

## IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.433 of 2014

Bindeshwar Bhagat S/O Late Baldeo Bhagat Resident Of Village- Sri Chandpur  
Kothia, P.S- Tajpur, District- Samastipur .... .. **Petitioner**

**Versus**

1. The State Of Bihar through the Principal Secretary, Science and Technology Department, Govt. Of Bihar, New Secretariat, Patna-1
2. The Joint Secretary, Department Of Science and Technology, Government Of Bihar, New Secretariat, Patna-1
3. The Additional Secretary, Department Of Science and Technology, Govt. Of Bihar, New Secretariat, Patna-1
4. The Deputy Secretary, Department Of Science and Technology, Govt. Of Bihar, New Secretariat, Patna-1
5. The Director, Department Of Science and Technology, Govt. Of Bihar, New Secretariat, Patna-1
6. The Deputy Director, Department Of Science and Technology, Govt. Of Bihar, New Secretariat, Patna-1
7. The Principal, Government Polytechnic Barauni, Begusarai .... **Respondents**

**Appearance :**

For the Petitioner : Mr. Chandra Mauli Chaurasia, Advocate

For the State : Mr. Sunil Kumar, AC to GA 12.

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**

ORAL JUDGMENT

**Date: 28-06-2018**

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

2. The petitioner was appointed as Laboratory Assistant on *ad hoc* basis on 29.10.1975 in the Government Polytechnic Barauni, Begusarai. Pursuant to the order of appointment, he joined on 4.11.1975.

3. Prior to petitioner's appointment, the post of demonstrator was abolished by the State Government with effect from 18.9.1975. Said fact is admitted. In spite of the post having been abolished, respondents however have continued to take work from the petitioner on the post of demonstrator for many years and as such the



petitioner approached this Court with a grievance that in spite of the fact that he has been made to work as demonstrator for more than twenty years he has not been regularized. Considering the said cut off date, i.e., 18.9.1975 and the fact that the petitioner's appointment and joining was subsequent to the said cut off date, respondents resisted petitioner's claim for regularization in the writ proceeding arising out of C.W.J.C.No. 9511 of 1996.

4. Stand of the respondents in the said writ petition and the observation of the Court in favour of the petitioner in order dated 27.10.1997 passed in the said writ petition (C.W.J.C.No. 9511 of 1996) are being recorded herein below since the same are relevant to the claim of the petitioner:-

*“Learned counsel for the respondents submits with reference to paragraph 31 of the counter affidavit that the post originally held by the petitioner has been abolished. As such the ways and means are to be worked out as to how the petitioner can be regularized.*

*In that view of the matter, this Court directs that since the petitioner has been working continuously from the year 1975 and thus worked for more than 22 years, the claim of regularization of services of the petitioner ought not to be refused now. In that view of the matter, this Court directs the Secretary, Science and Technology, Government of Bihar, Patna (respondent no.1) to consider the petitioner's case for regularization on the post of Demonstrator. Praying for such regularization the petitioner will make a representation within two weeks from the date of receiving a copy of this order and on the basis of the said representation, respondent no.1 will consider the case of the petitioner and pass appropriate reasoned order in the light of the observation made above within three months from the date of receipt of the said representation.*

*Learned counsel for the petitioner submits that his client's salary from October, 1996 has not been paid. While making the aforesaid representation, the petitioner will refer*



*to the said grievance also and the respondent authorities will also consider the same within the period aforesaid.”*

5. Petitioner's claim for promotion was left out in the said order and as such order dated 24.11.1997 was passed in the same case. Order dated 27.10.1997 was modified so as to direct the respondents to consider petitioner's claim also for the time bound promotion.

6. Pursuant to the said observations of this Court in the proceedings arising in C.W.J.C.No. 9511 of 1996, the respondents have thus carved out an exception for the petitioner and even though he was appointed few months subsequent to the cut off date, by order dated 10.08.1998 (Annexure 4) they have regularized the service of the petitioner with effect from his initial appointment being 29.10.1975.

7. The admitted fact is that the petitioner, as a result of being regularized as Demonstrator, has already been allowed the benefits of the UGC scale and has been placed in the UGC scale of Rs.5000-9000. The petitioner, by virtue of his status as Demonstrator duly recognized by the respondents, claims that he was entitled to the benefit of personal promotion as a lecturer under the decision of the State Government in the Science and Technology Department dated 23.2.1988. He approached this Court by filing a writ petition staking the said claim. The writ petition was numbered as C.W.J.C.No. 17733 of 2009 and the same was disposed of with the following



observations:-

*“The claim is for grant of personal promotion on the Assistant Professor. The foundation for the claim is the ground of similar promotion to another similarly situated under certain orders of this Court. The petitioner is stated to have filed a representation, and is given further permission to file additional representation, if he so desires.*

*Learned counsel for the petitioner submits that he seeks notional promotion from the effective date but the monetary benefits should be made available to him from the date of institution of the writ application.*

*Let the representation of the petitioner be considered and disposed of by a reasoned and speaking order within a maximum period of four months from the date of receipt/production of a copy of this order.*

*The writ application stands disposed of.”*

8. The petitioner thereafter is aggrieved by rejection of his claim under ‘speaking order’ dated 10.5.2010 bearing Memo no. 1344 (Annexure 15), whereby his claim for the notional promotion and monetary benefit in respect thereof from the date of institution of C.W.J.C.No. 17733 of 2009 has been rejected. The reasons assigned in the said order are mere reiteration of stand of the authorities taken to resist petitioner’s claim for regularization in the earlier proceeding arising out of C.W.J.C.No. 9551 of 1996 in respect of which this Court had made certain observations in favour of the petitioners which has been indicated hereinabove. Other than the said fact that the petitioner has been appointed subsequent to the cut off date, i.e., 19.2.1975 no ground has been taken to reject the claim of the petitioner.

9. Petitioner thereafter filed contempt petition MJC No. 3146



of 2010 and the same was disposed of with liberty to the petitioner to challenge the order of rejection dated 10.5.2010 in another writ petition. Accordingly, the instant writ petition has been filed.

**10.** In the instant writ petition, other than the aforesaid claims, the petitioner has also made a grievance that he has been placed on the lower scale and he has not been granted the revised scale under the UGC. UGC Letter dated 21.7.1999 (Annexure 17) relates to certain revision/enhancement of salary.

**11.** As regards enhancement of the salary, this Court would observe that the same has not been denied in the counter affidavit. As such, the petitioner, in terms of the decision contained in UGC letter dated 21.7.1999, would also be entitled to the revision/benefits in the UGC scale.

**12.** Only ground for resisting petitioner's claim is that he has been appointed subsequent to the cut off date. i.e., 18.9.1975. The said cut off date has been made basis of rejecting petitioner's claim relying upon letter dated 9.9.1991 issued by the Deputy Secretary to the Department of Science and Technology in the Government of Bihar.

**13.** As regards the cut off date standing in the way of grant of benefit of personal promotion to petitioner, as lecturer this Court considering the uniqueness of petitioner's claim since he has been continued for such a long time has already made observation in



favour of the petitioner under order dated 27.10.1997, passed in C.W.J.C.No. 9511 of 1996 so as to direct the authorities that ways and means were to be worked out in respect of petitioner's claim.

**14.** Relying upon said observations, respondents have also granted the benefits of regularization to the petitioner ignoring the said cut off date in his case. Having done so, this Court is of the opinion that the respondents cannot deny the benefits of notional promotion and the monetary benefits in respect thereof for the notional promotion to the post of lecturer in terms of the policy decision of the Government dated 23.2.1988.

**15.** Respondents have acted in terms of the earlier orders passed in C.W.J.C.No. 9511 of 1996. They have themselves allowed petitioner's claim for regularization in the unique background of the case. Having relaxed the cut off date in case of the petitioner, now they cannot be permitted to rely upon the same cut off date to deny future benefits of service to the petitioner, claimed in the instant proceedings.

**16.** This Court is of the opinion that petitioner's claim for the benefits of personal promotion as also revised UGC scale with reference of the observations of this Court in orders dated 27.10.1997 & 24.11.1997, passed in C.W.J.C.No. 9511 of 2011 as well as order dated 21.12.2009, passed in C.W.J.C.No. 17733 of 2009 may be examined and be given to the petitioner after



ascertaining the claim admissible.

**17.** In order to facilitate such determination of the admissible amount, the petitioner is at liberty to file a detailed representation making his specific claim with reference to the date before respondent no.1 within a period of eight weeks from today. On receipt of such application, respondent no.1 would be obliged to pass a reasoned and speaking order with respect to the admissible claim of the petitioner and make payment of the amount admissible within eight weeks thereafter.

**18.** The writ petition stands allowed with the aforesaid directions.

**(Madhuresh Prasad, J)**

Shashi.

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