

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8820 of 2013

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1. Vinod Kumar Mishra S/O Sri Tota Mishra Resident Of Village + P.O. - Habi Bhaur, Via Nehra, P.S. - Bahera, District - Darbhanga, At Present Residing At Lakshmi Sagar, Road No. 7, P.O. - Lakshmi Sagar, P.S. - Sadar, District - Darbhanga

.... Petitioner/s

Versus

1. The Kameshwar Singh Darbhanga Sanskrit University , Kameshwar Nagar, Darbhanga Through Its Registrar
2. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga
4. The Principal, Dharma Samaj Sanskrit College, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Dharendra Kumar Jha,
Mr. Krishna Chandra Jha, Advocates.
For the Respondent/s : Mr. Tej Bahadur Singh, Sr. Advocate.
Mr. Awadhesh Prasad Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 11-03-2016

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. In the present writ petition, petitioner is seeking relief for issuance of a direction to the respondents' authorities for considering his case for promotion to the post of Clerk in Dharmasamaj Sanskrit College, Muzaffarpur.

3. As per claim of the petitioner, he was appointed as Darban which is Class IV post in Dharma Samaj Sanskrit College,



Muzaffarpur. Subsequently his appointment was cancelled. Later on he was appointed with due process of law and by that time he enhanced his qualification as Shastri and Acharya which is equivalent to BA and MA. As per claim of the petitioner he is possessing better qualification so he has been asked to discharge the duty of Clerk which is a Class III post and performing the duty since long which is apparently clear from Annexure-2, Annexure 3 series. Vide letter dated 25.8.2002 a letter has been written by the Principal of the College to the Vice Chancellor bringing to his notice that petitioner is holding high qualification and has been discharging the duty of Class III post, requested that he should be accommodated in Class III post of the College. A large number of documents have been annexed in this writ petition showing that he has been discharging the duty of Class III post but substantively he is holding the Class IV post. Further he has made a claim that in past large number of persons who were holding Class IV post have been promoted to Class III post and as such he is also entitled that his case should be considered for promotion from Class IV post to Class III post. He has also filed several representations requesting for his promotion from Class IV post to Class III post but nothing substantial was done in favour of the petitioner which compelled the petitioner to

approach this Court with the aforesaid prayer.

4. Sanskrit University has vehemently resisted the claim of the petitioner that there is no provision rather the State Government has put a ban vide department letter no.344 dated 18.6.1990 for promotion from Class IV post to Class III post. What wrong has been done, requires rectification and wrong act done in the past cannot be the basis for the claim of the petitioner as right to equality enshrined in Article 14 of the Constitution of India is not attracted on the basis of illegal act that has been committed for promotion.

5. Learned counsel for the petitioner has brought large number of documents to show that large number of persons who were holding the post of Class IV have been promoted to Class III post and specifically brought some documents to show that certain persons of Lalit Narain Mithla University who were earlier appointed as Class IV post and later on they were promoted to Class III post. So much so he has brought a circular showing earlier circular of 1990 has been modified by another circular issued on 16.9.1992 (Annexure-30) which provides that where there is a provision for promotion of Class IV to Class III post on 25% post in that case 50% vacancies will be filled up on the basis of minimum qualification and experience and for that a



limited examination would be conducted on seniority cum merit in the ratio of 60:40 and where examination has not been conducted for years in that circumstances the promotion would be granted on the basis of seniority cum merit. He has also brought to the notice of this Court a letter issued by the Education Department, Government of Bihar which provides that in terms of compromise with the Union it has been decided that whatever rule, regulation and circular is applicable to the Government employee will equally applicable to the non-teaching staff of the University and sub-ordinate affiliated College and on that strength counsel for the petitioner submits that circular of 1992 is equally applicable to the University and Colleges attached to the University. He has also placed reliance on the letter dated 29.2.2016 under R.T.I. (Annexure-31) from which it appears that the University has not conducted a single limited examination for promotion from Class IV post to Class III post.

6. Learned counsel for the respondents has resisted the submission of learned counsel for the petitioner and submits that as the petitioner has not completed three years of Kalawadhi from the date of his appointment he cannot be considered for promotion to the next higher grade and he has also relied on the



Rule which is called as Bihar Collectorate Clerical Cadre (Recruitment and Service Conditions) Rule, 2011 where in Clause 5 it has been mentioned that person who is holding matriculation certificate can only be entitled for the post of Class III. In Clause 6 of the said Rule the qualification has been mentioned where in the essential qualification is matriculation and its equivalent.

7. Having considered the rival contention of the parties, it is clear that 1990 circular which has been issued by the State Government has been modified by subsequent circular dated 16.9.1992 which provides that there will be 25% promotion from Class IV post to Class III post. The basis of entry will be limited examination and selection will be made on the seniority cum merit in the ratio of 60:40 as the petitioner has already entered into service in 2000 this Court is of the view that rider of three years does not stand in the way. This Court is not giving any direction for promotion as it is well known principle of law that any Government employee or University employee has a right for consideration of promotion not the promotion.

8. In such view of the matter, this Court directs the University and Colleges to consider the case of the petitioner and other similarly situated person for the purpose of granting promotion from Class IV post to Class III post within a period of

three months from the date of receipt/production of a copy of this order.

9. With the aforesaid observation and direction this application is disposed of.

(Shivaji Pandey, J)

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