

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11227 of 2012

=====

Shaheda Khatoon W/O Late Serajul Haque R/O Near Poultry Farm, Quarter
No. 68, Pusa, Samastipur

... .. Petitioner/s

Versus

1. The Vice-Chancellor Rajendra Agriculture University, Bihar, Pusa, Samastipur
2. The Registrar Rajendra Agriculture University, Bihar, Pusa, Samastipur
3. The Assistant Director Rajendra Agriculture University, Bihar, Pusa, Samastipur
4. The Director, Administration Rajendra Agriculture University, Bihar, Pusa, Samastipur
5. The Holding Authority Live Stock Unit Rajendra Agriculture University, Bihar, Pusa, Samastipur

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Md. Khurshid Alam, Advocate
For the Respondent/s : Mr. Chandra Mohan Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date : 05-07-2018

Heard Mr. Khurshid Alam, learned counsel
appearing on behalf of the petitioner and Mr. Chandra Mohan
Singh, learned counsel appearing on behalf of the University.

2. The grievance of the petitioner in the present writ
application is that petitioner appeared at the limited competitive
examination for promotion from Class-IV to Class-III but
petitioner was not treated at par with other granted promotion
from Class IV to Class III.

3. Learned counsel for the petitioner with reference
to Annexure-3 submits that petitioner was accommodated



against the post of Clerk on 12.1.2002 and therefore, petitioner was paid salary of Rs. 1200-30-1800.

4. From Annexure-4, it appears that after nine years notice was issued to the petitioner by the Director (Administration) that promotion of the petitioner in the pay scale 1200-1800 was wrongly granted and accordingly the petitioner was asked to submit show-cause. The petitioner submitted show cause and thereafter, on 16.12.2011 (vide Annexure-6) the respondents have issued orders cancelling the promotion of the petitioner in the pay scale of Rs. 1200-1800 and also directed for recovery of the alleged excess amount. So far as the order of recovery is concerned that was stayed by this Court and as such there is no recovery. In view of the law laid down by the Apex Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (white washer), etc: 2015(1) PLJR (SC) 261=(2015) 4 SCC 334** recovery in the present case is not permissible as the petitioner was promoted in the pay scale 1200-1800 and was paid salary and there is no allegation of any fraud or misrepresentation.

5. Learned counsel for the petitioner submits that the action of the University vide Annexure-3 granting pay scale of Rs. 1200-1800 by posting the petitioner in Pusa was in



accordance with law and action of the respondents reopening of the same after nine years is arbitrary exercise of power. He submits that name of the petitioner was at sl.3 in the merit list and two others were accommodated on the basis of limited competitive examination and against the vacancy which was available subsequent to grant of promotion to no. 1 and 2 in the merit list this petitioner was considered granted pay scale and position vide Annexure-3. There is no infirmity in decision of the University contained Annexure-3.

6. On behalf of the University stand has been taken that the decision of granting such promotion vide Annexure-3 was not in accordance with law. The decision was not taken by the University but by the Controlling Officer who has no such jurisdiction.

7. Considering the rival contention of the parties, the writ petition is disposed of with liberty to the petitioner to file representation before the Vice-Chancellor of the University stating therein that the post on which the petitioner was accommodated was available for consideration of case and petitioner was at sl. no.3 and in terms of rule and practice the persons in the panel is eligible for consideration and posting against the vacancy which was available subsequent to the



preparation of the merit list. In case of filing of such representation alongwith with a copy of this order, the Vice-Chancellor may take final decision on objective consideration of the case and the claim of the petitioner cannot be rejected simply because that the University has become now Central University.

8. The Annexure-6 to the extent of recovery is hereby quashed.

With the aforesaid, writ petition is allowed and to the extent indicated above.

Ravi/- **(Anil Kumar Upadhyay, J)**

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.07.2018
Transmission Date	

