

(2019) 07 PAT CK 0298

In the Patna High Court

Case No : Letters Patent Appeal No. 619 Of 2018 In Civil Writ Jurisdiction Case
No. 16539 Of 2016

Jai Prakash University Chapra Through And Ors

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 30-07-2019

Acts Referred:

Bihar State Universities Act, 1976 — Section 35

Citation : (2019) 07 PAT CK 0298

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Anjana Mishra, J

Bench : Division Bench

Advocate : Anjani Kumar, Nagendra Kumar Singh, Purushottam Kumar Jha,
Ashutosh Ranjan Pandey

Final Decision : Dismissed

Judgement

Re: I.A. No. 1 of 2019

1. Heard Shri Anjani Kumar, learned senior counsel for the appellants and Shri Purushottam Kumar Jha, learned counsel for the respondent-petitioner as well as Shri Ashutosh Ranjan Pandey, learned Additional Advocate General No. 15 for the State.

2. The appeal is reported to be delayed by two days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 1 of 2019 stands allowed accordingly.

Re: L.P.A. No. 619 of 2018

This appeal assails the judgment dated 26th March, 2018 in C.W.J.C. No. 16539

of 2016, whereby the respondent- petitioner has been found entitled to certain pecuniary service benefits at par with the judgment in the case of Abdus Salam Vs. State of Bihar, decided on 21st September, 2010 relating to the post of Laboratory-In-charge and Demonstrator in Rajendra College, Chapra, a constituent of the appellant University.

2. We had heard the matter on 26th April, 2019 and had passed the following order:

"Heard Shri Anjani Kumar, learned Senior Counsel for the appellant-University. Shri Purushottam Jha, learned Advocate who has put in appearance in this case for the respondent-petitioner and had also conducted the case on behalf of the writ petitioner before the writ Court. His name shall be shown in the cause list accordingly.

This appeal arises out of the judgment of the learned single Judge dated 26.03.2018, whereby the learned single Judge taking notice of the judgment in the case of Abdus Salam vs. State of Bihar (C.W.J.C. No.2002 of 2010, decided on 21.09.2010) and affirmed by a Division Bench in L.P.A. No.981 of 2011, decided on 11th July, 2011, the S.L.P. against which was dismissed on 27.2.2012 , has arrived at a conclusion that the respondent- petitioner was entitled to the benefits as claimed by him as his case is covered by the aforesaid decision.

The challenge raised is that the aforesaid judgment in the case of Abdus Salam (supra) does not apply on the facts of the present case and consequently, the conclusion drawn by the learned single Judge without examining the status of the claim of the respondent-petitioner cannot stand the scrutiny of law.

It is urged that the stand of the University as per the facts disclosed by the State Government was clearly to the effect that the post against which the respondent-petitioner was claiming salary had not been sanctioned by the State Government in terms of Section 35 of the Bihar State Universities Act, 1976. It was also the stand of the University in the counter affidavit filed before the learned single Judge that the mode and manner of appointment of the respondent petitioner was not processed as per rules and therefore the claim made by him had been withheld.

The records indicate that on 11th April, 2017, a learned single Judge, who was hearing the writ petition giving rise to this appeal, passed an order that if any payment of salary is to be made to the respondent- petitioner, at least with regard to his current salary, the same should be made and reflected in the counter affidavit to be filed on behalf of the University. It is pursuant to the aforesaid order that a counter affidavit came to be filed where these facts were stated, as noted above.

While going through the records of the writ petition, we find that the appointment of the respondent-petitioner is stated to have been notified by the

Principal of the College on 10th April, 1985. This was followed by an office order of the Vice-Chancellor issued under the signature of the Registrar dated 9th of May, 1985, which is Annexure 4 to the writ petition. The claim of the respondent-petitioner of salary ensued thereafter as it was not certain as to whether the salary would be paid by the State fund or by the University, upon which the University called upon the Principal of the Institution to furnish information with regard to the fact as to whether the post of the Laboratory Incharge as held by the respondent-petitioner was within the staffing pattern of the College or not. The Principal of the Institution, vide Annexure 15, informed the University that the post fell within the staffing pattern.

From the records, we further find that there was further communication with regard to payment of salary of the respondent- petitioner and on 15th July, 2010 the University through the Registrar who notified the designation of the respondent-petitioner as a Demonstrator keeping in view the resolution of the Government dated 14th of June, 2006. The said document is Annexure 21 to the writ petition and the resolution of the Government dated 14.06.2006 is Annexure 28. It is in this background that the respondent-petitioner claimed his benefits contending that since he is designated as Demonstrator by the University itself, there is no occasion for the University now to trace back its steps and deny the consequential benefits.

Shri Purushottam Jha, learned counsel for the respondent-petitioner contends that once it is established that the respondent- petitioner's appointment was within the staffing pattern, then creation/sanction of post shall be deemed to have been accepted and for that he relies upon a Full Bench judgment of this Court in the case of Braj Kishore Singh v. State of Bihar, reported in 1997(1) PLJR 509, paragraph 12 in particular. He submits that the said judgment has been later on followed in the same matter by a Division Bench of this Court in the case of Braj Kishore Singh v. State of Bihar, reported in 2004(3) PLJR 668. To counter the same, Shri Anjani Kumar, learned Senior Counsel for the appellant-University has cited the judgment in the case of Upendra Singh v. State of Bihar(Civil Appeal No.2356 of 2018, decided on 23rd of February, 2018). A couple of Division Bench judgments of this Court have also been cited at the Bar to substantiate the aforesaid submissions.

Prima facie, on the basis of whatever material has been placed before the Court, we find that the basic issue is as to whether the appointment of the respondent-petitioner having been validly made was within the sanctioned strength of the Institution and as to whether the status of his appointment stands supported by the decisions, which have been cited at the Bar.

Thus, in order to further proceed with the matter, learned counsel for the parties pray that the matter may be taken up on 6th May, 2019.

Let the matter come up on 6th May, 2019.

In the meantime, Shri Jha, learned counsel for the respondent may file a

response, if any required for the purpose of this appeal."

3. The matter was again heard by us in response to the aforesaid queries and Shri Anjani Kumar, learned senior counsel for the appellant-University has urged that in the absence of a sanctioned post and in the absence of the procedure prescribed in law for appointing the respondent-petitioner, no relief can be granted and his case is clearly distinguishable and not at par with the case of Abdus Salam. He further submits that the judgments relied on by the respondent-petitioner as referred to in the query raised by this Court are no longer applicable in view of the law laid down by a Constitution Bench in the case of Secretary, State of Karnataka Vs. Umadevi (3), reported in (2006) 4 SCC 1. He has further invited the attention of the Court to the decision of the Chancellor dated 22.02.2011 whereby the earlier financial and administrative decisions of the University stood withdrawn as a result whereof the respondent petitioner was not entitled to claim the benefits as prayed for.

4. Elaborating his submissions, Shri Anjani Kumar has invited the attention of the Court to the first order of appointment of the respondent-petitioner which is by the Principal, Rajendra College, Chapra dated 10.04.1985 and is as follows:

UNIVERSITY OF BIHAR

Principal PHONE{ Office: 2321 Resd. 12400

RAJENDRA COLLEGE CHAPRA

Date198

N O T I F I C A T I O N

Shri Birendra Kumar Mishra, B.Sc. (Hons.) is hereby appointed as Laboratory Incharge of Postgraduate (Chemistry) Department against the vacant post in the prescribed scale plus other admissible allowances. His appointment is temporary and subject to approval by the University.

He is directed to join his duty immediately.

No T.A. is admissible.

Sd/- G. Mehta

Principal

Rajendra College, Chapra

Memo No. 1552 to 1554 Dated Chapra, the 10. 4. 1985

Copy forwarded for information and necessary action to :-

1. The Vice-Chancellor, B.U., Muzaffarpur;
2. The Bursar (expenditure side), R.C. Chapra;

3. The Head of the Deptt. Of P.G. Chem.,R.C. Chapra &

4. The person concerned- Shri Birendra Kumar Mishra

O/O Shri A.K. Mishra

A.D. S.O., Giridih (Bihar)

Sd/- 8/4/85

PRINCIPAL

Rajendra College, Chapra

5. It is pointed out that this letter of appointment has been issued by the Principal of the College and not by the Vice Chancellor who is the Appointing Authority. The respondent-petitioner was appointed as Laboratory Incharge of the Post Graduate Chemistry Department against a vacant post and was temporary in nature subject to approval by the University.

6. It is then pointed out that the order came to be passed for the first time in the name of the Vice Chancellor through the Registrar of the University of Bihar, Muzaffarpur in the said capacity at Rajendra College, Chapra describes the appointment in anticipation of the sanction of the post by the State Government. The said order dated 9th of May, 1985 is extracted hereinunder:-

UNIVERSITY OF BIHAR MUZAFFARPUR

Date-----

Office Order

The Vice-Chancellor has been pleased to appoint Shri Birendra Kumar Mishra as Laboratory Incharge in the Post-graduate Department of Chemistry at Rajendra College, Chapra, on purely temporary basis in the scale of pay of Rs. 780-15-820-20-980-EB-1080 plus other usual allowances and

D.A. admissible under the rules of the University, with effect from the 10th April, 1985, or the day he joined or joins.

Sd/- (A.P. Sinha) Registrar

Memo No. B/2536 Dated the 9/5/1985

Copy forwarded to

1. Finance Officer, Bihar University, Muzaffarpur;
2. Deputy Registrar, do do
3. S.O. (Establishment) do do
4. Principal, Rajendra College, Chapra; &
5. Sri Birendra Kumar Mishra;

for information and necessary action.

The appointment has been made in anticipation of the sanction of the post by the State Government.

Registrar"

7. It is then urged by him that the Registrar issued a direction to the Principal on 24.06.1985 that till the post is sanctioned and the grant is released from the State Government, the respondent-petitioner be paid salary from the fee income collected from the Post Graduate students of the Institution. The Finance Officer of the University accordingly issued directions and the respondent-petitioner continued to function in the University. The University continued to make the payments. Accordingly, the petitioner represented the matter before the College and his representation was forwarded to the University with regard to payments to which he was entitled and with regard to certain payments that had been withheld between 1991-92. The University ultimately on 13th of December, 1995 passed a resolution in respect of the petitioner, which is extracted hereunder:-

"मद संख्या-3 पूर्व बैठक (दिनांक 18.9.95) की स्थगित भव संख्या- 5 एवं अतिरिक्त मद संख्या- 3 पर विचार।

(1) पूर्व बैठक की स्थगित मद संख्या- 5

अभिषद् के निर्णयानुसार याचित जानकारी अभिषद् के समक्ष रखी गयी। राज्य सरकार के पत्रांक 14/एम. 1-038/90 शि० 841 दिनांक 13.4.91 में प्रयोगशाला प्रभारी का वेतनमान (चतुर्थ योजना) 680-965 दर्शाया गया है एवम् तदनुकूल पुनरीक्षित वेतनमान में यह 1320-2040 है। 730-1080 का कोई वेतनमान नहीं है। परन्तु एच०आर० कॉलेज, अमनौर के लिए राज्य सरकार ने ही जे०पी०-2-774/99 शि० ज्ञापांक 65 दिनांक 17.12.82 के द्वारा प्रयोगशाला प्रभारी के दो पद सृजित किये गये हैं तथा इसी वेतनमान में भुगतान भी हो रहा है। गये पूर्ण विचारोपरान्त सर्वसम्मति से यह निर्णय लिया गया कि फिलहाल श्री मिश्र को जो भुगतान हो रहा है वह होता रहे और एच०आर० कॉलेज, अमनौर का हवाला देते हुए राज्य सरकार से उक्त पद का अनुमान्य वेतनमान तथा एच.आर. कॉलेज, अमनौर के संबंध में भी स्थिति स्पष्ट करने का अनुरोध किया जाय।"

8. A perusal of the said resolution indicates that with regard to another College namely H.R. College, Amnaur the State Government had created two post on 17.12.1982 in the pay-scale of Rs. 680-965/- revised to Rs. 1320-2040/-. Accordingly, it was resolved that the respondent-petitioner would continue to get the salary that he was getting and a request be made to the State Government in this regard.

9. The University in response to a query made by the Principal of the Institution wrote a letter on 20th December, 1997 that the appointment of the respondent-petitioner was within the staffing pattern and the norms prescribed and therefore his appointment was in accordance with the same. The said letter is extracted hereunder as it forms one of the basic arguments advanced on behalf of the respondent- petitioner:

सेवा में, 20.12.1997

कुलसचिव,

जय प्रकाश विश्वविद्यालय,

छपरा।

विषय:- श्री वीरेन्द्र कुमार मिश्रा, प्रयोगशाला प्रभारी, स्नातकोत्तर रसायनशास्त्र विभाग के संबंध में।

महाशय,

उपर्युक्त विषयक आपके पत्रांक 1/स्था.2/प-1/क.-2288 दिनांक 11.12.97 के संबंध में सूचित करना है कि श्री वीरेन्द्र कुमार मिश्रा द्वारा धारित पद स्टाफिंग पैटर्न के अंतर्गत है।

विश्वासभाजन ह0/- 20/12/97 प्रभारी प्राचार्य,

राजेन्द्र कॉलेज, छपरा।

10. A dispute was raised with regard to the payments to be made to the respondent-petitioner along with some other employees and in the meantime in view of certain judicial pronouncements the designation of the post as that of Demonstrator ensued. The Principal of Rajendra College, Chapra, where the respondent-petitioner was working, wrote a letter to that effect to the Registrar along with the details of his appointment. This was to be done pursuant to the notification dated 14th June, 2006, copy whereof has been filed as Annexure-28 to the writ petition. Consequently, a notification was issued by the University on 15th July, 2010 indicating the re-designation of the respondent-petitioner as Demonstrator. The notification of re-designation was approved by the University that is on record. The University while submitting this pay-fixation recommendations to the Government included the name of the respondent-petitioner showing his designation as Assistant Demonstrator in the College. Thus, the University itself continued to treat the respondent-petitioner within the staffing pattern of Rajendra College, Chapra as an Assistant Demonstrator in the Laboratory of the College. While showing the details of expenditure, the charts which were filed by the University and the budget demanded indicated the expenditure to be incurred which included two lab personnel based on the staffing pattern of the University. This entire chart is Annexure- 30 to the writ petition. The petitioner had represented his entire matter on 15th of June, 2016 where he had entailed his entire journey having served in the college and his service having been recognized by the appellant-University.

11. The matter of designation as Demonstrators became subject matter of litigation before this Court in C.W.J.C. No. 12967 of 2012 after the Government had withdrawn the resolution dated 14.06.2006 referred to above. This withdrawal on 10th April, 2012 became subject matter of challenge in the said writ petition.

12. The State Government had issued a letter on 16th of March, 2012 informing the Accountant General of payments being made to the staff appointed based on the staffing pattern of the Institution, particularly with regard to the Laboratory Staff working in colleges for which a budget of Rs. 10,74,27,432/- was released.

This document of 16th March, 2012 is Annexure-40 to the writ petition. This is one of the documents which indicates the release of payments by the Government as against the post, one of which was being occupied by the respondent-petitioner. The chart enclosed with this notification at page 164 of the paper-book and duly counter signed by the concerned Secretary of the Education Department is extracted hereinunder:-

Sl. No

Name of the Colleges where working strength is greater than Sanctioned Post

Sanctioned Post

Working Laboratory Personnel who have been Designated as Demonstrator or

Previously Accepted Post for Calculation

Difference (Col 4-5)

Gross Amount per Person per month in Revision Pay Structure

No. of Persons X Amount per month in Revised Pay structure (Col 6x7)

Total Amount of Difference for Twelve Months for Designated Demonstrator in Revised Pay structure (Col. 8X12)

1

2

3

4

5

6

7

8

9

1

H.R. College, Mairwa

0

2

0

2

23801

47602

571224

2

Jandam College, Chapra

0

2

0

2

24173

48346

580152

3

Rajendra College, Chapra

0

4

0

4

24173

96692

1160304

4

Vidya Bhawan Mahila College, Siwan

0

5

0

5

24173

120865

1450380

5

Z.A. Islamia College, Siwan

0

5

0

5

24173

120865

1450380

Total:-

0

10

0

18

120493

434370

5212440

(जितेन्द्र प्रसाद)

सरकार के संयुक्त सचिव

शिक्षा विभाग

13. A perusal thereof would indicate that at Serial No. 3 the College in which the respondent-petitioner is working as a Laboratory Personnel is included and which also indicates the designation as a Demonstrator together with the salary admissible to the respondent-petitioner.

14. It is in this background that the respondent- petitioner filed a writ petition giving rise to the present controversy and claimed payment of salary at par with the benefits extended to Abdus Salam and others.

15. During the course of the arguments in the present appeal, learned counsel for the respondent-petitioner has also invited the attention of the Court to the notification of the Education Department dated 17.08.1979 to contend that the continuance of the respondent-petitioner after appointment is in conformity with the norms prescribed in the staffing pattern of Laboratory Staff in the Universities including the Bhagalpur University. The said notification dated 17.08.1979 is reproduced hereinunder:-

बिहार सरकार, शिक्षा विभाग

प्रेषक,

श्री अमूल्य रत्न सारंगी,

सरकार के संयुक्त सचिव,

सेवा में,

कुल सचिव,

पटना/बिहार/मगध/भागलपुर/ रांची एवं मिथिला विश्वविद्यालय

पटना, दिनांक 17.8.1979

विषय- प्रयोगशाला प्रभारी के पक्षों के सृजन एवं नियुक्ति के संबंध में

महोदय,

निदेशानुसार उपर्युक्त विषय के सम्बन्ध में मुझे कहना है कि तिथि 1.1.73 से शिक्षकों के लिये पुनरीक्षित वेतनमान लागू करने की शर्त के अनुसार 18.9.75 से प्रयोग-प्रदर्शक के नये पद का सृजन एवं पूर्व से रिक्त अथवा हुई नयी रिक्तियों पर नियुक्ति बन्द कर दी गयी है। प्रयोग-प्रदर्शक के पदों को समाप्ति के बाद जिन विश्वविद्यालय विभागों एवं कॉलेजों में प्रयोग-प्रदर्शक अथवा प्रयोगशाला सहायक भी नहीं है उन विभागों एवं कॉलेजों के विज्ञान प्रयोगशालाओं के उपकरण के रख-रखाव एवं प्रयोगिक वर्गों के संचालन में कठिनाई महसूस हो रही है। अतः इस पर विचार कर राज्य सरकार ने विज्ञान विषयों के प्रयोगशालाओं के संचालन के सम्बन्ध में निम्नांकित निर्णय लिया है।

(1) प्रयोगशाला के कार्य में सहायता देने वाले कर्मचारी का पदनाम प्रयोगशाला प्रभारी होगा।

(2) उसकी शैक्षणिक योग्यता आई0 एस0 सी0 की होगी और वेतनमान रू0 340-10-400-द0 रो0-10-490 होगा। इस पद पर नियुक्त व्यक्ति शिक्षकेत्तर कर्मचारी की कोटि में होगा और वह ननभेकेशन विभाग का कर्मचारी होगा।

(3) इनकी साप्ताहिक कार्यभार 42 घंटों की होगी।

(4) जहां तक उपर्युक्त पद की आवश्यकता का प्रश्न है-

(क) एक कॉलेज में प्रयोगशाला को क्षमता के आधार पर आई एस0 सी0/बी0 स0 सी0 ऑनर्स स्तर तक 32 छात्रों के समूह पर एक प्रयोगशाला प्रभारी का पद अनुमान्य होगा अर्थात् यदि कोई प्रयोगशाला 32 छात्र या उससे कुछ न्यून छात्र सहित दिन भर में तीन शिफ्ट काम करे तो उसके लिये दो ही प्रयोगशाला प्रभारी होंगे। इस आधार पर अनुमान्य पदों में वर्तमान प्रयोग प्रदर्शक तथा प्रयोगशाला सहायक के पद को घटाकर जो पद अनुमान्य होंगे वही स्वीकृत किया जायेगा।

(ख) जहां तक स्नातकोत्तर विभागों का प्रश्न है, सामान्य प्रयोगशाला के लिये दो प्रभारी एवं प्रत्येक विशेष प्रयोगशाला के लिये एक प्रभारी अधिकतम किसी विभाग में पाँच अनुमान्य होगा। इन अनुमान्य पदों में वर्तमान प्रयोग प्रदर्शक/प्रयोगशाला सहायक के पद घटा कर शेष पद अनुमान्य पद स्वीकृत होंगे।

विश्वासभाजन

ह0/- अमूल्य रत्न सारंगी

सरकार के संयुक्त सचिव, बिहार

प्रतिलिपि: निदेशक (उच्च शिक्षा), बिहार/बिहार राज्यपाल के उप सचिव, राजभवजन, पटना को उनके पत्रांक 2810 दिनांक 29.78/उप निदेशक उच्च शिक्षा बिहार/उप सचिव, अन्तर विश्वविद्यालय बोर्ड, पटना/लेखा पदाधिकारी, शिक्षा विभाग, बिहार/प्रशाखा एवं केजे-प्रशाखा पदाधिकारी एवं सभी सहायकों को सूचनार्थ एवं मार्ग दर्शनीय अग्रसारित।

ह0/- अमूल्य रंल सारंगी

सरकार के संयुक्त, सचिव, बिहार, पटना

16. Shri Anjani Kumar, learned senior counsel for the appellant-University while advancing his submissions has urged that the respondent-petitioner was not appointed after due advertisement etc. as his appointment was not in conformity with law. The second argument is that any relief relating to the re-designation on the post of Demonstrator is inadmissible. The third argument is that there was no sanctioned post by the State Government and, therefore, the directions issued by the learned Single Judge drawing parity with the case of Abdus Salaam is unfounded. The 4th argument is that even if in the case of Abdus Salam any directions were issued, the said judgment is based on the two earlier Full Bench decisions in the case of Braj Kishore Singh Vs. The State of Bihar & Ors., reported in 1997 (1) PLJR 509 and again in the same case Braj Kishore Singh Vs. State of Bihar & Ors., reported in 2004 (3) PLJR 668.

17. The submission is that these decisions were rendered extending the benefit by treating such employees to have become regular, but the ratio of the said decisions now stands diluted with the Constitution Bench judgment in the case of Secretary, State of Karnataka Vs. Umadevi (3), reported in (2006) 4 SCC 1. He has further relied on the Full Bench decision in the case of Ram Sevak Yadav & Anr. Vs. The State of Bihar & Ors., reported in 2013(1) PLJR 964 to contend that such a benefit cannot be extended in the background aforesaid. He has further relied on the judgment in the case of Veer Kunwar Singh University Ad Hoc Teachers Association and others Vs. Bihar State University (C.C.) Service Commission and others, reported in (2009) 17 SCC 184 and the judgment in the case of Nand Lal Bhagat & Ors. Vs. The State of Bihar & Ors. decided on 25th July, 2013 that has been affirmed in the case of Upendra Singh Vs. State of Bihar, reported in (2018) 3 SCC 680. These judgments have been cited to contend that to treat employees on regular basis would be permissible only if the initial appointments were valid and against sanctioned posts. He has submitted that even now there is no such sanctioned post and, therefore, the direction issued by the learned Single Judge cannot be sustained.

18. To begin with, we may first point out that from the letter dated 17.08.1979, extracted hereinabove, the creation and appointment on the post of Demonstrators had been banned with effect from 18.09.1975 that had resulted in a lot of difficulties being faced by the laboratories in the various departments of the University and Colleges. The Government, therefore, resolved that for the purpose of science laboratories, an Assistant to be now appointed in the laboratories would be known as Laboratory-In-charge with his specific qualification of Intermediate in science and would be a Class-III post. The duties

and responsibilities were defined therein and the norms fixed thereunder are that if a laboratory is attended by a minimum of 32 students then there would be one Laboratory- In-charge to assist the laboratory on this strength. If there are several shifts of such students, there would only be a total of two Laboratory Assistants.

19. For Post Graduate classes, two Laboratory-In- charge personnel would be available and if there is a special laboratory, there would be one more Laboratory-In-charge, but the total shall be to a maximum of five Laboratory-In-charge personnel.

20. The petitioner, respondent herein, admittedly was the only Laboratory Attendant in the Chemistry lab of the College. There is no dispute that the University did continue to treat him as such which is evident from the resolutions that were passed by the University from time to time including the resolution for designating him as a Demonstrator. The appellant-University, therefore, itself had never disputed this fact about the continuance and the services of the respondent- petitioner being taken by Rajendra College, Chapra. The argument raised by Shri Anjani Kumar on this score is that the Chancellor had annulled the administrative and financial decisions of the University on 22nd of February, 2011. We may point out that the University itself had been sending the claim of the petitioner for payment of salary and it kept it under consideration. This is further fortified by the document dated 16th March, 2012 which was based on the information given by the University and had been sent by the State Government through a Secretary of the Education Department informing the Accountant General with regard to the availability and the appointments made in Rajendra College, Chapra for which a certain amount of budget had been released. This document of 16th March, 2012 is subsequent to the decision of the Chancellor dated 22.02.2011 and, therefore, the argument that the decision of the University had been annulled gets contradicted by the said evidence. The University, therefore, cannot be allowed to take a stand different than its own documents which is now being advanced on the ground as if the University had committed mistakes earlier and was seeking to rectify the same at this stage.

21. It is for this that the argument now advanced is that the respondent-petitioner was not working against a sanctioned post and his appointment had not been made in accordance with the procedure prescribed. We may point out that with regard to the procedure adopted for the appointment of the respondent-petitioner, the document available on record is the letter of appointment issued by the University itself and which is dated 9th of May, 1985, extracted hereinabove. It is correct that the said letter itself indicates the appointment being in anticipation of a sanctioned post, but at the same time the appellant-University has been unable to dispute the position taken by the respondent-petitioner that his appointment was within the staffing pattern as prescribed by the State Government in the notification dated 17.08.1979. This aspect of an appointment being valid, if it is within the sanctioned strength was subject

matter of the two Full Benches in the case of Braj Kishore Singh Vs. State of Bihar (supra) where it has been held that if the post is being held by a person within the staffing pattern, the same cannot be held to be a non-sanctioned post. To the contrary, the sanction will be deemed and presumed to have been made if it is within the staffing pattern. The said decision has been relied on in the case of Abdus Salam (supra) and which matter has now attained finality up to the Apex Court. It is for this reason that the learned Single Judge under the impugned judgment has extended the benefits of payment of salary and other pecuniary benefits to the respondent-petitioner in the light of the law laid down therein. This is further fortified by the fact that on the basis of the information tendered by the appellant University, the State Government had sent the documents to the Accountant General acknowledging the fact of the existence of the post for which salary was being claimed including the post of the respondent-petitioner.

22. It is the appellant-University which has come up in appeal questioning the services of almost 34 years spent by the respondent-petitioner being the only Laboratory-In-charge in the College, and not the State. This additional feature, therefore, also goes in favour of the respondent-petitioner that the appellant-University which had itself allowed the induction of the respondent-petitioner is now disputing his claim when it comes to monetary benefits. The University is estopped by its own conduct throughout in now disputing the claim of respondent-petitioner after he has discharged more than 33 years of service. This would not only be unjust but also amongst equity and fair play. It is well settled that law is good but justice is better. This is one of the cases where the employer in spite of having acknowledged the continuance of the respondent-petitioner for more than 33 years and there being no effort to withdraw the letter of appointment of 1985, has questioned the claim of the respondent-petitioner but the issues were legally answered against the University referred to hereinabove.

23. We, therefore, do not find any force in the submission of the learned counsel for the University on the issue of the manner of appointment and the post occupied by the respondent-petitioner in the above given circumstances. The argument based on the judgment in the case of Umadevi (supra) and the case of Ram Sevak Yadav (supra) that the same dilutes and takes away the impact of the earlier Full Bench judgment in the case of Braj Kishore Singh (supra) is an argument that would not apply logically, inasmuch as, the case of Umadevi (supra) or Ram Sevak Yadav (supra) or even for that matter Upendra Singh (supra) all relate to regularization of services where it has been held that regularization can be extended if the appointment was irregular, and not illegal, that too even against a sanctioned post.

24. In our opinion, the present is not a case of regularization as is being claimed by the appellant, inasmuch as, the respondent-petitioner has taken the stand of having been appointed in accordance with the staffing pattern and to that extent

the judgment of Braj Kishore Singh (supra) laying down the law in favour of the respondent-petitioner has not been diluted by any subsequent judgment nor it has been overruled. The said judgment is on the issue of staffing pattern and not on the issue of regularization.

25. The instant is also a case where the claim is based on having continued in service and treated as such by the appellant-University for long without having withdrawn any benefits that were extended to the respondent-petitioner including his continuance in service. The University has never withdrawn the letter of appointment issued in favour of the respondent-petitioner way back in the year 1985. His appointment was neither cancelled nor was it held to be unlawful or beyond the sanctioned strength prescribed in the staffing pattern. There being no material to contradict this aspect, the law relating to regularization would not affect the respondent-petitioner as urged on behalf of the appellant- University.

26. Learned counsel for the appellant Shri Anjani Kumar urged that the judgment in the case of Abdus Salam (supra) does not take into consideration these issues and, therefore, the same cannot be treated to be good law so as to bind this Court to follow the same.

27. We may only point out that the learned Single Judge has noted these facts and which have also been noticed by us while recording the submissions on 26th April, 2019 extracted hereinabove. The Special Leave Petition in the said matter was dismissed on 27th of February, 2012 and we can safely presume that this argument which is now being advanced was very much available then and yet it did not find favour in the decision of Abdus Salam. Consequently, the case of the respondent-petitioner cannot be distinguished from the case of Abdus Salam Vs. State of Bihar (supra). We, therefore, do not find any merit in this appeal, which is accordingly rejected.