

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3671 of 2011

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Ram Chandra Pd.Yadav, son of Shri Bans Raj Yadav, resident of Utare, P.S.
Sahar Ghat, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Higher Education, Government of Bihar.
3. The Vice-Chancellor, Lalit Narayan Mithila University, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Darbhanga
5. The Finance Officer, Lalit Narayan Mithila University, Darbhanga
6. The Principal, Kali Das Vidyapati Science College, Uchchaith, Benipatti,
District-Madhubani.

... .. Respondent/s

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with
Civil Writ Jurisdiction Case No. 14326 of 2011

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Prof. Surendra Narayan Jha S/O Late Upendra Narayan Jha R/O Vill.-
Bathnaha, P.S.- Sahsaal, Distt.- Saharsa, At Present R/O Benipatti, P.S.-
Benipatti, Distt.- Madhubani

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Higher Education, Government Of Bihar, Patna
3. The Vice Chancellor, Lalit Narayan Mithila University, Darbhanga
4. The Registrar, Lalit Narayan Mithila University, Darbhanga
5. The Finance Officer, Lalit Narayan Mithila University, Darbhanga
6. The Principal Kali Das Vidyapati Science College, Uchchaith, Benipatti,
Distt.- Madhubani

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 3671 of 2011)

For the Petitioner/s : Mr. Manoj Kumar Jha

For the Respondent/s : Mr. Ram Balak Mahto Ag

(In Civil Writ Jurisdiction Case No. 14326 of 2011)

For the Petitioner/s : Mr. Manoj Kumar Jha

For the Respondent/s : Mr. Rajesh Singh Gp16

For the University : Mr. Ajay Bihari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 12-07-2018

Heard learned counsel for the petitioners and the



counsel appearing on behalf of the State.

2. In both the writ petitions, similar issues are involved and as such with the consent of the parties both the writ petitions are heard together and disposed of by this common order.

3. In both the cases respondents have taken decision to revert the petitioners from the post of Lecturer to demonstrator and also decided to recover the salary paid to the petitioners as Lecturer.

4. Learned counsel appearing on behalf of the petitioners submits that petitioners were appointed against the post of Demonstrator which was created on 1.6.1972. He submits that the law in this regard is well settled that up to 1976 the Managing Committee of the College was competent to sanction the post and from the documents enclosed with the Annexure-3 dated 2.6.1984, it is evident that the post in question was sanctioned on 1.6.1972. He further submitted that in terms of instruction dated 11.1.1991 issued by the Human Resources Department, the Demonstrators were eligible for promotion to the post of Lecturer, if they were appointed against the post of Demonstrator sanctioned and have completed seven years service on 1.4.1986.



5. Learned counsel for the petitioners submits that petitioner in C.W.J.C. No. 3671 of 2011 was appointed by the College on 25.4.1978 whereas petitioner in C.W.J.C. No. 14326 of 2011 was appointed on 13.6.1975. Both the writ petitioners were granted promotion by the University as Lecturer on 17.8.1992 and 30.3.1993 respectively.

6. From perusal of Annexure-6 the notification issued by the LNM University, it is apparent that petitioner Ram Chandra Prasad Yadav was granted promotion as Lecturer on 17.8.1992 subject to the concurrence of Bihar State University Service Commission and Surendra Narayan Jha was granted promotion with effect from 30.3.1993 subject to the concurrence of the of State University Service Commission. Subsequently, vide notification contained in Annexure-7 the University Service Commission issued recommendation in favour of the petitioner Ram Chandra Prasad Yadav and on the decision of the Syndicate, the Vice-Chancellor has granted promotion to the petitioners Ram Chandra Prasad Yadav and Surender Narayan Jha vide memo No. 2850-80 dated 11.3.2000. After the grant of promotion and the subsequent post-facto recommendation by the University Service Commission and decision of the Syndicate when promotion of the petitioners as



Lecturer was notified by the University, the University cannot come out with decision nullifying the promotion already granted to the petitioners vide Annexure-11 dated 28.7.2010.

7. So far as Ram Chandra Prasad Yadav, petitioner in C.W.J.C. No. 3671 of 2011 is concerned, University has issued consequential order of recovery vide Memo no. 3443 dated 23.12.2010. However, order of recovery issued by the University against petitioner Ram Chandra Prasad Yadav was stayed by this court on 15.3.2011 by way of interim order passed in C.W.J.C. No. 3671 of 2011 .

8. In the counter affidavit filed on behalf of the University in C.W.J.C. No. 14326 of 2011 stand was taken that those Demonstrators were eligible for promotion who were appointed as Demonstrators before the post was created on 1.1.1973.

9. From the material available on record, it does not transpire that before passing impugned order adversely affecting the petitioners any opportunity of hearing was provided to the petitioners. Therefore, on the solitary ground of non-compliance of the principle of natural justice and fair play, the order contained in Annexure-11 of C.W.J.C. No. 3671 of 2011 is unsustainable and is accordingly quashed and consequential



order of recovery is also unsustainable as it was issued as the follow up of Annexure-11 and accordingly the writ petition C.W.J.C. No. 3671 of 2011 is allowed. The order contained in Annexure-11 and 12 is hereby quashed.

10. So far as C.W.J.C. No. 14326 of 2011 is concerned, in this case the respondents have not passed any order of reversion of the petitioner. However, vide order dated 23.12.2010 the respondents have taken decision to recover the alleged excess amount.

11. Since the action of the respondent is against the principle of natural justice as much as no opportunity of hearing was provided to the petitioners before passing the order contained in Annexure- 13 and as such the order contained in Annexure-13 cannot sustain. It is accordingly quashed.

12. Learned counsel for the petitioners submits that now petitioners have superannuated.

13. In view of the above, the respondent University is directed to work out the entitlement of the petitioners after restoring the position of the petitioners as Lecturer and they are also required to fix pensionary benefits treating both the petitioners as Lecturer.

14. The entire exercise in this regard may be taken



at the earliest preferably within a period of four months from the date of receipt/production of the copy of this order considering the fact that the petitioners have now retired.

15. With the aforesaid, both the writ petition stands allowed and disposed of.

Ravi/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.07.2018
Transmission Date	

