

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7696 of 2001

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Surendra Kumar, s/o late Mahendra Narain Ojha resident of village Usrahi,
P.S.-Jainagar, District-Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner cum-Secretary, Higher Education, New Secretariat, Patna
3. Director, Higher Education, New Secretariat, Patna
4. Maithili Academy through its Chairman, Shivpuri, P.S.-Sastrinagar, District and Town Patna
5. Director-cum-Secretary, Maithili Academy, Shivpuri, P.S.-Sastrinagar, District-Patna.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 7238 of 2002

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Surendra Kumar, S/o late Mahendra Narayan Ojha resident of village Ushrahi, P.S. Jaynagar, District-Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Commissioner Cum-Secretary, Higher Education, Govt. of Bihar, Patna
3. Joint Secretary Cum-Director, Higher Education, Govt. of Bihar, Patna
4. Maithili Academy through its Chairman, Shivpuri, P.S. Shastrinagar, District and Town Patna
5. Director Cum Secretary, Maithili Academy, Shivpuri, P.S. Shastrinagar, District-Patna

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 7696 of 2001)

For the Petitioner/s : Mr. Krishna Chandra Jha
Mr. Dharendra Kumar Jha

For the Respondent/s : Mr. Samir Kumar, AC to SC-16

(In Civil Writ Jurisdiction Case No. 7238 of 2002)

For the Petitioner/s : Mr. Krishna Chandra Jha
Mr. Dharendra Kumar Jha

For the Respondent/s : Mr. Samir Kumar, AC to SC-16

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT



Date : 06-03-2018

Heard the learned counsel for the petitioner and the learned counsel for the State.

In C.W.J.C. No. 7238 of 2002, the petitioner is challenging the order dated 22.04.2002 whereby and whereunder the services of the petitioner has been dispensed with as the Government refused to sanction the post against which the petitioner was appointed.

From the record, it appears that the petitioner has approached this Court in C.W.J.C. No. 729 of 1999 in which the claim was made by the petitioner that he was appointed as Night Guard and later on, he was promoted to the post of Typist.

The Court has found that the petitioner was working under unsanctioned post and the promotion of the petitioner on Typist was found to be invalid as person appointed against unsanctioned post cannot be promoted to the higher post of Typist as the Court has found that he was working on the post of *Aadeshpal*, but the recommendation was made for the absorption to the post of the Typist, which action was found by this Court illegal, completely violates Articles 14 and 16 of the Constitution of India and refused to recognize the promotion of the petitioner to the post of Typist i.e. Class III Post and as the petitioner was found that he was



working under unsanctioned post of the Peon, the Court directed Respondents to consider the case of petitioner for absorption, as the petitioner remained on the post of Peon for twenty years, which was found unsanctioned and the Court has directed the State Government to take decision with regard to the matter and any further delay will not be justified. Accordingly, the State Government was directed for taking final decision with regard to the matter as to whether the post of peon on which the petitioner was working, should be sanctioned or not, at which the Maithili Academy has already approached the State Government vide Annexure-8 and whereafter, the Government has taken decision refusing to oblige the petitioner creating a sanctioned post for him, which the Joint Secretary-cum-Director vide letter dated 22.04.2002 has communicated the decision of the Government.

The learned counsel for the petitioner submits that though the petitioner was working on the unsanctioned post, but the post of peon are still vacant and he continued to discharge the duties for a long period, his case should be considered sympathetically, if it is found possibility of adjustment, that benefit should be given to him.



As it is apparent from the record it appears that petitioner has not reached the age of superannuation, but only, his case be considered. Accordingly, this application is disposed of.

It is also made clear that as his appointment was found to be unsanctioned post, the question of payment of salary does not arise. Accordingly, C.W.J.C. No. 7696 of 2001 is dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
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