

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1706 of 2018

In

Civil Writ Jurisdiction Case No.15211 of 2012

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1. The B. N. Mandal University through its Registrar Madhepura
 2. The Vice-Chancellor, B.N. Mandal University, Madhepura
 3. The Registrar, B.N. Mandal University, Madhepura
 4. The Finance Officer, B.N. Mandal University, Madhepura

... .. Appellant/s

Versus

1. Dr. Suresh Prasad Yadav Son of Sri Singheshwari Prasad Yadav, resident of Mohalla-Lalapatti, P.O. Gahumani, Via and P.S. Singheshwar, Distt.- Madhepura at present residing at Professor Colony, Ward No.4, Shree Niwas, P.O. Madhepura, P.S. Madhepura, Distt. Madhepura
2. The State of Bihar
3. The Principal Secretary, Higher Education, Human Resources Department, Govt. of Bihar, Patna
4. The Director, Higher Education, Human Resources Department, Govt. of Bihar, Patna
5. The Principal Secretary, Finance Department, Govt. of Bihar, Patna
6. The Principal, K.P. College, Murliganj, Madhepura

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raju Giri, Advocate Mr. Santosh Kumar Mishra, Advocate.
For the Respondent/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Uday Chand Prasad, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey- Aag15

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-07-2019

Re: I.A. No. 1 of 2019

Heard learned counsel for the appellants Shri

Raju Giri and Shri Rama Kant Sharma, learned Senior counsel



for the respondent-petitioner.

2. The appeal is reported to be delayed by 54 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 1 of 2019 stands allowed accordingly.

Re: L.P.A. No. 1706 of 2018

The respondent-petitioner was extended the benefit of promotion to the post of Lecturer by the appellant-University with effect from 31st of March, 1992 declaring his appointment as regular against a duly sanctioned post since 31st of March, 1980. This recommendation was however hedged with two limitations namely, that his service is continuous from 31.03.1980 to 31.03.1992 as he has acquired his P.G. qualification from the D.A.V. College Kanpur University in 1986. This recommendation crystallized into a notification by the University dated 29th of June, 2011, but the notification nowhere prescribes any caveat to the promotion of the respondent as a Lecturer in the terms as was indicated in the



recommendation. This notification dated 29th June, 2011 extended the benefit to the respondent-petitioner with effect from 31st March, 1992. The respondent-petitioner challenged the said notification praying that his promotion should date back from 15.09.1987 and the University has made an incorrect recommendation by extending the benefit under the Time Bound Promotion Scheme only from 31.03.1992. The challenge therefore raised was by the respondent-petitioner to the aforesaid limited extent to the said notification dated 29th June, 2011. It may be mentioned that the said notification was neither rescinded nor withdrawn by the University and it remained intact. It may also be put on record that the respondent-petitioner filed C.W.J.C. No. 15211 of 2012 that has given rise to the present appeal where on 26th June, 2013 the following interim order was passed by a learned Single Judge :-

“Put up after disposal of C.W.J.C. No. 4395 of 2013 in which it is stated that the vires of Bihar Act 2 of 2012 amending the Bihar State Universities Act, 1976 is under challenge.

During the pendency of this application, status quo as flowing from notification of the University contained in Memo No. 4994 dated



29.06.2011, as contained in Annexure-18, shall be maintained.”

2. It appears that the issue relating to the Bihar State Universities (Amendment and Validation) Act 2012 that was filed by Lab Assistants and such similarly situated employees in non-government grant-in-aid colleges came to be heard by a Division Bench whereby the claim was that since the petitioners therein were designated as Demonstrators, they should be treated to be Teachers within the definition of Bihar State Universities Act, 1976. The Challenge raised to the amendment Act however, failed and the writ petitions were dismissed holding that a Demonstrator cannot be included within the term “Teacher”.

3. The aggrieved persons approached the Apex Court and the Apex Court dismissed the SLP on 27th February, 2017, but at the same time made an observation that the present status, rank and pay of the appellants shall not be disturbed and if any Lab Assistant has been given the designation of Demonstrator which he was holding as on that date, the same shall not be withdrawn. A caveat, however, was put in by the Apex Court to the effect that they shall not be entitled to any further benefits in conflict with the impugned Act. The order is



extracted hereinunder:-

“We have heard learned counsel for the parties at great length.

These appeals arise out of challenge to the Bihar State University (Amendment and Validation) Act, 2012 (Bihar Act 22 of 2012) which has been upheld by the High Court by the impugned order. We do not find any ground to interfere with the view taken by the High Court in upholding the said Act.

We however make it clear that the present status, rank and pay of the appellants will not be disturbed. If any lab assistant has been given designation of demonstrator, which he continues to hold till date, it will not be withdrawn. They would not be entitled to any further benefits in conflict with the impugned Act.

In view of above, the appeals are disposed of. No costs. Pending application, if any, shall also stand disposed of.”

4. Taking aid of these entire facts, Shri Giri, learned counsel for the appellant-University contends that



firstly, there was no sanctioned post of Demonstrator so as to enable the respondent-petitioner to claim his promotion as Lecturer from such a post and he had been substantively appointed and was continuing on the post of Lab Assistant only. The second contention is that the issue of equivalence of a Demonstrator to be that of a Teacher already stood settled by the Division Bench and affirmed by the Apex Court and therefore in the absence of any such eligibility being possessed by the respondent-petitioner he could not have claimed any benefit of promotion as a Lecturer.

5. It is further submitted that the respondent-petitioner would not have claimed the benefit in view of the fact that even the Time Bound Promotion Scheme and the statutes applicable could not be pressed into service to confer any such benefit. During the pendency of the litigation, he also contends that the University through its Vice-Chancellor was called upon to file an affidavit where it was categorically indicated that the notification dated 29th June, 2011 by virtue whereof the respondent-petitioner was claiming benefit was not a valid notification as the same had been issued bereft of all the aforesaid considerations. Virtually, the argument is that the notification dated 29th June, 2011 should be treated as invalid



and accordingly, the order of the learned Single Judge that has placed reliance on the same should be set aside.

6. The learned Single Judge after having traversed the facts and the aforesaid status of the respondent-petitioner has held that the respondent-petitioner could not be denied the benefits which have accrued to him by virtue of the notification dated 29.06.2011 once it has been found by the University itself that the recommendation made in his favour is valid.

7. We have considered the submissions raised and what stares on the face of it is that the notification dated 29th June, 2011 has neither been rescinded nor modified by the University. The plea taken by the learned counsel for the University is that since this Court was in seisin of the matter and an order of the status quo had been passed in 2013, therefore, the University could not act accordingly. We do not find any effort made on behalf of the University to have questioned the status quo order by filing any Letters Patent Appeal before this Court or even contesting the same. To the contrary from 2011 till 2013 whereafter the order of status quo was passed, even during this period no effort was made by the University to withdraw the notification dated 29.06.2011. Shri Giri contends



that as a matter of fact, the respondent-petitioner appears to have been favoured at the hands of some erring University officials. Be that as it may, we find nothing on record to that effect nor any action having been taken by the Vice-Chancellor against any such person or even the Recommending Committee that had showered benefits on the respondent-petitioner which the University now contends the respondent-petitioner was not entitled to. The University was therefore estopped by conduct and having not withdrawn its notification, there was no reason available to the learned Single Judge to have taken a view different from what has been concluded by him in the impugned judgment. We otherwise also do not find any reason to disagree with the same in the background aforesaid when the notification dated 29th June, 2011 is still intact at the behest of the University itself. The University could have taken a stand by pressing into service all the reasons that have been advanced as an argument in this appeal for disgorging the benefits that were given by the University to the respondent-petitioner by its own action, but we do not find any such effort having been made.

8. In the above circumstances, we find no reason to interfere with the discretion exercised by the learned Single Judge under Article 226 of the Constitution of India. The appeal



fails and it is accordingly rejected. It goes without saying that the respondent-petitioner has admittedly superannuated during this litigation in 2018 which is an additional reason for us not to interfere.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	25.07.2019
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