

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14119 of 2014

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Prof. Sami Askari, son of (Late) Prof. S.H. Askari, resident of Mohalla + P.S. - Sultanganj, P.O. - Mahendru, at & district - Patna - 800006.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar, New Secretariat, Patna.
2. The Director, Higher Education, Govt. of Bihar, New Secretariat, Patna
3. B.R.A. Bihar University, Muzaffarpur, through its Registrar, Muzaffarpur.
4. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukul Sinha, Advocate Mr. Suraj Kumar, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9 Mr. AC to SC-9
For the University	:	Mr. S. Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 03-10-2018

Heard learned counsel for the petitioner and the respondents.

2. The petitioner is aggrieved by the order of the University, as contained in Annexure-10 and Annexure-13, the objection raised by the Auditor of the State Government in the process of pay verification.

3. Mr. Mukul Sinha, learned counsel appearing on behalf of the petitioner submits that the petitioner was appointed in the College in question way back in 1973. The post in question was sanctioned w.e.f. 01.04.1974. Referring to Annexure-1 he submits that at the relevant time the University Service Commission was required



to take decision with regard to appointment of teachers and the University Service Commission vide letter no.6103 dated 24th August, 1974 concurred with the temporary service of altogether 23 teachers including the petitioner, whose name figures at serial no.17 as lecturer (Zoology). The services of the petitioner was extended from time to time and vide letter no.1817 dated 25.09.1980 the College Service Commission granted approval from the date of sanction of post. Referring to Annexure-4 Mr. Mukul Sinha submits that the post of Lecturer (Zoology) against which the petitioner was appointed, was sanctioned vide letter dated 19.12.1974. Referring to the above, Mr. Sinha submits that the petitioner was appointed in accordance with law against the sanctioned post and as such the petitioner shall be entitled to counting of his seniority w.e.f. 01.04.1974. The College in question was made constitution unit w.e.f. 1975, after the college was made constituent, office order was issued by the University counting the services of the petitioner from 15.02.1977 vide Annexure-10, i.e. the date of recommendation for permanent absorption by the Bihar Public Service Commission. However, the State Government on account of take over of the College as constituent unit and absorption of the petitioner sanctioned Budget and also fixed the pay scale of the petitioner treating the date of appointment as 01.04.1974. In view of the above, the office order as contained in Annexure-10 has lost its



significance. After report of Professor Shyam Lal Committee, the auditor of the Education Department raised objection in the matter of counting of seniority of the petitioner.

4. So far as jurisdiction and competence of the auditor of the department is concerned, it has been decided by this Court that the Pay Fixation Committee of the University is the Competent Statutory Committee and the auditor has no business in the matter of pay fixation. The objection raised by the auditor has no relevance in the matter of pay fixation, as service of the University employees are regulated by the Statutory Scheme and statutory committee constituted under the Statutes.

5. Learned counsel appearing on behalf of the University has raised objection with reference to Annexure-9 that the Bihar Public Service Commission has recommended the case of the petitioner for permanent absorption on 15.02.1977 and in that view of the matter, the seniority of the petitioner shall be reckoned from the date of recommendation of the Bihar Public Service Commission for permanent absorption.

6. The objection of the University does not appeal to reason for the obvious reason that the appointment of the petitioner was against a sanctioned post and the College Service Commission was competent at the relevant time under the old Act i.e. under the



Bihar State University (Bihar, Bhagalpur and Ranchi) Act, 1960, has considered the case of the petitioner and others and the Commission concurred with the temporary appointment of the petitioner as lecturer and the same was extended from time to time and followed by permanent absorption.

7. In view of the above, the petitioner is entitled to count his seniority from the date of his initial appointment with the concurrence of the College Service Commission in terms of the 1960 Act. It is to be noted that the Apex Court has the occasion to consider the effect of ad-hoc appointment followed by regular appointment in the matter of counting of seniority. Reference in this connection is made to the judgment of the Apex Court in the case of **Direct Recruit Class-II Engineer Officers' Association Vs. The State of Maharashtra and Others**, reported in **AIR 1990 SC 1607**, Para 44 thereof is clinching on the point.

8. In addition thereto, a large number of cases where after the report of Professor Shyam Lal Committee, the date of seniority was altered, the matter was taken to Justice S. N. Jha (Rtd.) Committee and the Committee recorded a finding that those who were appointed after following the selection process, seniority will be reckoned from the date of initial appointment and not from the date of regular appointment applying the same line of reasoning after



regularization under the regularization scheme in the recommendation of Commissioner petitioner would be entitled to counting of seniority from initial date.

9. Considering the totality of the facts situation, as discussed herein above, the Court finds substance in the submission of Mr. Mukul Sinha, accordingly, the writ application is allowed. The order as contained in Annexure-10 is hereby declared as inoperative in view of the subsequent decision of the State Government. The order as contained in Annexure-13 is without jurisdiction, as auditors have no jurisdiction and, as such, shall not be given effect to in the matter of counting of seniority and for grant of benefits admissible to the petitioner counting his initial date of appointment for all practical purposes as 01.04.1974.

10. The writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2018
Transmission Date	

