

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15211 of 2012

Dr. Suresh Prasad Yadav, Son Of Sri Singheshwari Prasad Yadav, Resident Of
Mohalla- Lalapatti, P.O.- Gahumani, Via & P.S.- Singheshwar, District-
Madhepura At Present Residing At Professor Colony, Ward No.-4, 'SHREE
Niwas', P.O. Madhepura, P.S. Madhepura, District- Madhepura

... .. Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Higher Education, Human Resources Department,
Government Of Bihar, Patna
3. The Director, Higher Education, Human Resources Department, Govt. Of
Bihar, Patna
4. The Principal Secretary, Finance Department, Govt. Of Bihar, Patna
5. The B.N. Mandal University Through Its Registrar, Madhepura
6. The Vice-Chancellor, B.N. Mandal University, Madhepura
7. The Registrar, B.N. Mandal University, Madhepura
8. The Finance Officer, B.N. Mandal University, Madhepura
9. The Principal, K.P. College, Murliganj, Madhepura

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate Mr. Uday Chand Prasad, Advocate Mr. Binod Kumar Singh, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA 7 Mr. Gopal Krishna, AC to GA 7
For the University	:	Mr. Raju Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 11-09-2018



Heard Mr. Jitendra Prasad Singh, learned Senior Counsel appearing on behalf of the petitioner, learned counsel for the State and Mr. Raju Giri, learned counsel representing the B N Mandal University.

2. This writ application was filed in 2012 for quashing of recommendation dated 12.04.2011(Annexure-17) and notification dated 29.06.2011 (Annexure-18). The writ petitioner has also prayed for grant of personal promotion on the post of Lecturer with effect from 15.09.1987 and for further consideration of his case for promotion to the post of Reader. In substance the prayer of the petitioner was to shift back the date of promotion of the petitioner from 31.03.1992 to 15.09.1987 on the basis of petitioner's initial date of entry in service 15.09.1975 on redesignation as Demonstrator.

3. Initially the petitioner was appointed as Lab Assistant in Physics Department of K P College, Murliganj on 15.09.1975. He was subsequently redesignated as Demonstrator. The Hon'ble Chancellor of the University vide letter no. 52505 dated 18.11.1980 approved the statute for promotion of Demonstrator to the post of Lecturer and further from Lecturer to Reader. Since the petitioner was upgraded pursuant to the resolution dated 7th March 1978 as Lab Assistant/Demonstrator he claimed consideration of



his case for promotion as Lecturer in terms of the Chancellor's statute for promotion of Demonstrator. The petitioner passed M.Sc. On 8.8.1986. He claimed that on account of the time frame indicated in the statute for promotion of Demonstrator to Lecturer the petitioner became eligible in 1987. The case of the petitioner was considered for grant of promotion to the post of Lecturer after the direction of this Court in CWJC No. 486 of 1998 dated 22.04.2010 vide Annexure-17 the University Selection Committee recommended the case of the petitioner for promotion as Lecturer with effect from 31.03.1992. On the recommendation of the University Selection Committee the University issued notification on 29.06.2011 (Annexure-11) granting promotion to the petitioner as Lecturer with effect from 31.03.1992.

4. The petitioner filed the present writ petition challenging Annexures- 17 and 18 since the petitioner was claiming grant of promotion from the date of his completion 12 years of service from 1975 when he was inducted in service. Vide order dated 26.06.2013 the Court granted status quo staying the notification contained in Annexure-18. The status of the petitioner in terms of the order dated 26.06.2013 remains of a Lecturer with effect from 31.03.1993.



5. During the pendency of the writ application, the University has issued notification dated 13.04.2013 whereby the petitioner has been reverted from the post of Lecturer to Demonstrator notwithstanding the order of status quo.

6. Petitioner filed I A No. 3273 of 2013 for amendment in the writ application and for quashing of Annexure-39.

7. In the meanwhile, question of the exclusion of Demonstrator from the definition of the teachers was decided by the Division Bench of this Court. It is noted here that amendment in the Bihar State Universities Act excluding the Demonstrator from the purview of teacher was upheld by the Division Bench. The matter was taken to the Supreme Court. The Hon'ble Supreme Court passed the following order while disposing of the appeals:-

“We have learned counsel for the parties at great length.

These appeals arise out of challenge to the Bihar State Universities (Amendment and Validation) Act, 2012 (Bihar Act 22 of 2012) which has been upheld by the High Court by the impugned order. We do not find any ground to interfere with the view taken by the High Court in upholding the said Act.

We however make it clear that the present status, rank and pay of the appellants will not be disturbed. If any Lab Assistant has been given designation of Demonstrator, which he continues to hold



till date, it will not be withdrawn. They will not be entitled to any further benefits in conflict with the impugned Act.

In view of above, the appeals are disposed of.
No costs.

Pending applications, if any, shall also stand disposed of.”

8. The Apex Court while upholding the decision of the High Court upholding the Bihar State Universities (Amendment and Validation) Act, 2012 made it clear that present status, rank and pay of the appellants will not be disturbed. If any Lab Assistant has been given designation of Demonstrator, which he continues to hold till date, it will not be withdrawn. They shall not be entitled to any further benefits in conflict with the impugned Act.

9. It is noted here that during the pendency of the present writ petition in the teeth of the status quo, the respondent-University has reverted the petitioner from Lecturer to Demonstrator and the petitioner superannuated during the pendency of this writ application.

10. Mr. Jitendra Singh, learned Senior Counsel representing the petitioner would submit that the petitioner was entitled to continue as Lecturer in view of the interim order dated



26.06.2013 and the action of the respondents in reverting the petitioner to the post of Demonstrator is a nullity in the eye of law and placed reliance on the judgment of the Apex Court in the case of *Manohar Lal vs Ugra Sen [(2010) 11 SCC 557]* and referred to paragraphs-24 to 26 thereof to contend that the order of the University reverting the petitioner from Lecturer to Demonstrator is a nullity as such order was passed in the teeth of the interim order passed by this Court.

11. Mr. Raju Giri, learned counsel appearing for the University referring to the order of the Hon'ble Supreme Court in *Durga Prasad Singh & Ors. Vs State of Bihar & Ors.* Submits that the Apex Court while upholding the judgment of the Division Bench has categorically held out that if any Lab Assistant is given designation of Demonstrator, he will continue to hold the post and it will not be withdrawn and in view of the same the petitioner cannot be entitled to protection. He further submits that the Court has categorically held out that they shall not be entitled to any further benefits in view of the Amendment Act. The amendment in the Act was made in 2012 whereas the status of the petitioner was determined vide Annexure-18 dated 29.06.2011. The petitioner became Lecturer with effect from 31.03.1992 vide notification dated 29.06.2011 and his status was maintained by this Court by



the order of status quo dated 26.03.2013. The expression 'further benefit' in the order of the Apex Court implies that whatever the status an individual is holding on the date the Act came into force, shall be maintained and there shall not be further benefit available to such Lab Assistant. Giving plain and simple meaning of the expression of the Apex Court in the order dated 27th February, 2017 it is manifest that the Demonstrator shall not be granted any further benefit after the amendment of the Act. Since the petitioner was granted the benefit of promotion as Lecturer vide notification dated 29.06.2011 that cannot be construed as further benefit as the benefit was already extended to the petitioner. This Court is not in a position to accept the contention advanced by Mr. Raju Giri that the petitioner shall not be entitled to benefit of Annexure-18. Annexure-18 was not challenged by the University as it was a conscious decision of the University and Annexure-18 was challenged by the petitioner for the purpose of revising the date of his promotion. The issue whether the order passed by the University during the pendency of the writ petition in teeth of the interim order dated 26.06.2013 is sustainable in view of the judgment of the Apex Court, there is no difficulty in holding that the order is a nullity and cannot be given effect to.



12. Considering the materials and the background of the order dt. 26.06.2013, the I.A. No. 3273 of 2013 is allowed and the amendment sought for is treated as part of writ application.

13. In view of the discussions made hereinabove, the Court cannot uphold the notification contained in Annexure-39. Accordingly, it is quashed as a nullity being passed in the teeth of the order passed by this Court.

14. Considering the factual legal position discussed above, the Court holds that the petitioner is entitled to status of Lecturer by virtue of Annexure-18 and as such is entitled to all the benefits as admissible to Lecturer.

15. The next question would be the benefit available to the petitioner when the petitioner was made to retire treating him as non-teaching employee. Once it is held that petitioner is entitled to the status of Lecturer it would follow as a natural corollary that petitioner being teacher is entitled to age of retirement of teacher. The issue of age of superannuation of teachers was finally adjudicated by the Apex Court in the case of ***Jagdish Prasad vs. State of Bihar [(2013) 8 SCC 633]***, where the Apex Court held out that teachers are entitled to retire on attaining the age of 65 years. Since the Apex Court has fixed the retirement age the of teachers as 65 years the respondents have to treat the petitioner as Lecturer



and grant him the status as such and treat the age of retirement of the petitioner as 65 years and grant all consequential benefits treating the age of retirement of the petitioner as 65.

16. With the aforesaid, the writ petition stands allowed. All the consequential benefits admissible to the petitioner as teacher shall be extended to him within a maximum period of four months from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

mrl/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.09.2018
Transmission Date	N.A.

