

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16829 of 2016

=====

Sanjiv Kumar S/o Late Ram Krishna Mistri Resident of village - Banbari Pur,
Post Hilsa, P.S. Hilsa, District Nalanda Pin 801302

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Bihar, Patna
2. The Additional Secretary, Department of Higher Education, Government of Bihar, Patna
3. The Vice - Chancellor, Magadh University, Bodh Gaya, Gaya, Bihar
4. The Registrar, Magadh University, Bodh Gaya, Gaya
5. The Finance officer, Magadh University, Bodh Gaya, Gaya, Bihar
6. The Principal, S.U. College, Hilsa, Nalanda, Bihar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar Singh, Advocate Mr. Ravindra Kumar Advocate Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Amit Bhushan, AC to GP17
for Magadh University	:	Mr. Arbind Nath Pandey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 06-03-2018

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

2. The present writ petition has been filed by the petitioner for a direction to the respondents to pay arrears of salary from September, 2010 till date.

3. On behalf of the University a counter affidavit has been filed, in paragraphs 6 to 10 of which following stands have been taken by the University.

“6. That it is respectfully stated and submitted that the father of the petitioner was working as a peon (Class IV post) in the college against a sanctioned post and after his death the post became vacant but



the compassionate appointment committee without verifying the fact, appointed the petitioner on a class III post which was not sanctioned. The petitioner was getting his salary after his appointment, but since no fund is being released by the State Government for payment to an employee who is working against a post which is not sanctioned and due to the above reason the petitioner is not being paid his salary since September, 2010.

7. That it is further swtated and submitted that keeping in view the fact that compassionate appointment is made essentially for the purpose of giving support to the bereaved family of the deceased employee, the compassionate appointment committee without verifying the fact that the father of the petitioner was working as a peon and after his death the same became vacant, appointed the petitioner on a class III post of routine clerk, which is not a sanctioned post.

8. That it is respectfully stated and submitted that keeping in view the law laid down by the Hon'ble Apex Court and the order relied upon by the petitioner passed in CWJC No. 9489 of 2013 by a bench of this Hon'ble Court, the petitioner will be adjusted to another college against a vacant sanctioned post of Routine Clerk and his arrears of salary as well as current salary will be paid to him after release of fund from the State Government and after approval of the State Government under Section 35 of the Bihar State Universities Act, 1976.



9. That it is respectfully stated and submitted that since the State Government is the funding agency, the university will request for release of fund for making payment to the petitioner after adjusting him in some other college. The petitioner will be paid his arrears of salary after receipt of fund from the State Government.

10. That under the above stated facts, the writ petition may kindly be disposed of at the stage of admission itself.”

4. On behalf of the Education Department, in the counter affidavit, stand has been taken that the University is the custodian of the record and it is in a better position to give reply on fact. In para-9 specific stand has been taken that State Government releases grants-in-aid to the University for making payment of salary to the employees who are appointed in accordance with law and are working against a valid sanctioned post.

5. Since the respondent-University has appointed the petitioner on compassionate ground and the petitioner was paid salary upto 2010, there is no justification to stop salary of the petitioner as the objective behind compassionate appointment is to provide financial assistance to the family of the employee died in harness. Non-payment of salary to employee appointed on compassionate ground runs contrary to the objective of the



compassionate appointment. Accordingly, the respondent-University is required to adjust the petitioner against any sanctioned post as per their own stand in the counter affidavit.

6. In view of the specific stand of the respondent-University, two months time is granted to the University to take appropriate step for adjustment of the petitioner against sanctioned post in the University or any constituent unit of the University so that regular payment to the petitioner, appointed on compassionate ground, is made. The claim as to payment of arrears since September, 2010 is also required to be addressed by the respondents as the petitioner cannot be made to suffer for the lapse of the University in not adjusting the petitioner against sanctioned post. The entire exercise of adjustment and payment of salary – arrears as well as current – must be taken by the respondents within a maximum period of three months from the date of receipt/production of a copy of this order.

7. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	9.3.2018
Transmission Date	

