

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 9711 of 2015**

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Deo Narayan Sharma, Son of Late Maharaj Sharma, R/o Village Sakhua, P.O. Mahespur, P.S. Sahnaula, District Bhagalpur (Bihar).

.... .... Petitioner/s

Versus

1. The T. M. Bhagalpur University, Bhagalpur, through its Registrar.
2. The Vice-chancellor, T.M. Bhagalpur University, Bhagalpur.
3. The Registrar, T.M. Bhagalpur University, Bhagalpur.
4. The Finance Office, T.M. Bhagalpur University, Bhagalpur.
5. The Principal S.M. College, Bhagalpur.
6. The state of Bihar, through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
7. The Director, Department of Higher Education Government of Bihar, Patna.
8. The In-charge State Govt's Auditors Team, Deputed at T.M. Bhagalpur University, Bhagalpur.
9. The Chief Secretary, Government of Bihar, Patna.
10. The Director General of Police, Bihar, Patna.
11. The District Magistrate, Bhagalpur.
12. The Senior Superintendent of Police, Bhagalpur.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date: 24-09-2018**

Heard learned counsel for the petitioner; State and T.M.

Bhagalpur University (hereinafter referred to as the 'University').

2. The petitioner has moved the Court for the following  
reliefs:

*“(i) Issuance of an Order, Direction or a Writ in the nature of Certiorari for Quashing of the Order contained in Memo No. B/10756-58 dated 21.08.2012 (Annexure-26 of this Writ Petition), passed by the then Vice-Chancellor of the Respondent T.M. Bhagalpur University, Bhagalpur, whereby and where under legal/legitimate and*



*lawful claim of the Petitioner for making payment of his due Salary and admissible allowances for the period from 31.08.1999 to February 2003, has been rejected, during which period the Petitioner had continuously discharged his duties on the post of “Sorter” in the College in question, to the full satisfaction of all concerned in the College.*

*(ii) Issuance of an Order, Direction or a Writ in the nature of Certiorari for Quashing Memo No. RO/Spl/500-503/13 dated 26.02.2013 (**Annexure-30 of the Writ Petition**), passed by the then Vice-Chancellor of the Respondent University, whereby and where under legal /legitimate /lawful claim of the Petitioner for making payment of his due salary and admissible allowances for the period from 31.08.1999 to February 2003 has been rejected and previous Order contained in Memo No. B /10756-58 dated 21.08.2012 (contained in **Annexure-26 of the Writ Petition**), has been upheld.*

*(iii) Issuance of an Order, Direction or a Writ in the nature of Mandamus commanding the authorities concerned of the University in hand for making the payment of Petitioner’s lawful legitimate due Salary and other admissible allowances for the period from 31.08.1999 to February 2003, as has been done in the case of one Nand Lal Mandal, who was also promoted with this Petitioner vide Annexure-7 to this writ petition.*

*(iv) Issuance of an Order, Direction or a Writ in the nature of Mandamus commanding the authorities concerned of the Respondent University for making payment of Penal Interest @ 12% per annum on the aforesaid arrears of salary claim of the petitioner.*

*(v) For grant of any other relief(s) to which this petitioner may be found entitled to, in the facts of this case.”*

3. Though, the matter has been heard on a number of occasions, the Court on the last occasion had given opportunity to learned counsel to come prepared with a comparative chart with



regard to the relief claimed by the petitioner and that by Nand Lal Mandal in whose case a Division Bench of this Court by judgment and order dated 25.07.2011 in L.P.A. No. 901 of 2008, had allowed the appeal by holding that the promotion given to Nand Lal Mandal to Class-III post was valid in the eyes of law and could not have been reviewed after such a long period, especially in the absence of any specific order cancelling such promotion and, thus, the Court had held Nand Lal Mandal entitled to all consequential benefits pursuant to his having been promoted in the year 1981 and also held any recovery to be impermissible and to be returned. The Court had further directed for payment of post retiral benefits to him treating such promotion valid from the year 1981 itself along with statutory interest permissible under law as also further consequential benefit as provided under the Statute. The Court had also indicated in the order that it be assisted on the point of similarity and dissimilarity of the case of the petitioner with that of Jwala Prasad Singh.

4. In terms thereof, supplementary counter affidavit has been filed on behalf of the University enclosing a chart in tabular form the similarities and dissimilarities of the petitioner, firstly as compared to Nand Lal Mandal and thereafter to Jwala Prasad Singh.

5. Coming to the case of similarity between the petitioner and Nand Lal Mandal, the similarities and dissimilarities shown have



been recorded as under:

| <u>Nand Lal Mandal</u> |                                                                                                                                                                                                                                                                                                                           | <u>Deo Narayan Sharma</u>                                                                                                                                                                                                                                          |
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| <u>Simialrities</u>    |                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                    |
| 1.                     | <i>Appointed by the Principal, S.M. College, Bhagalpur on 01.07.1967 as Peon (Class IV Post) on purely temporary basis.</i>                                                                                                                                                                                               | <i>Appointed by the Principal, S.M. College, Bhagalpur on 28/30.01.1964 as Peon (Class IV Post). He joined the college on 01.02.1964.</i>                                                                                                                          |
| 2.                     | <i>Service was confirmed vide order dated 28.02.1981. Information of confirmation of service was sent to the University.</i>                                                                                                                                                                                              | <i>Service was confirmed vide order dated 28.02.1981. Information of confirmation of service was sent to the University.</i>                                                                                                                                       |
| 3.                     | <i>Promoted from Class IV Post of Peon to Class III Post of Assistant on the basis of staffing pattern subject to approval of University w.e.f. 01.05.1981.</i>                                                                                                                                                           | <i>Promoted from Class IV Post of Peon to Class III Post of Librarian Sorter on the basis of staffing pattern subject to approval of University 01.05.1981.</i>                                                                                                    |
| 4.                     | <i>Payment of Salary was stopped with effect from 31<sup>st</sup> of August, 1999.</i>                                                                                                                                                                                                                                    | <i>Payment of Salary was stopped with effect from 31<sup>st</sup> of August, 1999.</i>                                                                                                                                                                             |
| <u>Dissimilarities</u> |                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                    |
| 5.                     | <i>Filed a writ petition being CWJC No. 11755 of 2005 for issuance of direction to the authorities concerned to settle his post retiral dues and also for payment of other admissible benefits after getting the calculation done.<br/>During the pendency of this writ petition this court by order dated 27.02.2008</i> | <i>Filed a writ petition being CWJC No. 11249 of 2000 for issuance of direction to restrain the respondents specially the respondent University from Stopping the petitioner's salary after more than 35 years of service without any fault on the part of the</i> |



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| <p><i>directed to respondent no.3, the Registrar of the University to dispose of the representation of the petitioner as contained in Annexure 8 by a reasoned order.</i></p> <p><i>The said representation was disposed vide Memo No. 288-90/VCR/08 dated 29.06.2008 whereby the representation of the Nand Lal Mandal for approval of his promotion to class III post was rejected stating therein to the effect that after enactment of Bihar Universities Act, 1976 the University was not competent either to appoint or to create a post without prior approval of the State Government and since the petitioner was promoted by the Principal of the College to class III post of Office Assistant which was not a sanctioned post.</i></p> <p><i>Said writ petition was disposed off vide order dated 03.09.2008 with a direction to pay interest at the rate of ten per cent over the amount paid to the petitioner treating him as Class IV employee, calculating from the date of retirement till the date of payment to the petitioner by the respondents within a period of two months on receipt/production of the certified coy of the present order.</i></p> | <p><i>petitioner and without any show cause or any departmental proceeding and in violation of the Principles of Natural Justice and against the Statutes (Rules) of the respondent University in the most Arbitrary manner and for directing the respondent University to maintain status Quo prevalent before 30.08.1999 in the matters of payment of salary and allowances.</i></p> <p><i>During the pendency of aforesaid writ petition, the petitioner moved an I.A. No. 955 of 2008 for amendment of prayer portion by making an additional prayer that he may be treated to be regular service from the dated of appointment i.e 01.02.1964 till date of his retirement and subsequently he be paid with all the emoluments which he would have received if he would have been in continuous service including benefit of revised pay scale implemented w.e.f. 01.01.1996 along with reasonable interest. This application was moved only after his absorption in the</i></p> |
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|  | <p><i>Nand Lal Mandal thereafter preferred an Appeal being LPA No. 901 of 2008 before the Division Bench of this Hon'ble High Court which was allowed holding that the promotion of the valid in the eye of law as the conduct of the Vice-Chancellor of respondent University in approving the pay fixation of Nand Lal Mandal fixation of Nand Lal Mandal could be deemed as approval of promotion.</i></p> | <p><i>College/University service vide Office no. 84/2006 dated 27.05.2006 w.e.f. 05.06.2003.</i></p> <p><i>The Hon'ble High Court vide its order dated 24.04.2008 disposed of the writ petition with a direction to pass an order either agreeing or disagreeing with the order of the Principal of the college within two months of receiving of the findings of the Principal.</i></p> <p><i>The Vice-Chancellor of the respondent University in compliance of order dated 24.08.2008 passed by the Hon'be High Court in C.W.J.C. No.. 11249 of 2000 and order dated 08.08.208 passed by this Hon'ble High Court in MJC No. 1566 of 2012, passed a reasoned order dated 21.08.2012 rejecting the claim of the petitioner for being promoted to the post of Sorter.</i></p> <p><i>Thereafter, in MJC No. 1556 of 2012, the petitioner stated that the case of the petitioner is similar to Nand Lal Mandal.</i></p> |
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|  | <p><i>The Hon'ble High Court vide its order dated 06.02.2013 to reconsider the case of the petitioner on the issue of his claim of similarity with Nand Lal Mandal within a period of three weeks and pass an appropriate order.</i></p> <p><i>The Vice-Chancellor vide its reasoned order dated 26.02.2013 whereby it was clarified that the grievances of the petitioner as well as the case of Nand Lal Mandal is absolutely different and the order passed by the Vice-Chancellor of the University in compliance of respective order dated 24.04.2008 in CWJC No. 11249 OF 2000 is in accordance with law. Vide this order the claim of the petitioner was rejected.</i></p> <p><i>The Hon'ble High Court vide its order dated 17.01.2014 disposed of the MJC No. 1566 of 2012 on granting the liberty to the petitioner that if the petitioner feels aggrieved with the order dated 26.02.2013 passed by the</i></p> |
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|    |                                                                | <p><i>University, he may assail the same in appropriate proceedings.</i></p> <p><i>The petitioner had thereafter filed this writ petition being CWJC No. 9711 of 2015 seeking quashing of orders dated 21.08.2012 and 26.02.2013 passed by this the Vice-Chancellor of Respondent University and further for issuance of direction to the respondent University for making the payment of Petitioner's lawful legitimate due salary and other admissible allowances for the period from 31.08.1999 to February, 2003 as has been done in case of one Nand Lal Mandal and further for making payment of Penal interest @ 12% per annum on the aforesaid arrears of salary claim of the petitioner.</i></p> |
| 6. | <b><i>Did not apply in response to said advertisement.</i></b> | <p><i>Being aggrieved from the disengagement from service and non-payment of some daily wage employee preferred writ petition before this Hon'ble Court which traveled upto LPA by the</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |



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|  | <p><i>Respondent University. It is noteworthy that the Hon'ble High Court vide its order dated 28.02.2000 quashed the communication dated 30.08.1999 of the University and directed the University to take steps for regularization/absorption of the service of the petitioners against posts.</i></p> <p><i>During the pendency of LPA, a direction was issued by the office of Higher Education, Govt. of Bihar, Patna in the light of order dated 12.04.2001 passed by this Hon'ble High Court in LPA No. 1514 of 2000. Vide its order dated 18.02.2002, the University dated 18.02.2002, the University had withdrawn all the appeals.</i></p> <p><i>In pursuance to it an advertisement published in Hindi daily News Paper "HINDUSTAN" dated 19.10.2001, by the respondent University for appointment of Class III and Class IV posts.</i></p> <p><i>The petitioner had applied for his</i></p> |
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|  | <p><i>regularization in view of above said advertisement.</i></p> <p><i>After qualifying in the written test and interview, the petitioner was absorbed in the services of the College/University in question vide Office order no. 2160 dated 05.07.2002.</i></p> <p><i>The aforesaid Notification was modified vide Office Order No. 32 of 2003 dated 25/26.01.2003, as in the earlier notification reservation rules were not applied. The petitioner was shown to be absorbed at the Class III post of Assistant.</i></p> <p><i>Later on the Office Order No. 32 of 203 dated 25/26.01.2003 was partially modified vide Office Order No. 171 of 2003 dated 05.06.2003. The petitioner was shown to be absorbed at the Class III post of Storekeeper.</i></p> <p><i>Finally, the service of petitioner was absorbed vide Office Order no. 84 of 2006 dated 24.05.2006 on the post</i></p> |
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|    |                                                                                                                                                                                | <i>of “Steno Typist” w.e.f. 05.06.2003.</i>                                                                           |
| 7. | <i>The College vide its office order no. 36/2004 dated 09.12.2004 absorbed his services in Class III post and sent the same to the respondent University for its approval.</i> | <i>Finally, absorbed as Office Order no. 84/2006 dated 27.05.2006 w.e.f 05.06.2003 on the post of “Steno Typist”.</i> |
| 8. | <i>Retired on 31.01.2005</i>                                                                                                                                                   | <i>Retired on 29.02.2008</i>                                                                                          |

6. In the dissimilarity, the only ground taken is that the petitioner had filed C.W.J. C. No. 11249 of 2000, being aggrieved by stopping his salary whereas Nand Lal Mahto had not preferred to move the Court which he did by filing C.W.J. C. No. 11755 of 2005 for settling of his post retiral dues. The Court would pause here. From the aforesaid, it is clear that Nand Lal Mandal preferred not to agitate the matter of his stoppage of salary whereas the petitioner had moved the Court in the matter which was disposed off on 24.04.2008, directing the Principal to look into the entitlement of the petitioner to payment of salary on the basis of his original appointment on the post to which he was promoted, which according to the University, was not a sanctioned one. In terms of the order, the Principal passed order on 08.08.2012 holding that in the background



of the service of the petitioner, he was required to be paid his salary in accordance with law.

7. Further, as also was required by the order of the Court dated 24.04.2008, the Vice Chancellor passed order dated 21.08.2012, accepting the claim of the petitioner to salary only for the IVth Grade Post and rejecting the claim of the petitioner to the promoted post of Sorter. However, since prior to passing of the order, the petitioner had moved in M.J.C. No. 1566 of 2012 and the order was passed during the pendency of the same, the Court taking note of the order passed in the case of Nand Lal Mandal in L.P.A. No. 901 of 2008, directed the Vice Chancellor to examine as to whether the case of the petitioner stands on similar footing as Nand Lal Mandal, and pass a fresh order, which was done on 26.02.2013, by which the earlier order dated 21.08.2012 was upheld. The contempt application was, thus, disposed off giving liberty to the petitioner to assail the same which has given rise to the present writ application.

8. The Court, thus, gave an opportunity to learned counsel for the University to assist as to how the case of the petitioner was dissimilar to Nand Lal Mandal.

9. After some arguments, learned counsel for the University fairly submitted that the basic foundational facts are



identical except for the petitioner having applied for regularization which was allowed by the University whereas Nand Lal Mandal never applied for regularization and accordingly, his service was never regularized.

10. Learned counsel for the State submitted that in view of the materials on record, the case of the petitioner cannot be said to be in any way different from that of Nand Lal Mandal.

11. In view of the aforesaid position, the Court does not find the necessity to consider the case of the petitioner *vis-à-vis* that of Jwala Prasad Singh.

12. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner and Nand Lal Mandal having been identically situated, the benefit which Nand Lal Mandal ultimately got from the Court cannot be denied to the petitioner. It would be relevant to indicate here that Nand Lal Mandal had not even preferred to assail the order stopping his salary in the year 1999, which the petitioner had done and further, he had not even applied for regularization of his services, which the petitioner did, and moreover, the service of the petitioner was regularized as that of Nand Lal Mandal by the same order.

13. Thus, in the opinion of the Court, when such



similarity has been admitted by the parties before the Court, in the fitness of things the judgment of the Division Bench in L.P. A. No. 901 of 2008 dated 25.07.2011 is required to be followed in the present case.

14. Accordingly, the writ petition stands allowed in terms of the aforesaid judgment and order dated 25.07.2011 in L.P.A. No. 901 of 2008. The petitioner is also held entitled to all consequential benefits in terms of his promotion given in the year 1981 which is held to be valid and his post retrial benefits shall accordingly be calculated and paid to him along with statutory interest permissible under law as also all further consequential benefits as provided under the Statute. The same be done expeditiously and latest within a period of two months from the date of production of a copy of this order before the Vice Chancellor and Registrar of the University.

**(Ahsanuddin Amanullah, J.)**

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