

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1838 of 2015

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Smt. Nilam Kumari, aged about 60 years Wife of Late Keshwar Chandra Thakur Resident of Mohalla - Subhash Colony, Balua Tal, Police Station - Motihari, District - East Champaran at Motihar, presently residing at Quarter NO- 7 Munsii Singh College, Motihari, District - East Champaran.

... .. Petitioner/s

Versus

1. The Vice Chancellor Baba Saheb Bhim Rao Ambedkar University, Bihar University, Muzaffarpur.
2. The Principal Munsii Singh College, Motihari, District - East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar, Advocate
For the Respondent/s	:	Mr. Fauzia Shakil, Advocate
For the University	:	Mr. Arbind Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 26-11-2018

Heard learned counsel for the petitioner and the counsel appearing on behalf of the University.

2. Petitioner was initially appointed on compassionate ground as routine clerk. After superannuation of regular Librarian, the petitioner was assigned higher responsibility and vide Annexure-3 the petitioner continued to perform the responsibility of Librarian till the petitioner attain the age of superannuation on 31.01.2014.

3. Learned counsel for the petitioner submits that petitioner was M.A. P. hd. Degree and acquired B.Lib degree in 2003 and from the date of acquiring B.Lib degree the petitioner was eligible for grant of promotion as Librarian as petitioner



was holding the requisite qualification and in fact performed the duty as Librarian.

4. Learned counsel appearing on behalf of the University submits that Principal has no jurisdiction to grant promotion as Librarian but the fact remains that the University tacitly approved the action of the Principal in allowing the petitioner to discharge responsibility of the Librarian of the college.

5. From the different documents enclosed it would be evident that the case of the petitioner was brought to the notice of the Vice-Chancellor of the University but no action was taken by the University either accepting the proposal for grant of promotion or rejecting the claim of the petitioner.

6. From the Annexure enclosed with the counter affidavit dated 8.9.2018, it appears that the claim of the petitioner was rejected for grant of promotion as Librarian by a reasoned order. The decision was taken four long years after superannuation of the petitioner. During the continuance of the petitioner, the University has not taken any decision which is admitted from the reasoned order dated 8.9.2018 itself.

7. From the reasoned order, it appears that petitioner could not have been granted promotion in another cadre as there



is no provision of inter cadre promotion.

8. The Court accepts the objection raised by the University so far as the claim of the petitioner for grant of regular promotion but the fact remains for 12 long years, the petitioner was allowed to officiate on higher post of Librarian and petitioner has requisite qualification, the petitioner cannot be denied at least the officiating allowances in terms of Rule 103 of Bihar Service Code.

9. Learned counsel appearing on behalf of the petitioner has placed reliance on the judgment of the Apex Court in the case of **Arindam Chattopadhyay & Ors vs. State of West Bengal & Ors. reported in (2013)4 SCC 152.**

10. The fact situation in the instant case is distinguishable from the case of Arindam Chattopadhyay. In the instant case, the petitioner was appointed on compassionate ground and under the scheme of University Act, the Vice-Chancellor has to power to make appointment or grant promotion in terms of Section 10(6) of the State University Act and as such the Court does not accept the contention of the petitioner for grant of pay scale admissible to the Librarian as post of Librarian is of different cadre but the Court in the peculiar circumstances is of the view that the petitioner cannot



be denied special allowance in terms of Rule 103 of Bihar Service Code as petitioner discharged responsibility on higher post.

11. Necessary decision granting such benefit in terms of Rule 103 of the Bihar Service Code may be taken by the respondents within a period of four months from the date of receipt/production of a copy of this order. The respondents are also obliged to ensure payment thereof in view of the fact that petitioner superannuated in 2014 itself without getting the benefit of officiating allowance for discharging higher responsibility.

12. The order contained in Annexure-R/1 will not come in the way of respondents granting officiating allowance to the petitioner.

13. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.12.2018
Transmission Date	

