

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9911 of 2015

=====

Dr. Bhushan Singh, son of Late Ram Suresh Singh, resident of Mohallah-Sahjanand Colony, Bagdulhan, P.S.- Town Hajipur, Town and District-Hajipur, Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Director (Higher Education), Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The J. P. University, Chapra through its Registrar.
4. The Registrar, J.P. University, Chapra.
5. The Governing Body through its Secretary, Purvottar Railway College, Sonapur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Jai Kishor Poddar, Advocate
For the Respondent/s	:	Mr. Sd. Irshad, AC to SC-1

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 11-12-2018

Heard learned counsel for the petitioner and the respondents.

2. The grievance of the petitioner in the present writ application is rejection of the claim of the petitioner for shifting from 2nd post to 1st post in the department of English.

3. Mr. Shivendra Kishore, learned senior counsel for the petitioner submits that there is only one post of lecturer (English) is sanctioned in the category of teachers under the deficit grant whereas the other posts are sanctioned by the respondents in the category of unaided. He submits that there is no dispute that the



post on which the petitioner is working is a sanctioned post. Referring to the provisions of Section 35 of the Bihar State Universities Act, he submits that posts have been sanctioned by the State Government and once the State Government has sanctioned that post whether in the category of deficit grant or without financial aid, the question remains the same that the petitioner was appointed after following the selection process against the sanctioned post or not. He submits that once it is held out that the petitioner has been appointed irrespective of deficit grant category or unaided category against sanctioned post and in the event there is vacancy in the sanctioned category whether in the deficit grant category or unaided category, person from bottom is to be shifted against the vacancy on the top in chronological manner. He further submits that since the petitioner was at serial 1st in the category of unaided and second in the category of lecturer against the sanctioned post and on account of death of the holder of 1st post, the petitioner is entitled to consideration and shifting of his case from unaided to deficit grant category. He referred to the case of similarly circumstanced other teachers of the same College, who have been favoured with the adjustment against the sanctioned post in the deficit grant category from sanctioned post without financial liability. Reference of Dr. Binay Kumar Verma (Hindi



Department), Pramod Kumar Das (Botany Department) and Braj Kishore Prasad Singh (Zoology) has been made to highlight discrimination.

4. Referring to the aforesaid three instances, he submits that the State is not expected to adopt two different yardsticks in the matter of shifting of lecturer from sanctioned post unaided to deficit grant post. If the respondents have granted approval of shifting from unaided to deficit grant in the case of Dr. Binay Kumar Verma (Hindi Department), Pramod Kumar Das (Botany Department) and Braj Kishore Prasad Singh (Zoology), the petitioner deserves similar treatment. Referring to Annexure-1 he submits that the reason assigned for rejecting the claim of the petitioner does not appeal to reason as discrimination goes to the root of the case and the decision making process stand vitiated, the respondents are not allowed to adopt two different yardsticks and practice of discrimination.

5. Considering the submissions advanced by Mr. Shivendra Kishore, learned senior counsel for the petitioner and the submissions of the respondents that in the matter of vacancy on account of death, superannuation or otherwise, the post sanctioned in the deficit category required to be advertised afresh and fresh



recruitment process has to be undertaken, as shifting is not permissible.

6. The Court on scrutiny of the materials available on record and the instance of three such teachers of the same college, as indicated hereinabove, is of the view that the respondents are not justified in practising discrimination and adopting two different yardsticks, if others were adjusted from without financial aid to deficit grant, the respondents have to either extend the same treatment or adopt corrective measures so that there may not be any heart burning on account of discriminatory treatment, if decision in their favour cannot be reversed, the same should be extended to the petitioner.

7. In the peculiar facts and circumstances, the respondents are directed to extend similar treatment, which was extended to the teachers, whose name figured in the previous paragraphs in the order, as the Court cannot approve the action of the respondents rejecting the claim for two fold reasons: (I) discrimination is impermissible (ii) the way of interpretation of Section 35 does not appeal to reason, the idea behind incorporating Section 35 of the Bihar State Universities Act. Once the post was sanctioned, irrespective in the category of deficit grant or without financial liability, the vacancy is available for shifting and denying



shifting amounts to reducing the sanctioned strength of deficit grant sanction post in the College, which is otherwise impermissible without following the principles of natural justice. Consequently, Annexures- 1 and 2 are held to be inapplicable in the case and accordingly, the same are quashed.

8. The Court hope and trust that the respondent will take appropriate decision on the claim of the petitioner at the earliest preferably within a maximum period of four months from the date of receipt/production of a copy of this order.

9. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2018
Transmission Date	

