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**(2013) 01 PAT CK 0078**  
**In the Patna High Court**  
**Case No : CWJC No. 15350 of 2007**

Anand Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 10-01-2013

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14

**Citation :** (2013) 2 PLJR 472

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

**Advocate :** Y.V. Giri and Pranav Kumar, for the Appellant; H.P. Singh and Arbind Kumar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ajay Kr. Tripathi, J.—Ad hocism seems to be the bane for most of the ills of the Higher Education in the State of Bihar. Series of decisions over long period of time rendered by the Apex Court or this Court has not helped in cleaning up the stable, as would be evident from reading of the present writ application and the issues raised therein. As far back as in the year 1989, the Hon'ble Supreme Court had taken note of the manner in which large number of ad hoc teachers came to be appointed, either by Vice-Chancellors or Principals of various colleges, without any advertisement or sanctioned posts being available. Though ad hoc appointments were valid for a period of six months but they have been allowed to continue from one decade to the next. The Hon'ble Supreme Court in the order contained in Annexure-2 has also taken note of the case where salary was being paid to such teachers from provident fund, development fund, building fund etc. which can never be the source for funding such teachers. Clear directions came to be issued on 6th of December, 1989 to bring an end to the ad hocism by resorting to permanent arrangement. The direction of the Apex Court is reproduced herein below:--

(i) The University Service Commission shall advertise the posts available for

direct recruitment within four months.

(ii) The Government shall consider the workload in each University and sanction such additional posts that may be required, within the said period. Such additional posts shall also be filled regularly either by direct recruitment or by promotion as per rules and not by ad hoc appointment.

(iii) The University/Government shall relax the maximum age prescribed for direct recruitment of teachers to the extent of service rendered by persons as ad hoc teachers.

(iv) All the ad hoc teachers in service on February 10, 1989 against sanctioned posts shall continue till selection is made by the University Service Commission and they shall be paid in terms agreed for the period in which they actually worked.

(v) Other ad hoc teachers who have worked till that day must also be paid.

(vi) The payment shall be made within one month.

2. There is nothing available from record that these directions of the Hon''ble Supreme Court were followed in letter and spirit. If that had been, there may not have been many other litigations by various teachers on this issue. But it was not be as cases on the issue continue to pour before this Court and before the Apex Court.

3. We are not required to take note of all those decisions. What is of relevance is the decision which had been rendered by the Hon''ble Supreme Court in the case of Veer Kunwor Singh University Ad hoc Teachers Association and Others Vs. The Bihar State University (C.C.) Service Commission and Others . This was yet another matter where the question of status of ad hoc teachers and their rights for continuance or permanency was the subject matter of consideration by the Apex Court. The Division Bench of the Hon''ble Supreme Court after taking note of the various other decisions rendered from time to time, again opined in similar manner in which the 1989 order was passed. The observations of the Hon''ble Apex Court rendered in paragraphs 38, 39 and 40 are reproduced hereinbelow:--

38. The practice to appoint ad hoc teachers must be deprecated. If a Government of a State or a University which is also a State within the meaning of Article 12 of the Constitution of India, despite the repeated observations of the superior courts of the country, continue to do so, such a practice must be condemned.

39. Directions can be issued to the State to act within four-corners of the statute and to declare any action taken in contravention thereof to be a nullity; but it would not be permissible for this Court to go beyond the provisions of the statute and issue a direction that cases of all the appellants must be considered irrespective of the fact as to whether their appointment even as ad hoc teachers was against a sanctioned post or they have been working against the non-

sanctioned posts or not.

40. We may at this stage notice that even before the High Court it had been conceded that many teachers have been appointed on an ad hoc basis on non-sanctioned posts. We fail to understand how this could be validly done. Those teachers who could compete with others having requisite qualification must be appointed by the University Service Commission in accordance with the provisions of the Bihar State Universities Act. Appellants may have the requisite qualification at the relevant point of time, but we must also consider that since then a large number of other persons must have acquired the requisite qualification for being appointed to the said posts, who cannot be deprived of their right to be considered for appointments alongwith other eligible candidates in terms of Article 14 of the Constitution of India.

4. Since learned Senior Counsel for the petitioner relies on the observation of the Hon'ble Supreme Court in paragraph 46 of the said decision, that too is reproduced hereinbelow for ready reference:--

46. We, therefore, are of the opinion that the interest of justice would be subserved if it is directed that the respondents herein in filling up of the vacant posts must take into consideration the cases of all those teachers also who have the requisite qualifications, upon relaxation of age, if permissible by law alongwith other eligible candidates. We may, however, direct that it would be open to the State of Bihar as also the concerned Universities to forthwith terminate the services of those teachers not working against sanctioned posts or who do not fulfill the requisite educational qualifications or whose services are otherwise not required.

5. The cause of action for the petitioner to file the present writ application is that pursuant to the direction of the Hon'ble Apex Court in the case of Veer Kunwar Singh University (supra), Annexure-19 has been issued by the respondent-B.N. Mandal University terminating the services of large number of teachers, whose names figure in the said notification dated 1.10.2007. Name of the petitioner also figures at serial 7. He wants quashing of this notification insofar as he is concerned because, according to him, the direction of the Hon'ble Supreme Court does not apply to his case and the observation, in fact, of the Hon'ble Apex Court has been misread or applied in removing the petitioner from the post of teacher, despite he being in that capacity for almost two decades.

6. Learned Senior Counsel places reliance on some lines in paragraph 46, which says that the University or the State was required to terminate services of those teachers not working against sanctioned posts or who do not fulfill the requisite educational qualifications or whose services are otherwise not required. According to him, there is no dispute about his qualification, there is no dispute about the sanctioned post and there is no material to show that services are not required. In support thereof, attention of the Court has been drawn to Annexure-10, which is the notification issued by the University, after the earlier

order of the Apex Court issued in the year 1989 and some orders of the High Court passed in writ applications, whose numbers are indicated in the said notification.

7. Stand of the counsel for the petitioner is that if by virtue of this notification, the status of this petitioner was identified and conferred where was the occasion for the University to remove him from the post after so many years by misreading the observation or direction of the Supreme Court issued in the year 2007. He has also drawn the attention of the Court to some other Annexures including some resolutions taken by the Syndicate, as would be evident from reading of Annexures-13, 15 etc.

8. The Court has very carefully gone through all these Annexures and notifications. One tag, which has stuck with the petitioner right from these notifications, is that he was an ad hoc teacher, continued to be an ad hoc teacher and whatever arrangement or indulgence was shown by the University from time to time also smacks of ad hocism. At no point of time, the petitioner acquired any permanency as to the post on which he was appointed. If it was so, then the present writ would not have arisen at all.

9. The ad hoc arrangement, by virtue of which the petitioner continued all these years, cannot be seriously disputed. With due regard to learned Senior Counsel, the observation of the Hon''ble Supreme Court cannot be read down to allow continuance of such persons on the post. If it is done then the University cannot go about curing the ills by resorting to the process of appointment afresh in accordance with direction of Apex Court, by giving opportunity to one and all, who would be eligible. The benefit which the petitioner wants to derive from the decision of the Hon''ble Supreme Court rendered in the year 2007, would be taken into consideration when appointment on a permanent basis is taken, provided the petitioner fulfils the educational and other qualifications laid down in the statute or the advertisement, which may be issued. But it cannot be his case that he should be allowed to continue without being disturbed in violation of the direction of the Hon''ble Apex Court and till the University takes steps for filling up the posts on regular basis.

10. In the opinion of this Court, the removal is a first step towards filling up the posts on regular basis after following the procedure. Therefore, the University was compelled by the Hon''ble Apex Court to act in the manner in which it has acted.

11. A short and cryptic counter affidavit has been filed on behalf of the University. It is evident from reading of paragraph 4 of the counter affidavit that the petitioner was appointed on ad hoc basis on compassionate ground as a Lecturer on 2.1.1990. The reason for compassion, I am told, is that his grandfather was responsible for setting up of the college in question and the compassion, therefore, was applied in the case of the present petitioner. The compassion, however, cannot subsist contrary to statute and the direction of the

Hon''ble Supreme Court. Petitioner has already been allowed to work in that capacity for a long period of time. He has the observation of the Hon''ble Apex Court for consideration for permanent appointment as per the directions given in paragraph 46 but none of the above helps the petitioner in retaining the post or continuing on the post after the notification contained in Annexure-19 came to be issued.

12. Any interference with Annexure-19 in relation to the petitioner would be yet another instance of the High Court supporting ad hoc arrangement made by the University and allowing dilution of the order of the Apex Court by trying to interpret the said order, when no interpretation is required to be made.

13. Writ application, therefore, has no merit. It is dismissed.

14. The question of any payment to the petitioner is another cause of action for which he can raise his grievance before appropriate forum. The Court, however, would like to direct the State and the University that they have an obligation in terms of the observation of the Hon''ble Supreme Court to take steps for filling up the posts in accordance with statute and the law within a reasonable time frame so that the indulgence given to the petitioner of participation does not become illusory.