

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.434 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 2892 of 2014
Along with
Interlocutory Application No. 2017 of 2015

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Dr. Mridula Kumari W/O Mr. Shailendra Nath Sahu, R/O Q. No. - 0/6 Lal Bag
Professor's Colony, Sarai, P.S.-Tatarpur, Town & District - Bhagalpur.

.... Petitioner-Appellant

Versus

1. The T.M. Bhagalpur University, Bhagalpur, through its Registrar.
2. The Vice-Chancellor, T.M.Bhagalpur University, Bhagalpur.
3. The Registrar, T. M. Bhagalpur University, Bhagalpur.
4. The Finance Officer, T. M. Bhagalpur University, Bhagalpur.
5. The State of Bihar, through the Principal Secretary, Education Department,
Govt. of Bihar, Patna.
6. The Director, Higher Education, Govt. of Bihar, Patna.
7. The State Govt. Auditor, Posted in T. M. Bhagalpur University, Bhagalpur.

.... Respondents-Respondents

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Appearance :

For the Appellant	:	Mr. Purushottam Kumar Jha, Advocate
For the Respondent-State	:	Mr. Gyan Prakash Ojha- G.P.-22
For the University	:	Mr. Rajendra Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 21-06-2016

Re.: Interlocutory Application No.2017 of 2015

The application is for condonation of delay of 319 days in
filing of the present appeal.

For the reasons mentioned in the application, we find that
sufficient cause is made out for condonation of delay. Consequently,
we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.434 of 2015

The writ petitioner is in appeal against an order passed by the learned Single Bench of this Court on 06th March, 2014. The appellant claims the following three reliefs:

- (i) That the appellant is entitled to pay scale of the post of Chief Medical Officer with effect from 05.09.2011 from which date the appellant has been working on the said post till the period she discharged the duties of the said higher post.
- (ii) That the appellant is entitled to assured career progression pay scale on the lines of payment of such pay scale to the Government employees in terms of the Supreme Court order in Civil Appeal No.516 of 2013 decided on 18th of January, 2013 (State of Bihar & Anr. Versus Sunny Prakash & Ors.).
- (iii) That the appellant is entitled to refund of Rs.50,000/- which was paid to the appellant against the time bound promotion scheme but was recovered on erroneous reason of non entitlement thereof.

A perusal of the order passed by the learned Single Bench shows that the appellant has worked against the post of Chief Medical Officer from 05.09.2011 till 30th September, 2013. The learned Single Bench declined such benefit of higher pay scale relying upon Rule 103 of the Bihar Service Code. We find that the reason given by the learned Single Bench is erroneous. Rule 103 of the Bihar Service Code contemplates payment of additional pay if an officer is discharging



functions of two or more independent posts at one time. It does not deal with the situation when an officer is exclusively assigned duties of the higher post. Once an officer is assigned the duties of the higher post exclusively, the officer is entitled to the pay scale attached to that post. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of Smt. P. Grover vs. The State of Haryana and another, AIR 1983 SC 1060. In view thereof, the finding recorded by the learned Single Bench that in terms of Rule 103 of the Bihar Service Code, the appellant is not entitled to pay scale of the higher post cannot be sustained. The same is, therefore, set aside.

In respect of Assured Career Progression Scale, the matter stands concluded by the Supreme Court order dated 18th January, 2013 in the case of State of Bihar & Anr Versus Sunny Prakash & Ors. (Civil Appeal No.516 of 2013) wherein there was a direction to enforce the agreement arrived at between the Government of Bihar and the Bihar State University and College Employees Federation. In view of the direction contained in the Supreme Court order in Sunny Prakash & Ors. Case (supra), the appellant is entitled to grant of Assured Career Progression pay scale as admittedly she has not been promoted from the date of initial appointment in the year 1978 till she was asked to discharge the duties of the higher post of Chief Medical Officer in the year 2011.

In respect of recovery of Rs.50,000/- earlier paid to the appellant against time bound promotion scheme, Mr. Giri fairly concedes that the said matter will be re-examined and appropriate decision will be taken as to the entitlement of the appellant for the grant of such benefit.

In view of the above, the present appeal is disposed of with a direction to the University to grant benefit of pay of the higher post of Chief Medical Officer from 5th September, 2011 till September, 2013 and also to grant benefit of ACP pay scale in terms of the policy of the State Government as extended to the employees of the Universities. The University is further directed to consider the entitlement of the appellant of Rs.50,000/- said to have been recovered illegally in accordance with law. All the directions shall be complied with within a period of six months.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
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