

(2018) 11 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.19931 of 2011

Krishna Kumar Yadav @APPELLANT@Hash State Of Bihar

Date of Decision : 02-11-2018

Acts Referred:

Indian Contract Act, 1872 — Section 70
Constitution of India, 1950 — Article 21, 23

Citation : (2018) 11 PAT CK 0016

Hon'ble Judges : Anil Kumar Upadhyay, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Nirala Kumar Singh, Rajeev Kumar Singh,
Anjani Kumar Singh

Final Decision : Disposed off

Judgement

Period for which

attendance register

was shown",Present,Absent,"Period for which the register was
shown

Mar. 2005 to Nov.06,"Mar. 2005 to June 05 & 29th

Aug.200-Nov.", "July 2005 to 28th Aug.

2005",I) Sept. 85 to Feb 2005

June 2007 to Dec. 07 3

days of May 2008 Jun

Aug & Sept. 2008", "06 Present Present

,", "ii) Dec.06 May 07 iii) Jan 2008 Apr.

08 iv) 28 days of May 2008 v) Jun

2008- Oct. 08

,April,"1, 2, 4, 8, 10, 20, 21, 24, 25, 31",
,May,"4, 8, 9",
,June,"29, 30",
,July,"10, 11, 15, 18, 21, 27, 28",
,August,"4, 5, 6, 7, 8, 10, 14, 31",
,September,"1, 7, 8, 14, 15",
1993,February,"4, 5, 6, 13, 16, 18, 20, 23, 27, 30",
,March,23,
,April,23,
,May,24,
,July,"27, 31",
,November,27,
2008,February,"4, 11",
,September,"10, 17, 24",
,November,"19, 24",
,December,"8, 10, 15, 17, 22, 24",
2009,January,5,

5. Mr. Anjani Kumar, Learned Senior Counsel Appearing On Behalf Of The T.M.Bhagalpur University Refers To The Order Of This Court Dated",,,

26.8.2009 (Annexure-14) To Contend That Payment Of Remuneration Is Admissible Only In Case The Petitioner Establishes That He Has Regularly,,,

Worked Since September, 1985. From The Report Of The Inspector Of The College It Appears That There Is Admission To The Effect That The",,,

Petitioner Did Work In The College But The Attendance Register And Class Register Of Practical Case With Regard To Taking Classes Also Does,,,

Not Indicate That He Has Regularly Attended The College And Worked.,,,

6. On Perusal Of Entire Pleadings The Court Finds That There Are Enough Materials To Indicate That The Petitioner Has Worked In The College,,,

And As Such If The Petitioner Has Been Allowed To Work, He Is Entitled To Remuneration In Terms Of Annexure-14.",,,

7. The Issue Of Engagement Of The Petitioner Either By The Authorities Of The University Or Otherwise, May Not Be Relevant In The Instant",,,

Case For The Purpose Of Deciding The Entitlement Of The Petitioner For Remuneration For The Period The Petitioner Has Actually Worked. In,,,

Fact, Similar Issue Was Considered By The Apex Court In The Case Of Government Of Andhra Pradesh Vs. K.Brahmanandam & Ors.: (2008) 5",,,,

Scc 241 Wherein The Apex Court On Consideration Of Various Aspects Of The Matter And The Liability To Pay Salary To The Teacher Appointed,,,

In The Recognized School Held Out That The Right To Claim Salary Must Arise Under A Contract Or Under A Statute. If Such A Right Arises,,,

Under A Contract Between The Appointee And The Institution, Only The Latter Would Be Liable Therefor. Its Right In Certain Situation To Claim",,,,

Reimbursement Of Such Salary From The State Would Only Arise In Terms Of The Law As Was Prevailing At The Relevant Time. In The Instant,,,

Case The Undisputed Fact Is That The University Was Informed By The College About The Engagement Of The Petitioner But The University,,,

Neither Approved Nor Rejected The Engagement Of The Petitioner And Thus Due To Silence Of The University The College Utilized The Services,,,

Of The Petitioner And As Such Non-Payment Of Remuneration Would Be In Teeth Of Articles 21 And 23 Of The Constitution Of India And Also In,,,

Teeth Of Section 70 Of The Contract Act.,,,,

8. Applying The Principle Discussed In The Judgment Of The Apex Court In The Case Of K.Brahmanandam (Supra), The Court Is Of The View",,,,

That The Liability To Pay Remuneration Cannot Be Directly Fastened Against The University. However, If The Petitioner's Service Was",,,,

Utilized By The College For Imparting Instruction Then The Principal Of The College Is Under Obligation To Ensure Payment Of Salary To The,,,

Petitioner For The Period The Petitioner Has Actually Worked But The University Cannot Disown Its Liability By Maintaining Golden Silence On,,,

The Engagement Of The Petitioner.,,,,

9. Accordingly, The Writ Petition Is Disposed Of With A Direction To The University To Fix Accountability On The Principal(S) For Engaging The",,,,

Petitioner And Allowing Him To Work. Since The Petitioner Was Allowed To Work Within The Knowledge Of The University, The University Is",,,,

Primarily Responsible For Ensuring Payment Of Remuneration And Thereafter The University Shall Be At Liberty To Recover That Amount From,,,

The Principal/Professor-In-Charge Who Allowed The Petitioner To Work

Notwithstanding There Was No Such Legals Sanction. Necessary Order,,,

For Payment Of Remuneration To The Petitioner For The Period The Petitioner Has Actually Worked, Shall Be Passed By The University Within A",,,

Maximum Period Of Four Months From The Date Of Receipt/Production Of A Copy Of This Order And Thereafter The University Shall Be At,,,

Liberty To Recover The Said Amount From The Concerned Principal Of The College Who Engaged And Allowed The Petitioner To Work Within A,,,

Further Period Of Three Months From The Date Of Making Payment Of Remuneration To The Petitioner.,,,

10. With The Aforesaid, The Writ Petition Stands Disposed Of." ,,,