

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1315 of 2017
In
Civil Writ Jurisdiction Case No.6236 of 2013

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1. B. N. Mandal University, Madhepura through its Registrar. Laloo Nagar Madhepura, P.S. Madhepura, District- Madhepura.
 2. The Vice Chancellor, B.N. Mandal University, Madhepura.Laloo Nagar Madhepura, P.S. Madhepura, District- Madhepura.
 3. The Registrar, B.N. Mandal University, Madhepura.Laloo Nagar Madhepura, P.S. Madhepura, District- Madhepura.
- Appellant/s

Versus

1. Rama Kant Mishra Son of Late Rishidevnarayan Mishra resident of mohalla - Channadih, K.B. Jha College Road, Katihar, P.S. & Town Katihar.
..... Petitioner-Respondent -1st Set.
2. The State of Bihar through the Principal Secretary Department of Human Resources Development, Now Education Department, Govt. of Bihar, Patna.
... .. Respondent-Respondent -2nd Set.

Appearance :

For the Appellant/s : Mr. Pushkar Narain Shahi, Sr. Adv.
Mr. Shashi Bhushan Singh, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 27-11-2018

Re: L.P.A. No. 1315 of 2017
With
I.A. No. 6923 of 2017
With
I.A. No. 6924 of 2017

I.A. No. 6923 of 2017 is filed with the prayer to condone a delay of 1 year and 88 days in filing this appeal which arises from a judgment and order of the learned Single Judge dated 03.05.2016 passed in C.W.J.C. No. 6236 of 2013 whereby the writ petition has been allowed and the order of the Registrar, B.N. Mandal University, Madhepura dated 04.08.2011 whereby the date of appointment of the writ petitioner as a Lecturer was



shifted from 22.08.1979 to 24.08.1991 with stipulation of recovery of excess amount so paid to the petitioner by virtue of the such appointment, was quashed. It is feeling aggrieved by the order of the learned Single Judge in allowing the writ petition that the University along with its officials are before this Court in this intra Court appeal.

We have heard Mr. Pushkar Narain Shahi, learned Senior Counsel appearing for the University who appears with Advocate on record Mr. Shashi Bhushan Singh, on the Letters Patent Appeal as well as the issues which has persuaded the University to file this intra Court appeal.

In so far as the prayer for condonation of delay is concerned, we note the explanation given in paragraph 3 which tries to explain the delay of 1 year by taking a defence of procedural stages through which the file has progressed for a decision to file this appeal. The explanation we find is vague and in case a delay exceeds a year then the delay needs to be explained which specific reference to the various stages through which the file did pass on. There is no such explanation except that it is awaiting permission from the competent authority i.e. the Vice Chancellor as regarding filing of the intra Court Appeal that the delay has occasioned which explanation in our opinion, is vague to condone an excessive delay exceeding 1 year but considering



that the matter raises issues having financial implication, we condone the delay in filing the appeal. I.A. No. 6923 of 2017 is allowed.

In so far as the merits of the contest is concerned, we note that the issue that has been wrecked up by the order impugned in the writ petition actually dates back to a judgment and order of the Supreme Court passed in a matter which travelled from this Court since reported in **2005 (1) PLJR (SC) 464 (State of Bihar & Anr. versus Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.)**. The Supreme Court taking note of the nature of controversy had constituted a one man Commission to examine the issue relating to validity of appointment in different Universities under Justice S.C. Agrawal, a retired Supreme Court Judge. The appointment of the writ petitioner also figured in the contest and his appointment as a Lecturer (Political Science) was upheld and finds mention in the report at serial No. 10 which is noticed by the learned Single Judge. The University supports the impugned action by submitting that it was due to lack of communication which led to such an order. It is argued that the Commission was not posted with proper facts and that under the statute the mandatory qualification for appointment as a Lecturer, is a Ph.d. qualification which the writ petitioner obtained only in 1991. It is further argued that there was a single post of Lecturer



in Political Science which was held by one Indu Bhushan Mandal who superannuated only on 24.08.1984 and thus the writ petitioner could not have been accommodated on the solitary post which became available only on retirement of Indu Bhushan Mandal. The objections so raised by the University have been noted by the learned Single Judge but were not persuasive enough to uphold the impugned action. It is but obvious that the University having failed to raise these issues either before the Justice S.C. Agrawal Commission or before the Supreme Court coupled with the fact that the writ petitioner has already superannuated in 2005, the University cannot be permitted reopen a chapter which stood closed under the judgment of the Supreme Court as well as by the superannuation of the writ petitioner as back as in the year 2005.

We are in agreement with the opinion recorded by the learned Single Judge on the merits of the contest because even when the issues were wide open for discussion, the University did not choose to raise any objection on the eligibility of the writ petitioner to hold the post of Lecturer as on 22.08.1977 either on availability of post or on the educational qualification and since the report of Justice S.C. Agrawal Commission accepts the appointment of the petitioner on a sanctioned post of Lecturer since 22.08.1977 which report has been accepted by the Supreme



Court in its judgment, the University had no business to reopen concluded issues.

The order in such circumstances so passed by the Registrar, B.N. Mandal University dated 04.08.2011 which was put to challenge before the writ Court was rightly quashed by the learned Single Judge because on acceptance of the Justice S.C. Agrawal Commission report by the Supreme Court, the right of the writ petitioner to hold the post as Lecturer since after 22.08.1977 stood confirmed and the University had no jurisdiction to review the issue which stood concluded under the judgment and that too 6 years after the superannuation of the writ petitioner.

For the discussion above, we are not persuaded to interfere with the judgment and order of the learned Single Judge passed on the writ petition.

In result, L.P.A. No. 1315 of 2017 is dismissed, I.A. No. 6924 of 2017 is disposed of.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

Bibhash/Ranveer

AFR/NAFR	AFR
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