

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15097 of 2013

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1. Pitamber Jha S/O Late Asharfi Jha Resident Of Village- Brhmotra, P.S.- Pandaul,
District- Madhubani, Retired As Head Assistant/Accountant From R.N.College,
Pandaul, Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Higher Education, Govt. Of Bihar, Patna
3. The Vice-Chancellor, L.N. Mithila University, Darbhanga
4. The Registrar, L.N. Mithila University, Darbhanga
5. The Finance Officer, L.N. Mithila University, Darbhanga
6. The Principal, R.N. College Pandaul, District- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SHASHI BHUSHAN SINGH
For the University : Mr. Chandra Mohan Singh,
For the State : Mr. Pramod Kumar Singh AC to SC 16

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-09-2016

Heard the parties.

In the present writ petition, relief has been sought; firstly
petitioner has made a prayer for shifting the date of his promotion
from 1.1.2006 to 31..5.2001 on the post of Head Assistant-cum-
Accountant as claim has been made by the petitioner that the
Registrar of the University has asked him to take work from the
petitioner of Head Assistant-cum-Accountant in the R.N.
College, Pandual. Accordingly petitioner started discharging the
duty on that post.

The University vide memo no.13407-44 dated 21.9.2012

along with five others and petitioner have also been promoted with effect from 1.1.2006. He has further submitted that as he was directed to discharge the duty, he continued to perform the duty so he has a right to be promoted from the retrospective date as on 31.5.2001.

The aforesaid claim is completely not sustainable and the same is rejected, as the competent authority for promotion is Vice Chancellor of the University, not the Registrar. Any direction by the Registrar for discharging the duty would not give right to the person, claiming his promotion. It does appear that he was asked to discharge the duty without considering the cases of other persons who are similarly situated along with the petitioner. Merely discharging the duty ipso facto cannot be a ground for granting the benefit. Petitioner has not made out a case for granting him promotion with retrospective effect, as no any person junior to him has been granted promotion from that date. He has placed reliance on the two judgments (i) Prafulla Ranjan Shrivastava v. The State of Bihar and others, reported in 2008(3) PLJR 144 and (ii) Dr. Nitya Gopal Bandyopadhyay vs The State of Bihar and others, reported in 2008(1) P.LJR 245. In both the cases the matter relates to payment of salary who were discharging the duty of that post of the State Government

are/were governed by the Bihar Service Code. The University employees and employees of the College are governed by the statute framed under the University Act.

Learned counsel for the petitioner submits that before the enforcement of statute in 2015, earlier, they were governed by the Rule and Regulation of the Government of Bihar.

In the aforesaid judgment the matter was for granting salary, not granting promotion. Granting of salary is one matter and granting of promotion is quite different matter. In both cases relief was granted in terms of the Bihar Service Code which is not applicable in the present case.

So far other prayer is concerned, he should be granted the pay scale of Rs.6,500-11,000 claiming in view of the judgment reported in the case State of Bihar & another v. Sunny Prakash and others, reported in 2013(1) PLJR 233 SC where Hon'ble Supreme Court has directed for giving benefit of 6th pay revision commission to all employees of the University.

Learned counsel for the petitioner submits that though petitioner is entitled to that scale but has not been granted the benefit. He has placed reliance on paragraph 6 of the judgment where it has been provided that the Head Assistant-cum-Accountant of the College is designated as Section Officer at the

departmental level and pay scale of Rs.5500-9000 has been granted.

In such circumstances, the Registrar of the L.N. Mithila University, Darbhanga will consider the case of the petitioner with regard to the scale of pay and take a proper decision in the matter.

For convenience, petitioner is directed to file a detailed representation before the authority concerned who will examine the case of the petitioner and pass the order in accordance with law within a period of three months from the date of filing of the representation.

With the aforesaid observation and direction this writ petition is partly allowed.

(Shivaji Pandey, J)

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