

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1602 of 2016
IN
Civil Writ Jurisdiction Case No. 20524 of 2014**

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Jai Ram Singh @ Jay Ram Singh, son of Late Rajendra Singh, resident of Village -
Bishunpur, P.S. - Wazirganj, District – Gaya, then Librarian, Gaya College, Gaya

.... Appellant/s

Versus

1. Magadh University through its Vice Chancellor, Bodh Gaya , Gaya.
2. Vice Chancellor, Magadh University, Bodh Gaya, Gaya.
3. Principal, Gaya College, Gaya.
4. Registrar, Magadh University, Bodh Gaya, Gaya.
5. Governor-cum-Chancellor of Universities, Raj Bhawan, Bihar, Patna.
6. Bhrigunath Singh son of Late Sri Ram Padum Singh L.I.G. - 91, Mustaffabagh,
Rampu, P.S. - Rampur, District - Gaya

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Rajendra Pd. Singh, Sr. Advocate Mr. Navjot Yesu, Advocate
For Respondent No.6	:	Mr. Ram Hriday Prasad, Advocate
For Magath University	:	Mr. K.N. Singh, Sr. Advocate Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-04-2017

Having heard learned counsel for the parties at length,
we find that even though the learned Writ Court has discussed
various aspect of the matter, but one of the grounds that weighed with
the learned Writ Court in allowing the writ petition filed by the
Respondent No.6, was that the petitioner, who was appointed by
promotion from the post of Assistant Librarian to the College
Librarian, did not fulfill the requisite minimum criteria laid down in



Statute No.10 of the Bihar Universities Act, 1976. One of the qualifications or the pre requisites, statutory in nature for appointment or promotion as a College Librarian was that a candidate should be a first class or high second class master degree holder in the subject of Library Science. Admittedly, when the selection committee met on 26.06.2012 the petitioner did not have this qualification as he appeared in the examination for acquiring this qualification in the first semester in December, 2013 and in the second semester in June, 2014 and the results were declared on 16.08.2014, meaning thereby that the petitioner acquired the statutory qualification required for appointment only on 16.08.2014, two years after the selection committee met on 26.06.2012.

Keeping in view the aforesaid, if the learned Writ Court has quashed the appointment of the petitioner and directed for fresh selection process to be held, we see no error in the same warranting reconsideration, even though during the course of hearing, the learned counsel for the petitioner tried to emphasize that in view of the law laid down by the Supreme Court in the case of **Ramakant Shripad Sinai Advalbalkar vs. Union of India and others [AIR 1991 SC 1145]** and followed by a Bench of this Court in the case of **Smt. Jai Shree Gupta vs. The State of Bihar and others [1995(2) PLJR 837]**, the petition be allowed. These cases lay down a principle that if



a person has stayed on a post for a long period of time and acquired experience for working on the post. Even if he acquired the qualification required for appointment to the post, subsequently there is no need for reverting him from the post on which he was working. This principle cannot be applied now in the backdrop of the constitutional Bench judgment of the Supreme Court in the case of **Secretary, State of Karnataka & ors. vs. Uma Devi & ors. (2006) 4 SCC 1**, wherein it has been held by the Supreme Court that an appointment made *de hors* the statutory rule is an illegal appointment void *ab initio* and cannot be regularized in any manner whatsoever. That being the law laid down by the Constitution Bench, the judgment relied upon by learned counsel for the appellant cannot be made applicable in this case now.

Accordingly, once the learned Writ court has recorded a finding that the petitioner did not acquire the necessary minimum qualification as per the statutory rule and remitted the matter to the Selection Committee, we see no reason to make any indulgence in the matter. That apart various observations have been made by the learned Writ Court in the writ petition and learned Senior Counsel Sri Rajendra Prasad Singh tried to indicate to us that these observations were either uncalled for or contrary to the material available on record. Once we are upholding the order passed by the learned Writ



Court, so far as it sent back the matter to the selection committee, we need not go into all these questions, suffice it to indicate that the selection committee based on the statutory rule and the rules for appointment to the post shall conduct its proceedings and take a decision in accordance with law without being influenced by any other observation made in the order passed by the learned Writ court.

With the aforesaid, the appeal stands dismissed.

The Selection Committee shall take a decision within a period of three months from the date of receipt of the certified copy of this order.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	01.05.2017
Transmission Date	

