

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.217 of 2018

In

Civil Writ Jurisdiction Case No.7577 of 2014

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Abdul Quiyum son of Late Md. Muslim R/o Vill. - Gausnagar P.S. Rajnagar,
District - Madhubani At present Posted as Routine Clerk, P.S. Department of
Urdu, L.N. Mithila University, Darbhanga

... .. Appellant/s

Versus

1. The Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar,
Darbhanga.
2. Lalit Narayan Mithila University, through its Registrar, L.N. Mithila
University, Kameshwar Nagar, Darbhanga
3. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar,
Darbhanga

... .. Respondent/s

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with

Letters Patent Appeal No. 97 of 2018

In

Civil Writ Jurisdiction Case No.7791 of 2014

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Abdul Quiyum, Son of late Md. Muslim Resident of Village- Gausnagar, P.S.-
Rajnagar, Distt- Madhubani At present posted as Routine Clerk, P.G.
Department of Urdu, L.N. Mithila University, Darbhanga

... .. Appellant/s

Versus

1. The Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar,
Darbhanga
2. Lalit Narayan Mithila University through its Registrar, L.N. Mithila
University, Darbhanga
3. The Registrar, L.N. Mithila University, Kameshwar Nagar, Darbhanga

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Nivedita Nirvikar, Advocate
Mr. Ratanakar Jha, Advocate

For the Respondent/s : Mr. Dr. Anshuman, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-02-2019



Re: I.A. No. 9054 of 2018 (In LPA No. 217 of 2018) and I.A. No. 9052 of 2018 (In L.P.A. No. 97 of 2018).

Heard Smt. Nivedita Nirvikar, learned counsel for the appellant and Dr. Anshuman, learned counsel for the University in both the appeals.

2. The appeals are reported to be delayed by 142 and 588 days respectively.

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

4. Both the Interlocutory Applications stand allowed accordingly.

Re: L.P.A. No. 217 of 2018 and 97 of 2018

The background in which both these appeals have been filed deserves to be narrated first. C.W.J.C. No. 7577 of 2014 appears to have been instituted first with almost the same prayer namely that the appellant is entitled to be considered as having been promoted on the post of Assistant against which he was working as a daily wager with effect from 12th of July, 1982. The contention of the appellant is that the said post was a



sanctioned post that was in existence since 1979. The claim, therefore, was that he deserves to be regularized against the said post.

2. It is also the case of the appellant that four other similarly situated daily wage employees were also claiming similar benefits and they were extended the benefit of regularization against their post as Assistants with effect from 10th May, 1983.

3. The appellant contends that since he was working even prior to that with effect from 12th July, 1982, he should be extended the similar benefit and for which the matter was being pursued by the petitioner who it is stated is in possession of a degree in L.L.B. as well as Ph.D. The appellant contends that the unfortunate part is that his claim was sidelined by the University for no valid reason but he ultimately succeeded in getting his case considered by a Committee that made a recommendation in his favour on 27th August, 2004. Based on the said recommendations, a resolution was passed under the Chairmanship of the Vice Chancellor of the University on 27th March, 2006, whereby the appellant was extended the benefit of being treated as regularized on the post of Routine Grade Clerk, and not that of an Assistant, with effect from 12th



July, 1982. The said resolution dated 27th March, 2006 is on record.

4. It is with these pleadings that the aforesaid first writ petition being C.W.J.C. No. 7577 of 2014 had been filed and which remained pending.

5. The appellant appears to have filed a second writ petition being C.W.J.C. No. 7791 of 2014 practically for the same relief. The pleadings in the writ petition nowhere indicate the filing of the earlier writ petition referred to above. This second writ petition which was filed later on came to be dismissed on 4th May, 2016, the judgment whereof is extracted hereinunder:-

“Repeated representation is no ground for not approaching the Court in time.

It is evident from Annexure-1 that the petitioner who was working as a daily wager came to be adjusted against a vacant sanctioned post of an Assistant w.e.f. 12.07.1982. The order itself indicates that this adjustment from that date is only to grant him benefit of notional seniority and not any financial benefit. This order has been in existence since 19.10.2006. After having availed the advantage and benefit of the order in question, petitioner decides to file a writ application after more than eight years.

The Court will not entertain such a writ



application at this juncture because settled position cannot be allowed to be unsettled at the convenience of the petitioner.

Writ is dismissed.”

6. The learned Single Judge observed that since the appellant has availed of the benefit as per the aforesaid resolution dated 27th March, 2006 communicated on 19th October, 2006 without any financial benefits in relation to his past services, it will not be open to the appellant to challenge the same on account of passage of time of almost eight years.

7. After the aforesaid writ petition was dismissed, the first writ petition filed by the appellant, namely, C.W.J.C. No. 7577 of 2014 was taken up on 24th August, 2016 and it appears that the order of dismissal dated 4th May, 2016 in the second writ petition was not brought to the notice of the Court. Accordingly, the first writ petition came to be disposed of on 24th August, 2016 by the following orders:-

“There is a rule in place from the year 2014 which lays down the parameters for grant of promotion from Class IV to Class III. The exercise has been undergone but a final decision is yet to be taken.

This writ application is disposed of with an observation that if the finality has not been



reached by a decision taken by the Promotion Committee so far, it will be done within a reasonable time frame.”

8. It is in this background that both the Letters Patent Appeals have been preferred by the appellant, firstly contending that the appellant was entitled for regularization and being promoted to the post of Assistant and secondly, this plea deserves to be accepted as he has been discriminated as against the other four employees who have been extended the same benefit in similar circumstances.

9. In the background what has been stated above, in our opinion, it was not possible for the respondent University to proceed with the matter after the dismissal of the later writ petition in order to comply with the order passed in the first writ petition, quoted hereinabove.

10. The fact, however, remains and which is not disputed by the learned counsel for the University is that the resolution dated 27th March, 2006 under which the appellant was extended the benefit of notional appointment/promotion as Routine Grade Clerk has neither been rescinded, modified or withdrawn. We also find that the said resolution was not challenged by the appellant. In the above background, the



dismissal of both the writ petitions bereft of the facts of each other, therefore, has led to an anomalous situation to be resolved by us in these two appeals.

11. It has also been pointed out by the learned counsel for the University that in view of the statutory rules of promotion as per the notification dated 4th March, 2013, the same became subject matter of consideration by a Division Bench of this Court in the case of **Krishna Kumar Singh & Anr. Vs. Ram Nath Rai & Ors.** decided on 25th March, 2015. It is urged that in the light of above, the claim of promotion can only be considered provided a person is qualified and eligible to claim such promotion in terms of the rules aforesaid.

12. Even though the appellant's conduct has been such, namely, that of filing two writ petitions without disclosing the facts of each other in the manner aforesaid, yet in the said background where the appellant was considered and extended the benefit of adjustment against the post of Routine Grade Clerk under the resolution dated 27th March, 2006, which is not disputed by the University, we dispose of these two appeals modifying the aforesaid impugned judgments to the effect that the University shall proceed to pass an order keeping in view the fact that the 27th March, 2006 resolution has not been



rescinded or modified. It will be open to the appellant to move any representation in respect of any such claim that may be permissible and admissible as per the rules for which an appropriate decision shall be taken by the University within a period of three months from the date of production of certified copy of this order before the Registrar of the University.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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