

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1958 of 2015  
IN  
Civil Writ Jurisdiction Case No. 10142 of 2008**

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Dr. Nandita Banerji, daughter of late Somrendra Kumar Banerji, resident of P.S. Town and Distt- Madhepura, presently residing at M-3/20, Shrikrishnapuri, P.S. – Shri Krishnapuri, town and Distt Patna.

.... .... Appellant/s

Versus

1. The State of Bihar through Secretary, Science & Technology Department, Technology Bhawan, Government of Bihar, Bailey Road, Patna.
2. The Deputy Secretary, Science & Technology Department, Technology Bhawan, Government of Bihar, Bailey Road, Patna.
3. Director, Department of Science & Technology, Technology Bhawan, Government of Bihar, Bailey Road, Patna.
4. Accountant General, Bihar, Birchand Patel Path, Patna.

.... .... Respondents

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**Appearance :**

For the Appellant/s : Mrs. Shama Sinha, Advocate

For the Respondent/s : Mr.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)**

**Date: 08-08-2017**

**Reg.: I.A. No. 8765 of 2015**

Heard learned counsel for the appellant and the respondents and considering the explanation for 8 days delay in filing the present Letters Patent Appeal, we condone the delay in filing the present appeal.

2. I.A. No. 8765 of 2015 stands allowed.

3. The appellant in this intra court Letters Patent Appeal has assailed the oral judgment dated 12.08.2015 of the writ Court passed in C.W.J.C. No. 10142 of 2008.



4. Mr. Chitranjan Sinha, learned senior counsel has submitted that the appellant has worked as officiating Principal at Patna Polytechnic from 16.09.2004 till the date of her superannuation i.e. 30.04.2006 and, as such, while discharging the responsibility of higher post, she is entitled for grant of officiating allowance in terms of Rule 103 of the Bihar Service Code, but the writ Court declined to grant relief to the petitioner. Mr. Sinha has also submitted that since the appellant has obtained Ph.D. degree and as the appellant is entitled to two increments as incentive for acquiring Ph.D. degree.

5. The writ Court after analyzing the scheme of Bihar Service Code and also the eligibility criteria for the post of Head of Department (HOD) in terms of norms laid down by the AICTE, dismissed the writ application. So far as the claim of the appellant for grant of two increments for acquiring Ph.D. degree as incentive is concerned, the writ Court has noted the minimum eligibility for appointment on the post of Head of Department and held out that the writ petitioner was granted the benefit of Ph.D. in the matter of her appointment as Head of Department and once she was granted the benefit for acquiring degree of Ph.D., there is no arbitrariness in the decision of the respondents, which warrants interference.



6. We have given anxious consideration to the reason contained in Annexure-1 of the writ petition and the discussion of the writ Court, we do not find any infirmity, particularly, in view of the fact that the norms of AICTE is applicable in institution like Government Polytechnic, and as such writ court has committed no error in rejecting the claim of the petitioner for grant of two increments as incentive for Ph.D. So far as the claim of the appellant for grant of officiating allowance for the period she has worked as Principal of Patna Polytechnic, is concerned. Mr. Sinha has placed reliance on a decision of the Division Bench in the case of Chairman, Bihar State Power Holding Company Ltd. and others Vs. Ganesh Lal, dated 19.07.2017 wherein this Court on considering the fact that the respondent Ganesh Lal has discharged the responsibility of higher post and as such he was held to be entitled to officiating allowance in terms of Section 103 of the Bihar Service Code.

7. In the instant case, the respondents have admitted and granted the benefit of officiating allowance to the appellant for the period 21.01.1998 to 10.07.2002 for discharge of responsibility of incharge Principal of Polytechnic at Muzaffarpur, but the officiating allowance was denied to the appellant for the period 16.09.2004 to 30.04.2006, and during the said period the appellant has worked as



incharge Principal of Polytechnic, Patna. The refusal to grant officiating allowance as per Annexure-1 is that in terms of letter of the Finance Department no.14794 dated 30.12.1968, the appellant was not entitled to officiating allowance, as she has discharged the responsibility while she was substantially holding the post of Head of Department of Library Science. The writ Court held out that the petitioner was substantively holding the post of Head of Department and she was asked to officiate the office of incharge Principal of the Polytechnic, Patna. Undisputedly the post of Principal is a higher post and carries higher responsibility and, as such, the appellant, who has performed the responsibility of the Principal in addition to her responsibility as Head of Department, Library Science in the Government Polytechnic at Patna for nearly two years and as such in view of the decision of the Division Bench in the case of Chairman, Bihar State Power Holding Company and others (Supra), we find that the appellant deserves consideration for grant of officiating allowance for discharge of the higher responsibility as Principal, Polytechnic, Patna, accordingly, the Letters Patent Appeal is disposed of with a direction to the respondents to consider the case of the appellant for grant of officiating allowance for the period 16.09.2004 to 30.04.2006, during the period the appellant has discharged the responsibility of Principal, Polytechnic, Patna in addition to her



responsibility as Head of Department of Library Science in Patna Polytechnic .

8. The appeal is accordingly disposed of with the observations and directions indicated above.

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

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