

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6236 of 2013

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1. Rama Kant Mishra Son Of Late Rishidevnarayan Mishra Resident Of Mohalla -
Channadih, K.B. Jha College Road, Katihar, P.S. - Katihar Town, District - Katihar

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Human
Resources Development, Government Of Bihar, Patna
2. The B.N. Mandal University, Laloo Nagar, Madhepura Through Its Registrar
3. The Vice Chancellor, B.N. Mandal University, Laloo Nagar, Madhepura
4. The Registrar, B.N. Mandal University, Laloo Nagar, Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate.

For the University : Mr. Raju Giri, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-05-2016

Heard the parties.

2. In the present writ petition, petitioner is challenging the notification, contained in Memo No. V.C.O.-025/11 dated 4.8.2011 (Annexure-8) issued by the Registrar, B. N. Mandal University, Madhepura by which the eligibility of the petitioner to be appointed as lecturer has been shifted to 24.8.1991 from the original dated 22.8.1977, also directed to recover the excess amount paid to the petitioner. Further prayer has been made by the petitioner that he should be treated as was appointed as lecturer on 12.8.1977 against the sanctioned post and no excess payment was made to him by discharging the duty in the

services of the University.

3. For deciding this issue it will be relevant to state some essential facts for the adjudication of the case. As per petitioner, he was appointed as lecturer on 12.8.1977 in the department of Political Science in K.B. Jha College, Katihar and his services was approved by Bihar College Service Commission. There was number of litigations in the College, the matter went to Hon'ble Supreme Court. The Hon'ble Supreme Court constituted one man enquiry committee known as Justice S.C. Agrawala Commission and Justice S.C. Agrawala Commission has submitted its report to the Hon'ble Supreme Court and from the extract of the report (Annexure-1) it appears that name of the petitioner is at sl.no. 10 subject has been shown Political Science, date of appointment has been shown as 12.8.1977 and nature of post has been shown as sanctioned post. Justice S.C. Agrawala Commission submitted its report before Hon'ble Supreme Court and said report was accepted in toto without any modification and that case has been reported in 2005(1) PLJR 464 SC (State of Bihar and others v. Bihar Rajya M.S.E.S.K.K. Mahasangh and others). It will be relevant to mention here that Justice Agrawala Commission has also given notice to the College to produce materials whatever available with the



College, the Commission recorded the finding on eligibility and date of appointment 12.8.1977 and the College never disputed ever before the Commission or before Hon'ble Supreme Court that petitioner was not appointed or not eligible for appointment on 12.8.1977. It will be relevant to quote paragraph 17 and 70 of the aforesaid judgment:

“17. The one-member Commission completed within two years the stupendous task of examining the records, hearing various authorities of the State and the colleges as also individual employees. After seeking extension of period for completing the enquiry, the Commission has submitted a detailed report on 19.12.2003. On submission of the report of the Enquiry Commission, parties were granted time to submit their written objections, if any. Objections have also been filed before this Court in large number. The Commission has purposely, as was expected of it, avoided to express any opinion on the legal issues involved and which are pending decision before this Court. Some opinions have been expressed by the Commission on the provisions of the Act with the limited purpose of providing necessary information to this Court, for coming to a right and just conclusion.

70. Most of the objections to the report of the Enquiry Commission are based on the reports of the various Committees set up by the State and the recommendations of the Universities. Thereafter, we set up an Enquiry Commission which has given its report. It is, therefore, not possible to grant any relief or directions in favour of the objectors on the basis of the reports of the various Committees and recommendations of the Universities. We have now directed the Universities concerned, in respect of colleges within their respective

jurisdiction to issue formal orders of absorption in the constituent colleges on the basis of the report of the Enquiry Commission and in the light of our judgment.”

4. In view of the direction given by the Hon'ble Supreme Court the University has issued notification dated 8.2.2005. It has specifically been mentioned the date of appointment of the petitioner as 12.8.1977 in K.B. Jha College, Katihar in the subject of Political Science. Accordingly petitioner worked against the sanctioned post accordingly absorbed in the services of the University. On 31.12.2005 the petitioner superannuated from service, dispute arose from the day he was not paid retiral dues. He approached this Court vide C.W.J.C. No.6587 of 2006, this Court disposed of the case giving direction to the University to pay retiral days along with undisputed salary to the petitioner and after the disposal of that case the University paid the retiral dues but not to the satisfaction of the petitioner.

5. Petitioner filed criminal case vide C.A. Case No.3320 of 2008 as well as he has also approached to the Consumer Court vide Case No.68 of 2007 for non-payment of the retiral dues including salary to the petitioner. Criminal Court has taken cognizance and issue notices to the University for its appearance caused anger and revengeful. The Consumer Court passed the

order dated 14.8.2010 in Misc. Case No.8 of 2008 showing that all the payment have been made and there was no outstanding dues but dispute between the petitioner and University did not end.

6. University has issued a show-cause intimating him that during 12.8.1977 to 24.8.1984 one Indu Bhushan Mandal was the lecturer on the first post and so much so he has less than 52.5% marks he could not have been validly appointed on the post of lecturer as he has acquired Ph.D degree in 1991 he made himself eligible for the post of lecturer.

7. In nutshell, the University stated that he could not have been appointed before 1991 on the two scores; first one Indu Bhushan Mandal was the lecturer and other petitioner did not hold requisite qualification. On receipt of the same petitioner gave his reply, where he stated, he was appointed against the sanctioned post, so much so his services has been approved by the College Service Commission whereas the service of Indu Bhushan Mandal was never placed before the College Service Commission for its approval.

8. The University after considering the reply passed the impugned order dated 4.8.2011 holding that before 24.8.1991 the petitioner was not at all eligible for holding the post of

lecturer and his appointment was shifted from 22.8.1977 to 24.8.1991 consequently the order of recovery was passed for excess amount.

10. Learned counsel for the petitioner submits before issuance of show-cause at no place University has taken a plea that petitioner was in-eligibility or appointed against second post before that Indu Bhushan Mandal had work against first post. When all payments have been made, some of the persons of the University out of grudge and malice got the show-cause issued against the petitioner. He has further submitted that he has already superannuated and it will not be proper and equitable to pass an order for recovery of amount which was granted by the University without any suppression or misrepresentation of his appointment as lecturer on 12.8.1977.

11. In contra, learned counsel for the University has stated that it is undisputed fact that Indu Bhushan Mandal was appointed as lecturer against first post for the period 21.8.1976 to 24.8.1984 and during that period he cannot be treated to be a lecturer against first post and after retirement at best he can claim to the first post on and after 1991 when he acquired Ph.D degree as his marks in M.A. was less than 52.5%, could not have been appointed as per the statute of the University.

12. Now the question, the petitioner had filed a criminal case against the University as per counsel for University has been quashed by this Court itself, payments were made, all thorough the petitioner was treated to be appointed on 12.8.1977. During entire proceeding of the Hon'ble Supreme Court or before Justice S.C. Agrawala Commission the University had never taken stand as has been taken in this present case, that too, after retirement, it will not be proper for the University to embark on and take action against the petitioner who has superannuated from service in 2005 itself.

13. In such view of the matter, the order dated 4.8.2011 is quashed and petitioner will be treated to holding the post of lecturer since 12.8.1977 and University will not take any action for recovery for purported excess amount paid to the petitioner.

14. Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.5.2016
Transmission Date	