

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3212 of 2017

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Dr. Anirudh Prasad Son of Late Mahabir Prasad Resident of Mohalla -
Opposite Dhobiya Kali Mandir, Naya Tola, Parbatti, P.S. - Tatarpur under
Kotwali District - Bhagalpur.

... .. Petitioner/s

Versus

1. The Tilka Manjhi Bhagalpur University, Bhagalpur through the Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
2. The Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
3. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
4. The Government Auditor, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Librarian Incharge, Central University Library, Tilka Manjhi Bhagalpur University, Bhagalpur.
6. The State of Bihar, Department of Human Resources Development, Government of Bihar, Patna through its Secretary, Higher Education, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sah, Advocat Mr. Radha Raman Verma
For the Respondent/s	:	Mr. Madhukar Mishra-SC16
For the University	:	Mrs. Rekha Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 28-02-2018 Heard learned counsel for the petitioner and the counsel
appearing on behalf of the State as well as University.

Earlier the petitioner has approached this court by way of
filing C.W.J.C. No. 16449 of 2009 and a coordinate Bench of
this court vide order dated 7.3.2013 allowed the writ
application.

The relevant part of the order dated 7.3.2013 reads as
follows:-

**“The question, therefore, finally boils down
to the facts, taking into consideration the**



communication, contained in Annexure-8, by the Service Commission made to the University is whether the reasons for withdrawal of benefit of promotion on the post of Deputy Librarian as communicated to the petitioner in terms of Annexure-5 is based on a cogent valid reason, which stand the test or scrutiny the law of not?. The answer to the said question is that it does not. Merely because in the past the University had chosen to obtain the concurrence in matter of grant of promotion on the post of Assistant Librarian in case of the petitioner, it does not mean that there is a legal requirement or there was a legal requirement to take concurrence of the Commission. In addition to that, the reason given in the said communication is non-receipt of concurrence. On a pointed question being put to the counsel for the University as to what is the meaning of the word 'non-receipt' and whether it amounts to refusal, he was not in a position to take a firm stand. Non-receipt can never be seen to be a reason for withdrawal of the promotion. If there was necessity to obtain concurrence of the Commission and if there was non-receipt, the matter should have been followed up with the Commission to clarify as to why the concurrence was not coming forth. But if it was not a case of refusal, there was no occasion for the University to withdraw the benefit of promotion, which the petitioner was enjoying on the recommendation of the Promotion Committee, right from April 1998.

Before parting, one other parting shot, which was fired by the counsel for the University, is that the petitioner had taken responsibility of a higher kind, accepted the position till his retirement and in support thereof, he wants to rely on Annexure-7, annexed with the writ application by the petitioner himself. This is a communication by which petitioner was deputed to work as the



Director of Central Library, which, in the opinion of the counsel for the University, was a bigger responsibility, which the petitioner did not resist. In fact, he accepted and retired in that capacity.

On the question of the said post of Director being of any higher magnitude or responsibility, the counsel for the University is not in a position to reply whether this was a post which was to be held by a person superior in status to the present petitioner. A reading of the said notification would show that the petitioner has been described as an Assistant Librarian and has been assigned the responsibility to work as a Director of the Central Library. Assignment of responsibility in no manner can be said to be the prejudice to the interest of the petitioner in matter of assailing the impugned order contained in Annexure-5.

In totality, therefore, the reason for withdrawal of the benefit of promotion to the petitioner from the post of Deputy Librarian was based on non est ground. The requirement of concurrence has not been established in accordance with provisions noted above.

In view of the same as well as the fact that the petitioner has suffered and is suffering by a wrong decision contained in Annexure-5, it is required to be quashed. Quashing of Annexure-5 would not mean that the petitioner would be entitled to the past benefits by way of emoluments and payments of salary etc. as he did not hold the promoted post after issuance of Annexure-5. The maximum the petitioner can derive from quashing of Annexure-5 is fixation of his pension etc. on the post of Deputy Librarian and nothing more."

The court after consideration of the entire material available on record held out that the decision contained in



Annexure-5 is unsustainable and as such it was quashed.

The court made it clear that quashing of Annexure-5 will not entitle the petitioner for payment of salary and the benefit. The maximum the petitioner can derive from quashing Annexure-5 is fixation of his pension on the post of Dy. Librarian.

In view of the above, the petitioner cannot be granted the benefit of payment of salary. The decision of the writ court dated 7.3.2013 inter parte is binding. The law in this regard is well settled that even wrong order passed inter parte are binding between the parties, the respondents University and the State who were party in the proceeding in C.W.J.C. No. 16491 of 1999 are obliged to honour the order passed in the said writ petition. It also binding on the petitioner with regard to the scope of his grievance in the present writ application as what was adjudicated by the writ court in C.W.J.C. No. 16449 of 2013. Thus, claim of the petitioner for payment of salary as Deputy Librarian is hereby rejected. The court finding the decision dated 7.3.2013 as binding and attained finality. Respondents are directed to work out the pension of the petitioner on the basis of salary of Dy. Librarian which according to the petitioner is Rs. 15000-39100. The respondent



University is now required to fix pension of the petitioner treating him to have retired as Dy. Librarian and necessary corrective order for revised pension as of Dy. Librarian may be issued and benefit of revised pension may be extended to the petitioner within a maximum period of sixty days from the date of receipt/pronunciation of a copy of this order and consequential monetary benefit must reach the petitioner within a further period of one month.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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