

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12189 of 2014

Radhika Raman Singh, S/O Late Arjun Prasad Singh, Village- Sharma, P.S. &
District- Lakhisarai

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Higher Education Department, Govt. of Bihar, Patna
2. The Principal Secretary, Higher Education Department, Govt. of Bihar, Patna
3. The Director, Higher Education Department, Bihar
4. The Hon'ble Chancellor, Universities of Bihar, Patna
5. The Vice-Chancellor, Magadh University, Bodh Gaya
6. The Registrar, Magadh University, Bodh Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Madan Prasad Singh, Advocate.
For the Respondent/s	:	Mr. Raj Kishore Roy, Advocate.
For the M.U.	:	Mr. Shivendra Kishor, Sr. Advocate.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 27-09-2018

1. Learned counsel for the petitioner and counsel appearing on behalf of the state as well as learned senior counsel appearing on behalf of Magadh University.

2. The grievance of the petitioner in this present writ application is non grant of 2nd time bound promotion to the petitioner. Petitioner was appointed as Demonstrator on 1.8.1967 as Demonstrator and his service was confirmed by the University as Demonstrator w.e.f 27.10.1967 vide his office Order dated 05.08.1999 issued by the Registrar of the University under the order of Vice-Chancellor. Petitioner was granted 1st time bound promotion on 01.04.1981 on completion of 25 years of service he



was entitled to 2nd time bound promotion but. He was not granted the benefit of 2nd time-bound promotion vide resolution dated 11th January 1991 issued by the State Government it was provided that minimum one time bound promotion should be granted to Demonstrator who has improved his qualification for grant of promotion to the post of Lecturer. But the resolution does not say that 2nd time-bound promotion is not admissible to the Demonstrator, who has not improved his qualification and acquired eligibility for promotion as Lecturer under the statute framed for promotion of Demonstrator as Lecturer. Petitioner superannuated on 31st October 2004 without getting the second time-bound promotion.

3. Learned counsel for the petitioner has drawn the attention of this Court to the agreement contained in Annexure-9 to contend that in the tripartite agreement the State Government agreed to grant the benefit of time-bound promotion on completion of 10 years and 25 years of service. The issue of implementation of the tripartite agreement between State Government and the University and the Federation of non-teaching employee was finally adjudicated by the Apex Court in the case of State of **Bihar vs. Sunny Prakash reported in (2013) 3 SCC 559**. The Apex Court held out that the tripartite agreement is binding and the State



Government and the University is obliged to grant the benefit admissible to non-teaching employee in terms of tripartite agreement.

4. Mr. Shivendra Kishore, learned senior counsel appearing on behalf of the petitioner opposed the writ petition and raised objection. Firstly that the scheme contained in Annexures-5 and 6 is not available to the petitioner as he has not improved his qualification to acquire eligibility for grant of promotion as Lecturer or further promotion. Second submission of Sri Shivendra Kishor learned senior counsel is that there is policy of the State government and University cannot act contrary to what has been decided vide Annexures -5 & 6 by the State Government. Third submission of Mr. Shivendra Kishore learned senior counsel is that the petitioner superannuated in 2004 and as such the judgment of the Supreme Court is of prospective effect.

5. The Court does not find any merit in the submissions of Mr. Shivendra Kishore, so far as the judgment is concerned of judgment does not operate prospectively unless it is declared as prospective. In view of the above the contention of Shivendra Kishore that the judgment of the 2013 will operate prospective does not find any merit. The second submission of Mr. Shivendra Kishore as the question of policy is involved in this case and as



such university cannot act contrary to Annexures- 5 & 6. In view of the judgment in the case of **State of Bihar Vs. Sunny Prakash reported in (2013) 3 SCC 559**. The second submission also does not merit any consideration as the matter has now crystallized and finally adjudicated by the Apex Court and as such university and State is obliged to follow the verdict of the Apex Court in the case of State of Bihar Vs. Sunny Prakash reported in (2013) 3 SCC 559 and grant 2nd time bound promotion. The third submission of Sri Shivendra Kishore is that the petitioner has retired in the year 2004 but he has filed writ application in the year 2014 and as the petitioner is not entitled to grant of benefit also does not find merit consideration as the judgment of the Apex Court has finally resolved the issue as to the binding effect of tripartite agreement in Sunny Prakash case (Supra) only in 2013, in that view of the matter, the Court does not find any merit in the objection advanced by Sri Shivendra Kishore.

6. In view of the aforesaid the right accrued to the petitioner in terms of the tripartite agreement including right to grant of 2nd time-bound promotion cannot be denied on the ground that the petitioner has not approached the university for grant of such benefit. Since the judgment of the Apex court was rendered in 2013 the University and the State is obliged to act in accordance



with the principle laid down by the Apex Court in the case of Sunny Prakash (Supra) and considering the case of the petitioner for grant of 2nd time bound promotion on completion of 25 years. Final decision on the claim of the petitioner for grant of 2nd time-bound promotion in the light of the judgment of the Apex Court in the case of Sunny Prakash (Supra) must be taken by the respondent within four months and petitioner should be granted all consequential benefits within the same time frame indicated hereinabove.

7. With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.10.2018
Transmission Date	

