

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22116 of 2012

=====

Sohan Prasad Singh S/O Late Nageswar Prasad Singh R/o Village- Sinhpur,
Madhurapur, P.O.- Madhurapur, P.S. Bihpur, District- Bhagalpur

... .. Petitioner/s

Versus

1. The Tilka Manghi Bhagalpur University, Bhagalpur through its Registrar
2. The Vice-Chancellor, T.M. Bhagalpur University, Bhagalpur
3. The Registrar, T.M. Bhagalpur University, Bhagalpur
4. The Principal, J.P. College, Narayanpur, District- Bhagalpur
5. The State of Bihar, through the Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna
6. The Director, Higher Education, Department of Education, Government of Bihar, New Secretariat, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mrs. Sandhya Mishra Mr. Purushottam Kumar Jha
For the State	:	Mr. Mujtabaul Haque
For the University	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Ashhar Mustafa

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 08-11-2019

The present writ petition has been filed for directing the respondents concerned to grant approval to the promotion of the petitioner on Class-III post (as Correspondence Clerk) in the college in question from the date of promotion of the petitioner i.e. with effect from 08.03.1994 and further direct the respondent to pay all consequential benefits in the pay-scale of Assistant with effect from 08.03.1994.

The brief facts of the case according to the petitioner is



that the petitioner is said to have been initially appointed as Daily Wage Class-IV employee in the J.P. College, Narayanpur, Bhagalpur vide letter dated 14.11.1979 issued by the Principal of the said college. Thereafter, the petitioner is stated to have been again appointed as a class four staff in the college hostel of the aforesaid college on prescribed pay-scale of Rs. 155-190/- with effect from 01.08.1981 vide letter dated 14.10.1981 issued by the principal of the said college. The further case of the petitioner is that vide order dated 19.10.1994, the petitioner was promoted as Class-III employee in the said college with effect from 08.03.1994 by the Principal of the said college, in anticipation of approval by the University with a stipulation that though the petitioner shall work on the promoted post but he will get the wages for the said post only after receipt of order regarding payment of such wages from the University. It is also the case of the petitioner that despite the petitioner having filed representations and the Principal of the college having written to the University for promotion/approval of the promotion of the petitioner on the post of Class-III employee, no action has been taken by the respondent University to regularize services of the petitioner on Class-III post.

The learned counsel for the petitioner has submitted



that though the petitioner had been promoted on the post of Correspondence Clerk (Class-III), vide order dated 19.10.1994 by the Principal of the college, however, the University has been sitting tight over the matter and has not approved his promotion, thus a direction is required to be issued to the University to approve the promotion of the petitioner on the Class-III post. It is further submitted that the petitioner is entitled to the pay-scale being paid to the Class-III employees inasmuch as he has been working on the Class-III post since 19.10.1994, hence the respondents be directed to make payment of the arrears of salary for the period 19.10.1994 onwards till his superannuation. The learned counsel for the petitioner has relied upon a judgment dated 19.10.2006 passed in CWJC No. 12378 of 2000 (Himanshu Shekhar Jha vs. The State of Bihar & Ors.), rendered by a coordinate Bench of this Court, to contend that this Court in similar circumstances had directed the writ petitioner to be reinstated on a Class-III post along with all the consequential benefits. It is also submitted that the said order of the learned Single Judge has been upheld by the learned Division Bench by an order dated 07.08.2008 passed in L.P.A. No. 1078 of 2007. The learned counsel for the petitioner has further relied on a judgment dated 15.05.2007 passed by a



learned Division Bench of this Court in L.P.A. No. 517 of 1998 (Dr. Nitya Gopal Bandopadhyay vs. The State of Bihar & Ors.) to contend that in case an incumbent is directed to officiate on a post, which involves assumption of duties or responsibilities of greater importance than those attached to the post being held by the incumbent, the incumbent is entitled to higher scale of pay attached to the officiating post. It is thus submitted that following the ratio of the aforesaid judgment rendered in the case of Dr. Nitya Gopal Bandopadhyay (supra), the petitioner is at least entitled to the pay-scale of Class-III post inasmuch as he has been officiating /working on the said Class-III post with effect from 19.10.1994, however, he is getting the pay-scale of a Class-IV employee.

Per contra, the learned senior counsel for the respondent-University has submitted that the petitioner is not entitled to any relief since firstly the writ petition is barred by the principles of delay and laches since the petitioner has filed the present writ petition after a delay of about 18 years inasmuch as the petitioner is said to have been promoted on 19.10.1994 on a Class-III post and he is seeking approval of the same by the University as also payment of salary on the Class-III post with effect from 19.10.1994. Secondly, it is submitted



that the Director, Department of Higher Education, Government of Bihar, Patna had issued a letter dated 26.09.2012 wherein clear and specific directions were given prohibiting any appointment on Class-IV post or Class-III post and further direction was issued not to grant salary as well as pay of third grade post in the light of the departmental letter dated 18.06.1990, hence the Principal of the college in question was not competent to give promotion to the petitioner from Class-IV post to the Class-III post. The learned senior counsel has further submitted that a bare perusal of the purported order of promotion dated 19.10.1994 would show that the same neither bears any order no./memo no./ letter no./notification no. nor appears to be an authentic order and further the same speaks about grant of promotion as Class-III employee in anticipation of the approval from the University, hence the same cannot be said to be an order of promotion in the eyes of law. It is further submitted that it is an admitted position that the University has never granted approval of the alleged promotion of the petitioner from Class-IV post to Class-III post and therefore, he has rightly been paid salary of a Class-IV employee. The learned senior counsel has further submitted that the case of Himanshu Shekhar Jha is clearly distinguishable in the facts and



circumstances of the present case inasmuch as the salary of said Himanshu Shekhar Jha was fixed under the orders of the Government against Class-III post and his promotion was cancelled by the University whereas in the present case neither the pay-scale of the petitioner has been fixed by the State Government in the Class-III post nor he has ever been granted promotion on the Class-III post by the University, hence the question of cancellation of such promotion does not arise.

The learned senior counsel for the respondent University has further submitted that upon a direction by this Court to the Principal of the aforesaid college in question to answer the issue raised by the petitioner to the effect that after his promotion on Class-III post on Correspondence Clerk, he had started to discharge his duties on the promoted post till the date of his superannuation, although the promotion had not been approved by the University, notices were issued to the Principal, J.P. College, Narayanpur, District-Bhagalpur, who has then appeared and filed a counter affidavit in this case wherein it has been stated that the petitioner was temporarily promoted to the Class-III post with effect from 08.03.1994 by the then Principal Prof. Madan Mohan Mishra, *in anticipation of the approval of the same by the University*, however, the



University had never approved such promotion of the petitioner. In paragraph no. 9 of the said counter affidavit, filed by the said Principal, it has been stated that the competent authority of the college has thoroughly examined the records pertaining to the duties performed by the petitioner during this period and it has been found that the petitioner was never assigned any specific routine task, usually performed by a Class-III employee, by any office order of the competent authority of the college. In paragraph no. 10 of the said counter affidavit, it has been stated that the documents relied upon by the petitioner i.e. Annexure-19 & 20 series to the I.A. petition to contend that he had continuously performed the work of Class-III employee, appears to be forged as those are on blank sheet of paper without any seal or signature of the competent authority of the college and moreover no such documents are present in the official records/ personal file of the petitioner.

I have heard the learned counsel for the parties and perused the materials on record. At the inception, this Court finds that the present writ petition is liable to be dismissed on the ground of delay and laches inasmuch as the petitioner has sought for a direction upon the respondents especially the respondent University to grant approval of the promotion



granted to the petitioner vide order dated 19.10.1994 with effect from 08.03.1994 on the post of Correspondence Clerk by the Principal of the college in question by way of the present writ petition, which has been preferred after a period of almost 18 years i.e. in the year 2012, belatedly. It is a trite law that when an aggrieved person without any adequate reason, approaches the Court at his own leisure or pleasure, the Court is under a legal obligation to scrutinize as to whether the lis at a belated stage should be entertained or not inasmuch as delay comes in the way of equity and inordinate delay only invites disaster for the litigant who knocks at the door of the Court belatedly since delay reflects inactivity and inaction on the part of a litigant, who has forgotten the basic norms namely, *“procrastination is the greatest thief of time”* and *secondly that the law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis”*.

This Court further finds that Section 10(6) of the Bihar State Universities Act, 1976 vests the Vice-Chancellor of the concerned University with the power to make appointments to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servant of the University, not being teachers and officers of the



University, and have control and full disciplinary powers over such staff and servants. Further Section 35(3) of the Bihar State Universities Act, 1976 postulates that any appointment or promotion made contrary to the provisions of this Act or Statutes, Rules or Regulations made thereunder or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time.

This Court further finds that the petitioner is stated to have purportedly been granted temporary promotion, in anticipation of approval of the same by the University, on a Class-III post by a peculiar sort of order dated 19.10.1994 with effect from 08.03.1994, which is on a plain paper and not even on the letter pad of the Principal of the college and further the same does not bear any notification no./order no./memo no./letter no., hence the validity of the same is under a cloud, specially for the reason that admittedly no approval has ever been granted by the University regarding the aforesaid alleged promotion of the petitioner to the Class-III post, hence the aforesaid perfunctory order dated 19.10.1994 has got no force and cannot be a ground to direct the respondent University to grant promotion to the petitioner in terms thereof, since the Principal is not the competent authority, either under the Act or



under the prevailing rules/regulation, pertaining to grant of promotion to the petitioner herein. Moreover, the Director, Department of Higher Education, Government of Bihar, vide letter dated 26.09.2012 had issued specific directions whereby the State Government had strictly prohibited granting promotion to the Class-IV employees on the Class-III post, hence in such view of the matter, as well, the alleged promotion of the petitioner could not have been approved by the University, in absence of any challenge or annulment of the said order dated 26.09.2012. Thus, this Court cannot issue any mandamus directing the University to grant approval of illegal promotion granted to the petitioner by the then Principal of the college in question on the Class-III post, in anticipation of approval by the University. Now coming to the case of Himanshu Shekhar Jha (supra), relied upon by the learned counsel for the petitioner, it would suffice to state here that the same is clearly distinguishable from the fact and and circumstances of the present case inasmuch as in the said case the salary of the incumbent had been fixed under the orders of the Government against the Class-III post and thereafter the promotion of the said incumbent had been cancelled by the University, whereas in the present case neither there is any



approval by the University with regard to the promotion granted to the petitioner nor there is any order of the State Government fixing the pay-scale of the petitioner against the Class-III post. As far as the judgment rendered by the learned Division Bench in the case of Dr. Nitya Gopal Bandopadhyay (supra) is concerned, the same is also not applicable in the facts and circumstances of the present case inasmuch as firstly the factum of the petitioner having worked on the Class-III post is itself doubtful and the Principal of the college in question, by filing a counter affidavit, has specifically denied that the petitioner had ever worked on the Class-III post and further has also stated that the documents relied upon by the petitioner to show that he had performed work of a Class-III grade employee appears to be forged and on blank sheet of paper without any seal or signature of the competent authority of the college. Secondly, the petitioner has also not made any pleadings in the entire writ petition or the supplementary affidavits filed by him that the Class-III post on which he was allegedly working involved assumption of duties or responsibilities of greater importance than those attached to the post being held by the petitioner as Class-IV post. Thus, the aforesaid judgment rendered by the learned Division Bench in the case of Dr. Nitya Gopal



Bandopadhyay (supra) is clearly distinguishable in the facts and circumstances of the present case. In nutshell, this Court finds that firstly illegal promotion was granted by the Principal of the college on 19.10.1994 with effect from 08.03.1994 to the petitioner herein on the Class-III post and further the factum of the petitioner having ever worked on the Class-III post is also counterfactual and in fact not correct since the Principal of the college in question has categorically stated in the counter affidavit filed by him that the petitioner had never worked on the Class-III post. Therefore, the petitioner is not entitled to salary/arrears thereof, by considering him to have worked on the Class-III post. It is further not in doubt that no approval has been granted by the University with regard to the alleged promotion granted to the petitioner on the Class-III post by the Principal of the aforesaid college in question, hence the petitioner has got no indefeasible right to claim promotion on the Class-III post on the strength of the aforesaid illegal order issued by the then Principal dated 19.10.1994 especially in view of the fact that the Principal has got no power to grant promotion to an employee from Class-IV to Class-III post.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find



any merit in the present writ petition, accordingly, the same stands dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.03.2020
Transmission Date	N/A

