

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11785 of 2014

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Man Mohan Jha son of late Kamla Kant Jha resident of Soti Lane, near Raj Power House, Post K. S.D.S.U. (Lalbag), P.S. University, District - Darbhanga

... .. Petitioner/s

Versus

1. The Vice - Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
2. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gopal Jha, Advocate

For the Respondent/s : Mrs. Binita Sinch, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 05-09-2018

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

The petitioner has filed the present writ petition raising grievance that the benefit of pay of Assistant which was sanctioned to the petitioner pursuant to the office order dated 22.05.2010 with effect from 10.08.1984 has not been extended to the petitioner. The writ petition was filed in the year 2014.

On behalf of the University counter affidavit has been filed today wherein the University has taken the following stand:-



“(a) That the petitioner was appointed on the compassionate ground on 10.08.1984 and his services were later regularized as routine clerk and therefore the petitioner was not promoted to the post of Assistant, which is duly claimed by the petitioner.

(b) That it is humbly submitted that the office order no. CR-1067-1072/10 dated 22.05.2010 (Annexure-2 of writ petition) whereby the directions were given for granting scale of Assistant to the petitioner, was not proper as the petitioner’s appointment was on the basis of compassionate ground w.e.f. 10.08.1984 initially on daily wage basis and therefore should not have been granted scale of Assistant since the Bye-laws/guidelines of the State Government for appointment on compassionate ground does not allow the scale of Assistant and further as no post of Assistant was vacant in the university at that point and therefore the office order could not have been issued for non-vacant post of Assistant.

(c) That also as per Section 10(6) of the Bihar University Act, which provides that the Vice Chancellor shall have the power to make appointments only with respect to the sanctioned grades and scales of pay, the relevant extract of the aforesaid provision is reproduced hereinbelow for ready reference:-

“The vice chancellor shall subject to the provisions of this Act, the Statutes and the ordinances have the power to make appointment to the post within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servants of the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants”.....

(d) That it is further submitted that as per Section 35 of the Bihar State University Act 1976 any appointment and promotion made contrary to the



provisions of the University Act was illegal and made in irregular or unauthorized manner and shall be terminated at any time.

(e) That statement made in paragraph -1 of the writ is the relief sought by the petitioner and paragraph-2 of the writ is the question for consideration and somehow has been replied with the aforesaid submissions of the answering respondent.

(f) That with respect to statements made in paragraphs 4 and 5 of the writ requires no comment as the same is a matter of record.

(g) That with respect to statement made in paragraphs 6 and 7 the averment made therein is wrong and hence denied the petitioner was not allocated any file in capacity of Assistant and rather he performed the duties of the Routine Clerk and later on worked in capacity of Lower Division Clerk and was never promoted to the post of Assistant by the University also his case was never considered to the post of Assistant by the statutory Committee namely "Promotion Committee".

(h) That with respect to statement made in paragraph 8 it is submitted that since the submission made thereof with respect to regularization of the 196 daily wagers is correct however rest of the submission are denied in totality and it further submitted that as per the executive order of the State Government, any appointment on compassionate ground was to be made in the scale of not exceeding 680-965 scale, and subsequently revised as 1200-1800 in next revision, which was lower scale than that of the Assistant.

(i) That with respect to statement made in paragraph 9 it is submitted that the office order no. CR-1067-1072/10 dated 22.05.2010 (Annexure-2 of writ petition) whereby the directions were given for granting scale of Assistant to the petitioner, was not proper in accordance with Section 10(6) and Section 35 of the Bihar State University Act."



Till date no final decision has been taken and the University is now taking the plea that the petitioner is not entitled to the benefit of the position of Assistant. The Court fails to understand the submission made on behalf of the University. The Court admits the position that the mistake in the order can be rectified at any point of time, but the respondents have adopted casual approach in the present case which indicates that as an after-thought they have taken such a plea in the counter affidavit, which is not expected from an institution like the University. The University took a decision way back in the year 2010 and after eight years they are finding fault in the decision. It is admitted that till date they have not adopted any corrective measure but are resisting the plea of the petitioner for the benefit of the post of Assistant. The stand of the University lacks bonafide and as such the Court is not inclined to approve the attitude of the respondent-University.

Under the aforesaid circumstances, the University is directed to ensure payment of the monetary benefits payable to the petitioner in terms of Annexure-2 until the decision is rectified/modified in accordance with law after opportunity of hearing. Learned counsel for the University is directed to ensure payment of the benefits to the petitioner within a period of three



months from the date of receipt / production of a copy of this order.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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