

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4649 of 2014

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1. Nand Kishore Prasad, son of Late Badri Narayan Prasad, Resident of Mohalla Madhopur (Panchu Mistri Gali), Post Office Basudeopur, Police Station Kotwali, District Munger.
 2. Md. Imtiyaz, son of Md. Mumtaz, Resident of Mohalla Harrat Ganj, Khankah Gali No. 10, Post Office Munger, Police Station Kasim Bazar, District Munger.
 3. Uday Chandra, son of Late Nathuni Lal Das, Resident of Mohalla Sri Krishna Road, Near Kalibari Asthan, Lallu Pokhar, Post Office Munger, Police Station Kasim Bazar, District Munger.
 4. Smt. Saroj Kumari Jha, daughter of Sri Amarnath Jha, wife of Late Sushil Jha, Resident of Mohalla Veer Kunwar Singh Colony, Dalhatta, Post Office Basudeopur, Police Station Kotwali, District Munger.

.... Petitioners

Versus

1. The Patna High Court through Registrar General, Patna.
2. The Registrar General, Patna High Court, Patna.
3. The District & Sessions Judge, Munger.

.... Respondents

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Appearance :

For the Petitioner : Mr. Dhurjati Kumar Prasad, Advocate
For the Respondents : Mr. Piyush Lall, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 22-02-2016

There are four petitioners before this Court who are all working on a Class IV post as employees of the civil court at Munger. Under the Rules for promotion meant for Class IV employees, these petitioners participated and became eligible for consideration, as is their case. However, by virtue of Annexure-1, 3 and 4 dated 02.08.2013, 23.07.2013 and 06.12.2013 respectively, their request for promotion has been turned down on the ground that they do not have a graduation degree issued by a recognized university. The Sahitya Alankar degree which the petitioners claim

to be equivalent to a graduation degree, on the basis of previous notifications, has not been accepted even by the administrative side of the High Court. It is in this background that the petitioners have filed the present writ application seeking quashing of Annexure-1, 3 and 4.

2. There is no dispute that it is the Sahitya Alankar degree which the petitioners claim to be equivalent to graduation, which is the sole basis for claiming benefit of promotion on a Class III post. The issue is whether such a degree is worth the paper on which it is printed and whether it can beget the benefit which the petitioners are looking for?

3. This Court had occasion to deal with such matter in the case of *Reeta Srivastava & Ors. vs. State of Bihar*, reported in 2012 (3) PLJR 353 because the relevance of such a degree or equivalent has been vexing the authorities and the High Court for a very long-long time. Since the counsel for the petitioners has very vehemently urged and argued in support of the equivalence, the Court is compelled to reproduce what the Court has already decided in paragraphs 14, 15 as well as paragraphs 27 and 28 which are reproduced herein below for ready reference:

"14. It is contended on behalf of the interveners that the State Government can never issue a circular which has the



*effect of amending of statutory provisions, which in this regard is Article 782 of Bihar Education Code, which clearly lays down that the basis qualification for promotion to Subordinate Educational Service is a graduation and not any equivalence. It is also their case that what cannot be done directly cannot be done indirectly because if the State wanted to extend the benefit of granting recognition to such degree of Sahitya Alankar to be equivalent to B.A. or any similar equivalence, the Statute itself would have been changed and a Government circular which is sought to be wrongly read by the petitioners as ample evidence of granting recognition to Sahitya Alankar has to be negated in view of the above contention. Reliance in support of such proposition has been placed on a decision on the case of **State of Tamil Nadu and Others vs. K. Shyam Sunder and Others**, 2011(8) SCC 737.*

*15. Another submission which has been made at the bar is that terms and conditions of service which are fixed by the codified law or rule cannot be altered by such circular of administrative kind to beget certain benefits to the petitioners by seeking equivalence to the degree they have. The judgment of the Apex Court in the case of **State of J&K vs. Shiv Ram Sharma and Others**, 1999(3) SCC 653 supports such a contention. The Apex Court has criticized above opinion in para 6 of the said decision.*

27. To sum up therefore, this Court categorically holds that a Sahityalankar degree is not equivalent to graduation

and no holder of a degree of Sahityalankar, therefore, can claim the benefit of promotion to the Subordinate Education Service as a matter of right. The recognition if at all given by the State is with a limited object which has been talked about earlier, that is for the purpose of qualifying any Hindi examination and drawing advantage thereof in service and not to beget appointment based on the eligibility laid down for such recruitment or promotion by treating such degree to have equivalence. (emphasis mine)

28. A Sahityalankar degree therefore is not equivalent to graduation degree in light of what has been held by this Court in this decision and therefore none of the petitioners have been illegally and arbitrarily discriminated by refusal of the State to bring them within the zone of consideration for promotion to the Subordinate Education Service."

4. Not only because of what this Court has said about Sahityalankar but also the fact that such a view has been upheld even by a Division Bench. Thereafter the Apex Court too has upheld the rationale and reasoning provided by the learned Single Judge in Reeta Srivastava's case.

5. Counsel for the petitioners thereafter submits that the stand of the High Court does not seem to be correct because the degree obtained by the petitioners is prior to 2013 and even the decision rendered by the learned Single Judge would be prospective in nature.

6. With due respect to learned counsel for the petitioners, the judgment which has been reproduced in earlier part of the order neither talks of retrospectivity or prospectivity which declares the law with regard to the status of such degree issued by Deoghar Vidya Pith.

7. Since Deoghar Vidya Pith is neither an educational institution or a University and nor is the degree issued by them in any manner equivalent to any graduation degree, in the circumstances under which they are being dispensed with, the equivalence, cannot come to the aid and assistance of the petitioners in acquiring a higher post without a valid degree of graduation.

8. The impugned orders do not suffer from any infirmity whatsoever. Writ application is, therefore, bound to fail and is dismissed.

(Ajay Kumar Tripathi, J.)

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