter No. KU-04/2020 1490 dated 25.08.2021 issued under the signature of the Under Secretary, Hon'ble Governor's Secretariat, Jharkhand, Ranchi whereby the case of the petitioner for regularization of his services in the University service on the post of Lecturer of English in K.S. College, Seraikela has been rejected and the petitioner further prays for issuance of writ, order, direction commanding upon the concerned respondent to make payment of pension/pensionary benefit and retirement benefit to the petitioner with interest.”

4. **Arguments of the petitioner as recorded in order dated 23.02.2024**

- A. Learned counsel for the petitioner has submitted that the crux of the dispute between the parties arises out of impugned letter dated 25.08.2021 issued under the signature of Under Secretary, Hon'ble Governor Secretariat, Jharkhand Ranchi whereby the case of the petitioner for regularization of his services in the University on the post in Lecturer in K.S. College, Seraikela has been rejected. The learned counsel submits that on account of rejection of regularization of the services of the petitioner, the petitioner has been deprived of the pension and other benefits and so far as other reliefs are concerned, they would be based on the pronouncement on the legality and validity of the aforesaid impugned letter dated 25.08.2021.

- B. While assailing the impugned order dated 25.08.2021, the learned counsel for the petitioner has submitted that the scheme for regularization was required to be taken into consideration in totality. He has submitted that the scheme for regularization has been placed on record on page no.135 of the amended writ petition which provides that for regularization, as per clause 1 (b) the required qualification was at least a Second-Class Master's Degree in the subject. He submits that the scheme for regularization is dated 29.01.1986 which stood amended on 17.02.1987 whereby it was provided that the person seeking regularization should possess at least a Second-Class Master's Degree in the subject. Learned counsel submits that the impugned order is perverse since Clause 1 (b) of the scheme for regularization has not been taken into consideration at all rather while quoting the relevant provision, the impugned order has not even quoted this provision. He has further submitted that the impugned order has been passed on the ground that the petitioner did not have the high Second-Class Master's Degree i.e. 52.5% and had only 46%.
- C. The learned counsel has submitted that the advertisement for his appointment way back in the year 1978 has been considered wherein it was mentioned that the candidate should have a high Second-Class Master's Degree and on this sole ground, the claim for regularization of the petitioner has been denied.
- D. The learned counsel has referred to the 5th supplementary affidavit filed on behalf of the petitioner and has submitted that the revised statute in respect of the qualifications of teachers of university and colleges dated 12.12.1983 has been brought on record and it has been brought in the statute for the first time that the persons having secured more marks than the midpoint of the prescribed minimum marks for passing an examination in the second division and the prescribed minimum marks for passing an examination in the first division by the University shall be deemed to have passed that examination in high second class.
- E. The learned counsel submits that without prejudice to the aforesaid submission, the concept to take the midpoint has been introduced in the statute dated 12.12.1983 and before this statute, there was no such provision. The learned counsel has further submitted that the provisions

that did not exist at the time of his induction cannot be used to deny him regularization. This is over and above the fact that the scheme of regularization only prescribed second-class degree and there was no such stipulation that a high second-class degree is required.

- F. The learned counsel while giving the sequence has submitted that the petitioner had initially joined the aforesaid college on a temporary basis against a new vacancy and an advertisement was published on 29.07.1978 and ultimately the petitioner was appointed and joined on 01.09.1978.
- G. On 28.01.1980, the Secretary of Bihar University Service Commission gave a temporary concurrence and immediately thereafter on 11.12.1980 the college was taken as a constituent college which also included the employees of the college including the petitioner and all assets and liabilities were also taken over.
- H. He submits that the petitioner has always been treated as an employee of the University. He was also allowed 4th revised UGC scale with retrospective effect from 02.01.1986 vide order dated 11.10.1996 and from time to time the petitioner was entitled to all the service benefits. The petitioner has rendered more than 39 years of continuous satisfactory service; and attained the age of superannuation on 31.07.2016 from the post of Lecturer and in the aforesaid background, the impugned order calls for interference and this writ petition may be allowed. The learned counsel has relied upon the following judgments:

- (i) **2022 SCC OnLine SC 2004 (State of Gujarat and others Vs. Talsibhai Dhanjibhai Patel) para 1**
- (ii) **(1977) 3 SCC 576 (The Nayagarh Co-operative Central Bank Ltd. and another Vs. Narayan Rath and another) para 4**
- (iii) **W.P.(S) No.4173 of 2013 (Prof. Goverdhan Mehta Vs. The State of Jharkhand and others) para 8**
- (iv) **[(2002) 2 BLJR 978] Jitendra Narayan Thakur Vs. Kameshwar Singh Darbhanga Sanskrit University & Ors. Para 4 & 5**
- (v) **2015 SCC OnLine Mad 2678 (P.S. Gunasekaran Vs. The State of Tamil Nadu and others) Para 6 and 7**

5. Arguments of the respondent no.7 as recorded in order dated 23.02.2024

- I. Learned counsel for respondent no.7 while opposing the prayer has submitted that as per the statute of the University relating to the mode of appointment, pay scale, and qualification for the post of teachers of the University as approved by the Chancellor on 01.07.1977 as amended vide letter dated 08.05.1979, the required qualification for lecturer was the first or High Second Class Master's Degree or equivalent degree of a foreign University on the subject concerned with consistently good academic record followed by Ph.D or M.Phil degree.
- II. The learned counsel has submitted that the petitioner did not possess a high second-class master's degree since the petitioner had only 46% in his post-graduation. He submits that the said degree does not constitute a high second-class master's degree although a high second-class master's degree at the relevant point of time was not specifically defined under the statute.
- III. The learned counsel has submitted that the high second class master degree has been well defined in the statute which has been approved by the Chancellor on 12.12.1983 and amended vide letter dated 09.08.1988 and also letter dated 15.12.1990 wherein it has been mentioned that midpoint of the starting point of second class and highest point of second class is to be taken into consideration and that would constitute 52.50% and since the petitioner was having only 46% and he was not qualified for being appointed. He also submits that even the advertisement mentioned about high second-class degree in post-graduation and, therefore, the petitioner was not qualified to be appointed in terms of the advertisement itself.
- IV. Consequently, the very appointment of the petitioner was ex- facie illegal and contrary to the advertisement. He has also submitted that so far as the scheme for regularization is concerned, the scheme has to be read along with the aforesaid statute and the advertisement; the petitioner not having the requisite qualification as per the advertisement cannot claim any benefit of paragraph no.1 (b) of the scheme for regularization which only provides that candidate for regularization has

to have second class master's degree. He submits that the said provision has to be read with other statutes and not in isolation.

V. The learned counsel submits that the high second-class qualification as above the midpoint is well understood in common parlance and subsequent statute is merely clarificatory in nature and would apply for all the recruitments particularly when the advertisement itself provided a high second class. The learned counsel has relied upon the following judgments:

(i) *On the point of difference between irregular and illegal appointment State of Madhya Pradesh Vs. Lalit Kumar Verma (2007) 1 SCC 575 para 8.*

(ii) *On the point of equity of law Laxminarayan R. Bhattad and ors. Vs. State of Maharashtra (2003) 5 SCC 413 para 72; CMD/Chairman, B.S.N.L and ors. Vs. Mishri Lal and ors. (2011) 14 SCC 739*

(iii) *On the point of definition of high second class J.P. Kulshreshtha and Ors. Vs. Chancellor, Allahabad University and Ors. (1980) 3 SCC 418 para 13*

(iv) *On the point of long period of service cannot be a ground for regularization Ganesh Digamber Jambhrunkar & Ors. Vs. State of Maharashtra 2023 LiveLaw (SC) 801.*

VI. The learned counsel has further relied upon the judgment passed by this Court in the case of *Mahendra Prasad Sah Vs. State of Bihar and Ors. [2004 (1) JCR 399 (Jhr)]* to submit that in the said case also, the candidate did not have the high second class qualification considering the midpoint although in the said case, the candidate was appointed without any advertisement.

6. Arguments of the petitioner by way of rejoinder as recorded in order dated 23.02.2024

In response, the learned counsel for the petitioner has submitted that there is no iota of allegation against the petitioner regarding any kind of fraud or misrepresentation. The petitioner participated in the selection process and was ultimately selected and the statute has been wrongly interpreted by the respondents only to deny the claim of regularization which the petitioner is otherwise entitled on the face of the scheme for regularization which applies to the petitioner even as per the respondents. However, the case of the respondents is that the

petitioner does not fit within the four corners of the scheme for regularization.

Findings of this Court.

Background of the case

7. It is not in dispute that the petitioner was initially appointed on 22.12.1976 against leave vacancy of one lecturer in English in K. S. College, Seraikela and submitted his joining on 02.01.1977. The post was advertised in newspaper ‘Searchlight’ on 27.07.1978 and the petitioner participated in the selection process. He was appointed again on 29.08.1978 on the same post of lecturer by the governing body of the college and he joined on 01.09.1978. The services of the petitioner were granted temporary concurrence by Bihar University Service Commission on 28.01.1980 for a period of three months from the date of such concurrence. Thereafter, the college was taken over as a constituent college on 11.12.1980 by Ranchi University the notification for which was issued in view of the decision taken by the Education Department of the State vide letter dated 24.07.1980. The petitioner continued to work and receive salary from the state government through the university and attained the age of superannuation in the year 2016 after rendering service since the year 1978 through advertisement. While in service, the petitioner was granted UGC pay scale.

8. While the petitioner was still in service, a letter dated 08.03.2003 was issued by the Registrar, Ranchi University whereby the petitioner was treated as not regularized in the university. The petitioner filed a writ petition challenging the said letter dated 08.03.2003 being W.P.(S) No. 2200 of 2003 and also claimed mandamus for regularization of his services and claimed revised pay-scale etc. In the said writ petition, an interim order dated 25.03.2009 was passed directing the respondents to take decision with regards to regularization of the services of the petitioner and the claim for regularization was declined vide decision dated 25.04.2009 by Ranchi University which was also challenged in the pending writ petition. Ultimately, decision dated 25.04.2009 refusing to regularize the petitioner was set-aside vide judgment dated 27.03.2014 and the matter was remanded back to the respondents with a direction to take appropriate decision within stipulated time frame by observing that it could not be said that Ranchi

University had taken prompt and urgent steps upon notification of the Statute dated 29.01.1986 for considering the cases of regularization of such Temporary Lecturers and the process of undertaking an exercise for regularization was commenced as late as May 1999 when the University undertook an exercise to seek the name of experts for constituting the screening committee for considering the case of regularization of services of Temporary Lecturers by asking the names of experts from the State Government vide letter dated 11.05.1999. It was observed that the State Government shall do the needful and nominate experts for consideration of the said committee if not already in existence and depending upon the decision to be taken by the respondents, if it was found that the petitioner was entitled for regularization in service, then any consequential benefit of service would thereafter be conferred upon him in accordance with law within a reasonable time thereafter. It was also observed that the college in question now falls within the Kolhan University, Chaibasa created during the pendency of the said writ petition. The findings of the writ court in W.P. (S) No. 2200 of 2003 are as under: -

"I have heard learned counsel for the parties

*So far as the reliance upon the judgment rendered by the Patna High court is concerned, the said judgment appears to have been rendered after the creation of the successor State of Bihar and Jharkhand i.e. on 02.03.2001. In the present case, the learned Single Judge of this Court had earlier issued a categorical direction on 25.03.2009 upon the respondents to take a decision in the matter and while doing so also noticed that similarly situated persons have been extended the same benefit during the pendency of the writ petition. An example of Miss K. Annapurna was also referred in the said order. From perusal of Annexure-14 which is one of the impugned letter dated 08.03.2003, issued by the Registrar of the Ranchi University, it is apparent that the services of petitioner as well as Dr. K. Annapurna were shown to have been not regularized by that date. Therefore, it is apparent that the respondents took a decision to regularize the services of Miss K. Annapurna after 08.03.2003 i.e. after passing of the judgment rendered in the case of **Dr. Shiv Narain Yadav** (Supra) by the Patna High Court. Therefore, the said judgment cannot be a sustainable ground not to take a decision on the question of regularization of the services of the present petitioner. Apart from that from chronology of facts which have been indicated earlier, the petitioner's appointment admittedly was concurred by the Bihar University Service Commission on 28.01.1980 though for a period of three months vide Annexure-4. It is not in dispute by the respondents either that the petitioner has continued to teach in the subject of English in the said College in question since then and after the College was taken over as constituent College of the Ranchi University on*

10/11.12.1980. The petitioner has also got the benefit of time bound promotion conferred by the respondents as also the benefit of UGC scale under the 4th Pay Revision.

It is also evident that the University under took an exercise to seek the name of experts for constituting the screening committee for considering the case of regularization of services of Temporary Lecturers by asking the names of experts from the State Government vide letter dated 11.05.1999. Therefore, it cannot be said that the University had taken prompt and urgent steps upon notification of the statute dated 29.01.1986 for considering the cases of regularization of such Temporary Lecturers. If no decision on the question of regularization of the services of the petitioner were taken prior to 1999, the petitioner obviously cannot be attributed the sole fault for such a delay in taking such decision. The act of regularization had to be undertaken by the respondent authorities which include the University and the State Government as well. In the wake of aforesaid facts, when the process of undertaking an exercise for regularization was commenced as late as May 1999, the Vice-Chancellor of the Ranchi University was not justified in refusing to consider the case of the petitioner by relying upon the judgment rendered by the Patna High Court as aforesaid when the case of other similarly situated person like Miss K. Annapurna was considered and regularized even thereafter. It, therefore, appears that the respondents have not considered the matter relating to regularization of the petitioner's services on merits taking into account all attendant facts and circumstances and the provisions of the statute of 1986 itself in question and whether the petitioner fulfilled the laid down condition therein. Therefore, in the aforesaid state of facts, the matter requires reconsideration at the level of the respondents. The impugned order dated 25.04.2009 (Annexure-15), therefore, cannot be sustained in the eyes of the law and it is quashed. The matter is remanded to the respondents to take a fresh decision in accordance with law within a period of 16 weeks from the date of receipt of a copy of the order.

The respondents would take a decision in the matter on its own merit without being influenced by any observations made hereinabove.

Due to change in the circumstances that the college in question now falls within the Kolhan University, Chaibasa created during the pendency of the writ petition, the concerned respondent authority of the Kolhan University, Chaibasa and the State respondent would consider the matter in accordance with law.

The Ranchi University, if it is in custody of the relevant records relating to the petitioner's case would forthwith transmit the same to the Registrar, Kolhan University, Chaibasa.

Needless to say that the State Government shall do the needful and nominate experts for consideration of the said committee if not already in existence.

Dependant upon the said decision taken by the respondents, if it is found that the petitioner is entitled for regularization in service, then any consequential benefit of service would thereafter be conferred upon him in accordance with law within a reasonable time thereafter.

Accordingly, the writ petition is allowed to the extent as indicated hereinabove."

9. The aforesaid order of the writ Court was not complied and therefore, a contempt case being Contempt Case (Civil) No. 746 of 2014 was filed. However, in absence of specific direction in the writ Court's order, the contempt application was dismissed. The petitioner filed the instant writ

petition and during the pendency of the writ petition the claim for regularization was rejected and the same was challenged in the writ petition as mentioned above.

10. Pursuant to the order passed by this Court, a committee of experts was constituted and a recommendation was made in favour of the petitioner for regularization of his services in terms of the Statute for regularization governing the petitioner and the matter was placed before the Hon'ble Governor, the Chancellor of the Universities but the office of the Hon'ble Chancellor disagreed with the recommendation of the expert committee and refused to regularize the petitioner on the sole ground that the petitioner does not satisfy the condition of the advertisement as the petitioner only had 2nd class master's degree and not high 2nd class master's degree i.e. 52.5% - midpoint between 45% and 60% as the petitioner had 46% marks in the master's degree.

11. While making a distinction between illegal and irregular appointment in the judgment passed by the Hon'ble Supreme Court in the case of "***State of M.P. and others Vs. Lalit Kumar Verma***" reported in (2007) 1 SCC 575, it has been held that an illegal appointment is one which has been made in total disregard to the constitutional scheme as also the recruitment rules and irregular appointment is one where although substantial compliance of constitutional scheme as also the rules have been made, but some provision of the rule might not have been strictly adhered to.

12. Considering the aforesaid facts and circumstances that all the relevant procedure for appointment of the petitioner was followed, this Court is of the view that by no stretch of imagination, the appointment of the petitioner can be termed as illegal appointment. The petitioner admittedly had ***second class Master's degree*** and the respondents are insisting that he ought to have ***high second-class Master's degree i.e. midway between 45% and 60% which would come to 52.5%***. However, the concept of having marks midway between 45% and 60% to constitute a ***high second-class Master's degree*** was introduced later on vide revised Statute dated 12.12.1983 and the petitioner had participated in the selection process pursuant to advertisement published on 29.07.1978 and he joined on 01.09.1978. The Statute which

has been relied upon by the respondents is dated 22.07.1977 read with amendment dated 08.05.1979.

13. In the present case, there is no dispute that the petitioner was duly appointed after participating in the selection process through advertisement and at the relevant point of time, the concerned college was still an affiliated college. The services of the petitioner after recruitment process were duly concurred by the College Service Commission for a period of three months and thereafter, the college became a constituent college by virtue of it being taken over by the University and the petitioner continued to work throughout till he attained the age of superannuation. In the present case, admittedly at the time of recruitment although a specific requirement was made in the advertisement itself that the incumbent should possess ***high 2nd class master's degree***, but at the relevant point of time, high second-class marks remained undefined.

14. Moreover, it is not the case in the impugned order that the petitioner did not satisfy the condition for regularization as per any applicable statute but the case is that the petitioner did not satisfy the condition of the advertisement as he did not possess ***high 2nd class master's degree*** and only had ***a 2nd class master's degree***.

15. In the judgment passed by the Hon'ble Supreme Court in the case of "***J.P. Kulshrestha (Dr.) Vs. Allahabad University***" reported in (1980) 3 SCC 418 the whole controversy was regarding legality of selection of Readers of Allahabad University and the prescribed qualification for Readers was ***first - or high second-class Master's degree***. It was undisputed that Allahabad University awarded first class to those who obtained 60% and above and second class to those who obtained anything between 48 to 59%. The appellants before the Hon'ble Supreme Court had obtained first class or high second-class marks and the contesting respondents had secured less than 52 ½ percent marks. The allegation with regard to pick and choose method was rejected and the Hon'ble Supreme Court was of the view that possession of first class or high second class was imperative.

In the judgement passed in the case of ***J.P. Kulshrestha (Dr.) (supra)*** the Hon'ble Supreme Court further considered the point as to when is a second

class high, going by marks. The Hon'ble Supreme Court was of the view that for a lay man the meaning is clear. When the range of second-class marks is wide, the candidate who gets that class with marks within lower half bracket cannot be said to have got high second class. The Hon'ble Supreme Court also observed that they were not impressed with the submission that the University had all these years treated a high second class to mean a mere second class. Paragraph no. 13 of the aforesaid judgment is quoted as under:

13. Now we come to close grips with the principal point debated before us. When is a second class high, going by marks? For any layman the meaning is clear. For any purpose-oriented interpretation the decoding is simple. High is the antithesis of low and a high second class is, therefore, a contrast to a low second class. When the range of second class marks is wide, of the candidate who gets that class with marks within the lower half bracket you cannot say he gets a high second class. If he manages to get 48% marks he barely gets a second class — not a high second class. And common sense, which is not an enemy of court sense, points clearly to the meaning of high second class as one where the marks fall a little short of first class marks and he narrowly misses first class. In the context of Ordinance 9 and its purpose and the collection of words used viz. "first class or a high second class", the interpretation will misfire if we disregard the intent and effect of the adjective "high" and indifferently read it to mean merely the minimum marks needed to bring the candidate within the second class. High is high and a superior second class denotes marks somewhere near first class marks. Assuming we relax, dilute and liberalise the rigour clearly imported by the draftsmen by using the expression 'high second class', still it is impermissible to render the word 'high' nugatory or make, by construction, that intensive adjective redundant. Nor are we impressed with the strange submission that the university has all these years treated a high second class to mean a mere second class, and, therefore, English has lost its potency in the Allahabad University and high includes low. Such bathetic semantics must be rejected since continuing commission of wrong does not right it."

16. The aforesaid judgement passed by the Hon'ble Supreme Court in the case of **J.P. Kulshrestha (Dr.) (supra)** does not apply to the facts and circumstances of this case. This case relates to claim of regularization of the petitioner in terms of the Statute for regularization dated 29.01.1986 and the scope for scrutiny is whether the petitioner satisfies the required conditions of regularization with respect to his qualification as per the Statute for regularization. On the other hand, in the judgment passed by the Hon'ble Supreme Court, two set of parties were contesting with each other where the selection process was under challenge. While deciding competing claims, the Hon'ble Supreme Court was of the view that the candidates who were having second class within the lower bracket of the range between 48% to

59%, if taken from its mid-point, would not constitute a high second class and were not qualified.

17. The issue involved in the present case is totally different. In the present case the petitioner was inducted in service in the affiliated college through an advertisement followed by all the legal formalities in connection with his appointment including concurrence by the College Service Commission, though only for a period of three months. Thereafter the college was taken over and made a constituent college of the university and the petitioner continued to work and was given revised pay scale till he attained the age of superannuation. In the meantime, the claim of the petitioner for regularization was taken up and the impugned order refusing regularization has been passed under the Statute for regularization dated 29.01.1986 which provides under clause 1(b) that, interalia, the required qualification for regularization is *at least a second-class Master's degree* in the subject.

18. The point for consideration is –

Whether, the claim for regularization of the petitioner can be declined on the ground that the petitioner did not possess “high 2nd class master's degree” as per the advertisement in spite of having qualification as per clause 1(b) of the Statute for regularization dated 29.01.1986 which requires only “at least a second class Master's degree” in the subject.

19. This Court is of the view that when a scheme for regularization has been framed clearly providing the required qualification for regularization i.e. second-class Master's degree, there is no scope for referring to any other Statute including the Statute which provided for a requirement of first-class Master's degree or high second class Master's degree. This is over and above the fact that high second-class Master's degree was not defined under the Statute and it stood defined later on vide revised Statute in respect of qualification of teachers of Universities/Colleges dated 12.12.1983 wherein specific provision was made as follows:

“Persons having secured marks more than the mid point of the prescribed minimum marks for passing an examination in the second division and the

prescribed minimum marks of passing an examination in the first division by a University shall be deemed to have passed that examination in the high second class.”

20. In view of the specific Statute involved in the present case governing the claim of regularization of the petitioner which specifically provided that the candidate should possess at least a second-class Master's degree, any other provision relating to minimum qualification cannot be read into the aforesaid Statute for regularization dated 29.01.1986.

21. It is further not in dispute that the petitioner satisfies all the criteria for regularization in terms of the Statute dated 29.01.1986 and the respondents are trying to read into the said Statute the minimum qualification which was mentioned in the advertisement pursuant to which the petitioner was appointed although no such Statute has been brought on record indicating such minimum qualification as on the date when the advertisement was issued in the year 1978. Accordingly, the said judgment does not apply to the facts and circumstances of this case.

22. In the judgment passed by this Court in the case of “***Mahendra Prasad Sah***” (*Supra*) the petitioner was working in the college prior to it becoming a constituent college with effect from 30.08.1988 and an enquiry was set-up to decide as to who were the persons qualified to be appointed. In the said case also, the petitioner was possessing a ***second-class Master's degree*** and on 06.02.1978 the governing body of the said college forwarded a proposal to Bihar University Service Commission to give concurrence of his temporary appointment and concurrence was given on 30.09.1978. On 19.08.1983, the governing body of the concerned college had confirmed the appointment of the said petitioner. Thus, the appointment of the said petitioner was under challenge.

23. This Court observed in paragraph 5 of the said judgment that from the Statutes relating to mode of appointment to the post of Lecturer approved by the Hon'ble Chancellor on 01.07.1977, the minimum qualification prescribed was ***first or high second-class Master's degree*** and, on the day, he joined temporarily, the petitioner did not even have a Master's degree, but he acquired the same subsequently and could manage to get only a second-class Master's degree. The Court was of the view that on the day he

was absorbed, namely 21.03.1983, he did not possess the requisite qualification for being appointed as the Lecturer in the College. While considering the provision of the Statute for regularization of services of purely temporary Lecturers appointed on or before 28.02.1982 (which is also the statute involved in the present case), as approved by the Hon'ble Chancellor it was also observed that the statute also insisted that the appointment should have been made on the basis of advertisement for the post in certain newspaper and this requirement was also there in the Statute regarding regularization of services of purely temporary lecturer as approved by the Hon'ble Chancellor and notified on 18.11.1980 and there was nothing on record to show that the petitioner was appointed by a regular process of selection after issuing notice inviting applications as prescribed and the services of the petitioner was terminated by the Vice Chancellor on 10.06.2000.

24. The said judgment was based on two premises; *firstly*, the writ petitioner did not possess the requisite qualification at the time of his appointment or at the time of his absorption and thus his appointment was itself bad in law and *secondly*, the Statute for regularization of the services also could not help the writ petitioner as his appointment was not made through advertisement as provided in the stature for regularization. In the said case, the initial appointment was held to be invalid for not having the requisite qualification and no relief could be granted by referring to the statute for regularization as the condition regarding regularization that the appointment should have been made through advertisement was not satisfied.

25. The said judgment of "*Mahendra Prasad Sah*" (*Supra*) does not apply to the present case where the petitioner is fully qualified for regularization as per the Statute dealing with regularization of the services of purely temporary lecturers as approved by the Hon'ble Chancellor vide letter dated 29.01.1986 for those appointed on or before 28.02.1982 but did not have the required qualification in terms of the advertisement i.e *high second-class Master's degree* but just had *a second-class Master's degree*. Once the petitioner was qualified as per clause 1(b) of the Statute for

regularization dated 29.01.1986 which required only *a second-class Master's degree*, the appointment of the petitioner in violation of the advertisement can at best be termed as irregular appointment and the case of the petitioner cannot be said to be outside the purview of the Statute for regularization dated 29.01.1986 on the face of specific clause 1(b) prescribing the required qualification for regularization.

26. This Court is of the considered view that once the petitioner is duly covered by the aforesaid Statute for regularization dated 29.01.1986, the claim of the petitioner for regularization could not have been rejected on the ground that he did not possess *high second-class Master's degree*.

27. In the judgment passed by the Hon'ble Supreme Court in the case of "*Ganesh Digamber Jambhrunkar and others Vs. The State of Maharashtra and others*" reported in (2023) *Live Law (SC) 801* which has been relied upon by the respondents, it was a case where the petitioner was working for a long period on contractual basis. With regard to such a petitioner, it was held that such long period of work on contractual basis does not create a vested right to regularization. The said judgment does not apply to the facts and circumstances of this case as the appointment of the petitioner was not on contractual basis, rather it was a regular appointment on vacant sanctioned post in an affiliated college through advertisement, approved by College Service Commission for a period of three months and soon after appointment the college itself was taken over by the university as a constituent college and the claim of regularization of the petitioner as per Statute for regularization dated 29.01.1986 remained pending and has been finally decided by the impugned order in the year 2021. The petitioner continued to work, was granted pay as per revised scale and he attained the age of superannuation in the year 2016.

28. The impugned order of rejection of the claim for regularization is quoted as under: -

“File No.6-505/13/2021-UNI

राज्यपाल सचिवालय, झारखंड, राँची

पत्रांक:-KU-04/20201490/ रा० म० राँची, दिनांक:- 25/08/2021

प्रेषक,

सुबोध कुमार,
अवर सचिव।
सेवा में,
कुलपति,
कोल्हान विश्वविद्यालय, चाईबासा।

विषय:- Regarding submission of the report of Screening Committee dated 28-08-2019 constituted as per Statutes, in respect of Sri Kusheshwar Prasad Singh, temporary Lecturer of English, K.S. College, Saraikela.

प्रसंग: कुलसचिव, कोल्हान विश्वविद्यालय, चाईबासा का पत्रांक 1112/19,
दिनांक-21.09.2019

महाशय,

निदेशानुसार उपर्युक्त विषयक प्रसंगाधीन पत्र के साथ संलग्न स्क्रीनिंग कमिटी की बैठक दिनांक 28.08.2019 के आलोक में माननीय राज्यपाल-सह-कुलाधिपति महोदय द्वारा निम्नांकित आदेश पारित करने की कृपा की गयी है:-

Statutes for Regularisation of the Service of Purely Temporary Lecturers Appointed on or before the 28th February, 1982 (As approved by the Chancellor vide letter no. BSU-25/85-283-GS(1) dated 29.01.1986) की कंडिका - 1(d) निम्नवत है:-

1. "A Purely temporary lecturer, who is in the service of the University or of a college admitted to it as a lecturer Shall be appointed by the Syndicate or the Governing Body as the case may be, in the regular service of the University or the College concerned, if he fulfils the following conditions:

(a)....

(b)....

(c)....

(d) That, the appointment had been made on the basis of advertisement of the post in the Indian Nation, Searchlight, Aryavarta, Pradeep or in any other daily newspaper of Bihar State or in a leading newspaper of India and from the panel recommended by a Selection Committee constituted by the University/college for the purposes assisted by an expert or experts.

उपर्युक्त Statute के तहत गठित समिति की दिनांक 28.08.2019 की कार्यवाही में यह स्पष्ट उल्लेख है की श्री कुशेश्वर प्रसाद सिंह नियुक्ति के समय Searchlight में विज्ञापित उच्च द्वितीय श्रेणी (52.5 %) की आवश्यक योग्यता नहीं रखते थे। इन्हें Masters डिग्री में मात्र 46 % अंक प्राप्त थे। कॉलेज के अधिग्रहण (take-over) के समय भी इन्हें निर्धारित योग्यता नहीं थी।

यह सही है की इनकी नियुक्ति Searchlight अखबार में विज्ञापन निकाल कर हुई थी पर Searchlight में निकाले गए विज्ञापन के अवलोकन से भी स्पष्ट है की उसमे उच्च द्वितीय श्रेणी की योग्यता मांगी गयी थी।

अतः यह स्पष्ट है कि इनकी नियुक्ति विज्ञापन की शर्त के अनुरूप नहीं थी अतः यह निष्कर्ष निकलता है की इनकी नियुक्ति के मामले में उपर्युक्त कंडिका 1(d) में निहित शर्त का उलंघन हुआ है।

Regularisation का लाभ उन्हीं व्यक्तियों को दिया जा सकता है जो उपर्युक्त statute की सभी शर्तों को पूरी करते हों। चैंकि श्री कुशेश्वर प्रसाद सिंह के मामले में statute की कंडिका 1(d) की शर्त पूरी नहीं होती है, अतः इस मामले में समिति की अनुशंसा से असहमत होते हुए इनकी सेवा के regularisation को अस्वीकृत किया जाता है।

विश्वासभाजन
(सुबोध कुमार)
अवर सचिव"

29. The Statute for regularization which concerns the petitioner is the Statute which has been approved by the Hon'ble Chancellor on 29.01.1986. The Statute is quoted as under:

8. STATUTE FOR REGULARISATION OF THE SERVICES OF PURELY TEMPORARY LECTURES APPOINTED ON OR BEFORE THE 28TH FEBRUARY, 1982.

(As approved by the Chancellor vide letter no. BSU-25/85-283-GS (1) dated 29.1.1986).

With effect from the date of the order of the Chancellor under Section 5 (2) of the Bihar Inter-University Board Act, 1981 the undermentioned criteria shall be followed for absorption of purely temporary lecturers in the regular service of the University or of a College admitted to the University |(other than a College managed and maintained by the State Government.)

1. *A purely temporary lecturer, who is in the service of the University or of a College admitted to it as a lecturer shall be appointed by the Syndicate or the Governing Body as the case may be, in the regular service of the University or the College concerned, if he fulfils the following conditions;*

(a) that, he had been appointed, as lecturer in the service of the University or the College concerned on purely temporary basis on or before the 28th February, 1982 and has been since then continuing in the service of the University/College as such;

(b) that, he possesses at least a Second-Class Master's degree in the Subject;

(c) that, the post on which the lecturer concerned had been appointed was duly sanctioned by the competent authority or the proposal for sanction of the post had been submitted by the University/College to the State Government in the Education Department on or before 28.2.1982 which was subsequently approved by State Government or the said proposal is still under consideration of the State Government;

(d) that, the appointment had been made on the basis of advertisement of the post in the Indian Nation, Searchlight, Aryavarta, Pradeep or in any other daily Newspaper of Bihar State or in a leading newspaper of India and from the panel recommended by a Selection Committee constituted by the University/ College for the purposes assisted by an expert or experts;

(e) that, his work has been found to be satisfactory; and

(f) that, the Chancellor, on the recommendation of a Committee constituted by him consisting of (i) the Vice-Chancellor/Pro-Vice-Chancellor of the University, (ii) an Officer nominated by the State Government and (iii) two experts nominated by the Chancellor; is satisfied that the candidate fulfils the conditions laid down above.

Provided that the Chancellor may in the case of individual hardship in respect of any lecturer appointed at the time of the starting of the College against the first post in the department, relax any of the conditions prescribed in clause (d) above:

N. B. - The conditions prescribed under clause (d) above shall be deemed to be fulfilled if the name of the lecturer concerned had ever been recommended by Bihar Public/University Service Commission for appointment to the post of lecturer or if his appointment as lecturer had ever been made in the post on the basis of advertisement and selection as required above.

2. The Committee constituted under clause (f) above shall meet from time to time on such dates as may be fixed by the Vice-Chancellor and finalise its recommendation in respect of all purely temporary lecturers within a period of four months from the date of implementation of these Statutes.

3. The Registrar shall, as early as possible, prepare a statement of all temporary lecturers in the service of the University who fulfil the prescribed conditions for consideration by the Committee. In the case of Admitted Colleges, the Principal of the College concerned shall prepare a statement in respect of the temporary lecturers of his College and send the same along with all the relevant papers to the Registrar for consideration by the Committee. The recommendation of the Committee shall be submitted to the Chancellor for his approval.

4. Subject to the conditions prescribed in the Statutes relating to qualifications of teachers regarding stoppage of increments, lecturers absorbed in the regular service under the above provisions shall draw their first increment in the prescribed scale on completion of one year of service from the dates of their appointments from which they have been continuing in service without any break.

5. The seniority of lecturers absorbed in regular service under the above provisions shall be determined from the dates of their absorption which shall be so fixed that their inter-se seniority, as it existed before their absorption in the service of the University or the College, as the case may be, remains unaffected.

6. These Statutes shall not be applicable to the temporary lecturers appointed after 28.02.1982.”

30. Upon perusal of the aforesaid Statute, this Court finds, *inter alia*, that purely temporary lecturers who were in service of the university or of

a College admitted to the University, shall be appointed by the syndicate or the Governing Body, as the case may be, in the regular service of the university or the college concerned, provided they fulfil the conditions mentioned therein. There are six conditions- (a) to (f). The dispute is in connection with the prescribed condition no. (d). The four of the conditions (a) to (c) and (e), with regards to which there are no dispute, are as under:-

- (a) *Such appointment has been made on or before 28.02.1982, and since then he has been continuing in the services of the university/college as such;*
- (b) *He possesses at least a Second-Class Master's degree in the subject.*
- (c) *The post of lecturer is a duly sanctioned post by the competent authority in terms of Clause (c) of the aforesaid statute.*
- (e) *The work has been found to be satisfactory.*

31. Clause (d) of the Statute provides the fourth condition, that is, the appointment had been made on the basis of advertisement of the post in the Indian Nation, Searchlight, Aryavarta, Pradeep or in any other daily Newspaper of Bihar State or in a leading newspaper of India and from the panel recommended by a Selection Committee constituted by the University/ College for the purposes assisted by an expert or experts.

32. On the face of the provision of clause (d), the petitioner satisfies this condition also.

33. However, the objection of the respondents is that the petitioner does not satisfy the condition of advertisement i.e. possession of ***high 2nd class Master's degree.***

34. The clause (d) is coupled with a proviso and also a deeming provision as mentioned in the Statute itself which is required to be seen with condition as contained in clause (f). Clause (f) of the Statute provides that the Hon'ble Chancellor shall consider the recommendation of a Committee constituted by him consisting of (i) the Vice-Chancellor/Pro-Vice-Chancellor of the University, (ii) an Officer nominated by the State Government and (iii) two experts nominated by the Chancellor, and will

satisfy himself that the candidate fulfils the conditions laid down in the Statute. The Hon'ble Chancellor has also been empowered to give certain relaxation in clause (d) in terms of the proviso which provides that the Chancellor may in the case of individual hardship in respect of any lecturer appointed at the time of the starting of the College against the first post in the department, relax any of the conditions prescribed in clause (d). The said proviso is followed with a note which has a deeming provision, that is, the conditions prescribed under clause (d) shall be deemed to be fulfilled if the name of the lecturer concerned had ever been recommended by Bihar Public/University Service Commission for appointment to the post of lecturer or if his appointment as lecturer had ever been made in the post on the basis of advertisement and selection as required in the Statute.

35. Admittedly, the recommendation of the expert committee was in favour of the petitioner. However, the office of the Hon'ble Chancellor was not satisfied that the petitioner fulfilled the conditions laid down in the statute, inasmuch as, the petitioner did not possess the high 2nd class Master's degree in terms of the advertisement published in Searchlight pursuant to which he was appointed as he possessed only 46% marks.

36. This Court is of the considered view that while taking the aforesaid view to reject the claim of regularization of the petitioner, the office of the Hon'ble Chancellor ignored the following aspects of the matter on account of which the impugned order is perverse, they are: -

- a) In the Statute for regularization dated 29.01.1986, whose full text has been quoted above, there is no such provision that the lecturer should possess a high second-class Master's degree. Rather, there is a specific condition for regularization in terms of clause (b) that the candidate should possess ***at least a second-class master's degree*** in the subject. The office of the Hon'ble Chancellor has completely ignored the required condition at clause (b) of the Statute for regularization dated 29.01.1986 while taking a view that the petitioner was not entitled to regularization as he did not possess ***high 2nd class master's degree*** in terms of the advertisement.
- b) While taking the aforesaid view and ignoring clause (b) of the Statute for regularization dated 29.01.1986, the office of the Hon'ble

Chancellor has refused to follow the scheme for regularization and has virtually re-written condition - clause (b) of the Statute for regularization dated 29.01.1986 by insisting that the petitioner ought to have possessed ***high 2nd class master's degree***. This Court is of the considered view that the Statute for regularization dated 29.01.1986 was required to be followed in totality and once the petitioner was found qualified in terms of clause (b) by possessing ***at least a second-class master's degree*** there was no occasion to refer to the advertisement which provided that the candidate should possess ***high 2nd class master's degree***. If such a course is allowed the same would be contrary to and in direct conflict with the Statute for regularization dated 29.01.1986 and would amount to making condition clause (b) of Statute for regularization dated 29.01.1986 redundant.

- c) During the course of arguments, the learned counsel for the respondents have asserted that the scheme for regularization is to be read with other Statutes of the university which provided for qualification for appointment of lecturer as ***high 2nd class master's degree*** but they have no answer to the specific condition at clause (b) of the Statute for regularization dated 29.01.1986 and as to how the provision of clause (b) can be ignored or more rigorous condition can be put by referring to other Statutes framed by the university when the scheme for regularization does not even refer to any other Statute of the university to give a complete go-by to specific and unambiguous provision of clause (b) with respect to required qualification for regularization, that is, ***at least a second-class master's degree***. The impugned order does not even refer to or discuss clause (b) of Statute for regularization dated 29.01.1986 which has a direct bearing on the case of the petitioner.

37. This Court is of the considered view that the Statute for regularization dated 29.01.1986 having the force of law was required to be strictly followed and once the conditions mentioned therein were satisfied, there was no scope to deny regularization. This Court finds that the

petitioner satisfied all the conditions of regularization in terms of Statute for regularization dated 29.01.1986 including the condition of clause (b) prescribing the qualification for regularization as *at least a second-class master's degree* and the claim for regularization of the petitioner could not have been rejected by referring to the terms of the advertisement i.e. requirement of *high 2nd class master's degree*.

38. Moreover, the Statute for regularization dated 29.01.1986 was made applicable to all such appointments made on or before 28.02.1982 with a rider that the candidate should have been continuing in the services of the university/college and should satisfy the conditions for regularization mentioned in Statute for regularization dated 29.01.1986 with a blanket condition that with respect to qualification the candidate should possess *at least a Second-Class Master's degree* in the Subject. This Court is of the considered view that the Statute for regularization framed by the Hon'ble Chancellor is essentially a policy document and once it is framed, notified and enforced, it has the force of law and is binding on all including the office of the Hon'ble Chancellor while considering the individual cases for regularization under the Statute for regularization. There is no scope for any deviation from the required conditions for regularization over and above what has been provided in the Statute for regularization dated 29.01.1986.

39. As a cumulative effect of the aforesaid findings the question formulated in paragraph 18 above is answered as follows: -

The claim for regularization of the petitioner could not have been declined by the impugned order on the ground that the petitioner did not possess "high 2nd class master's degree" as per the advertisement. This is on account of the reason that the petitioner is duly qualified and entitled for regularization as per clause 1(b) of the Statute for regularization dated 29.01.1986 which requires only "at least a second class Master's degree" in the subject. So far as other conditions of regularization are concerned, there is no dispute.

40. Consequently, the following orders are passed: -

- a) The impugned order dated 25.08.2021 issued under the signature of the Under Secretary, Hon'ble Governor's Secretariat, Jharkhand, Ranchi is quashed and set-aside.
- b) The service of the petitioner is directed to be regularized in terms of the Statute for regularization dated 29.01.1986.
- c) The petitioner would be entitled to all reliefs in terms of the scheme for regularization as contained in the Statute for regularization dated 29.01.1986.
- d) The office of the Hon'ble Chancellor is directed to issue follow-up orders /notification within a period of three months from the date of communication of this order.
- e) Thereafter the respondent no. 2 is directed to do the needful and issue follow up orders so that all monetary benefits arising out of this judgment including service benefits and pension is remitted to the petitioner within a period of eight months from the date of communication of the follow up notification/order from the office of Hon'ble Chancellor.
- f) In case of any default, the petitioner would be entitled to interest @6% per annum from the date of this judgment till payment.

41. This writ petition is allowed in the aforesaid terms.

42. Pending interlocutory application, if any, is dismissed as not pressed.

(Anubha Rawat Choudhary, J.)

Pankaj/Mukul