

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14052 of 2015

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1. Deepak Kumar son of Late Shankar Das, resident of Maulaganj, Bowli Pokhar,
Prof. Colony, P.O.- Lal Bag, P.S.- Laheria Sarai & District- Darbhanga

.... Petitioner/s

Versus

1. The Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga through its Registrar
2. The Vice-Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
3. Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
4. Principal, Marwari College, Darbhanga

.... Respondent/s

with

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Miscellaneous Jurisdiction Case No. 3053 of 2015

IN

Civil Writ Jurisdiction Case No. 14052 of 2015

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1. Deepak Kumar Son of Late Shankar Das Resident of Maulaganj, Bowli Pokhar,
Prof colony, P.O.-Lal Bao, P.S.-Laharia Sarai and Dist.-Darbhanga

.... Petitioner/s

Versus

1. The Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga through its registrar
2. The Vice-Chancellor, Lalit Narayn Mithila University, Kameshwar Nagar, Darbhanga
3. Registrar, Lalit Narayn Mithila University, Kameshwar Nagar, Darbhanga
4. Principal, Marwari College, Darbhanga

.... Respondent/s

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Appearance :

(In CWJC No.14052 of 2015)

For the Petitioner/s : Mr. N.A. Shamshi, Adv.
Mr. Mohammed Abu Haidar, Adv.

For the Respondent/s : Mr. Chandra Mohan Singh, Adv.
Mr. Ajay Bihar Sinha, Adv.

(In MJC No.3053 of 2015)

For the Petitioner/s : Mr. Mohammed Abu Haidar, Adv.

For the Respondent/s : Mr. Ajay Bihari Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-05-2018



Re: M.J.C. No. 3053 of 2015

This restoration application has already been allowed vide order passed on 17.2.2016 and thus has been wrongly listed and hence the same is delisted to be relegated to the records.

Re: C.W.J.C. No. 14052 of 2015

Heard Mr. N.A. Shamshi, learned counsel for the petitioner and Mr. Ajay Bihari Sinha for the Lalit Narayan Mithila University.

With the consent of the parties, the writ petition is being heard and disposed of at the stage of admission and in the nature of the order which this Court proposes to pass it would not be required to await the filing of a counter affidavit for the facts are not in dispute rather the dispute is whether the petitioner, a compassionate appointee, has been discriminated in the matter of upgradation of status from Class IV to Class III qua other similarly placed employees.

It is not in dispute that following an application made by the petitioner for compassionate appointment that he was appointed against a Class IV post along with several others. It is again not in dispute that while the petitioner was awaiting his graduation examination results there were others in the batch who were graduate and since by passage of time a number of Class III post fell vacant that those compassionate appointees with graduate qualification were



upgraded but the petitioner was not given this benefit because his results were yet awaited. Feeling aggrieved he approached this Court in **C.W.J.C.No.1721 of 2008(Deepak Kumar versus the Lalit Narayan Mithila & Ors.)**. The writ petition was disposed of by a coordinate bench vide judgment and order passed on 21.09.2010 in the following terms:

“In the circumstances, the writ application is disposed of with a direction to the respondent- Registrar of the L.N. Mithila University, Darbhanga to consider representations of the petitioner and pass appropriate orders on the same in accordance with law, preferably within a period of two months from the date of receipt/production of a copy of this order.

It is made clear that this Court has not expressed its opinion with regard to the merits of the claim of the petitioner.”

The matter has been considered by the respondent University and has been rejected by the order impugned dated 05.01.2012 issued under the signature of the Registrar of the University and the ground assigned is that since the petitioner was not a graduate degree holder at the time of his appointment hence he cannot be upgraded to the post of routine clerk.

Mr. Shamshi learned counsel for the petitioner has relied upon a decision of a Coordinate bench in **C.W.J.C. No. 11361 of 2007 (Md. Umar Farooque versus the State Bihar & Ors.)** which was heard along with **C.W.J.C. No. 11362 of 2007 (Waizul Haque Versus the**



State of Bihar & Ors.) to submit that a similar issue having got the attention of this Court that a direction was issued to the Vice Chancellor and the two petitioners in the said writ petition have been upgraded to a Class III post.

The submission of Mr. Shamshi is that it is only due to a circumstance that when the Compassionate Committee met the graduation results of the petitioner for the 2005 examination was yet to be announced which has deprived him of a similar upgradation as given to a similarly placed person. Placing reliance in the case of **Md. Umar Farooque** (supra) he submits that once on principle the University has taken a decision to upgrade the compassionate appointee with graduation degree to a Class III post, undisputedly, the petitioner had already appeared in the final examination awaiting his results thereof, a mere circumstance that the results were announced subsequent to his appointment cannot take away this right and the action of the respondent University in taking refuge under such explanation when no such condition was laid, is discriminatory.

Mr. Sinha learned counsel for the University has contested the claim on the reasons assigned in the order and which is not in dispute.

I have heard learned counsel for the parties and I have perused the records.

The appointment order of the petitioner dated 08.05.2005 is at



Annexure-2 with the name of the petitioner appearing at Serial No. 30 along with 42 other candidates who were found eligible for compassionate appointments and were appointed against Class IV post. The mark sheet of the petitioner is part of Annexure 6 and is enclosed at running page 35. It is dated 20.11.2006 and clearly mentions the appearance of the petitioner in the graduate examination held in the year 2005. Meaning thereby, the petitioner was final year examinee when his case was considered by the Compassionate Committee and a decision was taken for appointment against a Class IV post as manifest from Annexure-2. There is no dispute that a decision was taken to upgrade the compassionate appointees holding graduate qualification to a Class III post subsequently and the only distinction in between the petitioner and the upgraded compassionate appointees holding graduate qualification is that while in their case the results had been announced, in the case of the petitioner the result was yet to be announced.

There is a clear distinction between an eligibility condition fixed in a case of a direct recruitment to a case of appointment on compassionate ground for while in a case of direct recruitment, the candidate is to possess the eligibility qualification on the cut of date fixed in the notification so advertised, in the case of the compassionate appointees, the eligibility is to be tested on the date of



meeting held by the Compassionate Committee constituted in this regard. In so far as the case of the petitioner is concerned, Annexure 2 and 3 would confirm that while all applicants were appointed to Class IV post vide Annexure-2 dated 8.5.2005 it is following a decision taken by the respondents that such of the applicants possessing Graduation qualification were upgraded to Class III post vide Annexure 3 dated 25.7.2006 i.e a year later. Now since the petitioner was awaiting his graduation results had such meeting taken place a couple of months later, the petitioner would also fall in the category of graduate candidates. In my opinion, since the decision of the University to upgrade those Class IV appointees holding graduate qualification to class III post, is a subsequent event, a mere delay in the publication of the result of the graduate examination of the petitioner, in my opinion, would not wrest away his right of similar consideration as done by the University in the case of the other graduate candidates because such stipulation was introduced later.

It is not in dispute that the petitioner had appeared in the final graduate examination in the year 2005 and was awaiting his results which was announced in the year, 2006. Now had the Compassionate Committee of the University fixed stipulations of Class III appointments for graduate candidates at the very inception of the selection process, may be the petitioner would face difficult times but



such is not the case and a decision to such effect was taken subsequently as manifest from Annexure 3, when petitioner was awaiting his results. The case of the petitioner thus cannot be segregated from the other graduate candidates specially where there are no such stipulation was fixed for consideration by the University.

The opinion expressed by this Court finds support in the opinion of the coordinate bench in the case of the **Md. Umar Farooque** (supra) and for the reasons so discussed, the order of rejection passed by the University through the Registrar as contained in the letter dated 5.1.2012 cannot be sustained and is accordingly quashed and set aside. The matter is remitted to the Vice Chancellor for the decision afresh in the light of the discussion above and in the light of the position settled by this Court in the case of **Md. Umar Farooque** (supra) which decision be taken within a period of 6 weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
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