

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6769 of 2020

Dr. Shwet Prakash, Son of Sri Krishna Prasad Resident of Musafir Ganj, P.O.-
Buxar, Pin Code-802103

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Director, Higher Education, Education Department, Bihar, Patna.
3. Bihar Public Service Commission, Patna through its Secretary
4. Chairman, Bihar Public Service Commission, Patna.
5. Secretary, Bihar Public Service Commission, Patna.
6. Controller of Examinations, Bihar Public Service Commission, Patna.
7. Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Registrar
8. Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
9. Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7001 of 2020

1. Rashmi Sharma daughter of Sri Lalbabu Sharma, resident of Dwardevi Chowk, Liberty Cinema Road, Ward No. 13, Bettiah, District- West Champaran, Bihar, Pin Code- 845438
2. Seema Kumari, Wife of Sri Brahma Prasad, resident of Village and P.O.- Sarveji, P.S.- Mirganj, Bara Post Mirganj, Block- Hathua, District- Gopalganj, Bihar, Pin Code- 841438

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Director Higher Education, Education Department, Bihar, Patna.
3. Bihar Public Service Commission, Patna through its Secretary.
4. Chairman, Bihar Public Service Commission, Patna.
5. Secretary, Bihar Public Service Commission, Patna.
6. Controller of Examinations, Bihar Public Service Commission, Patna.
7. Lalit Narayan Mithila University, Darbhanga through its Registrar.
8. Vice Chancellor, Lalit Narayan Mithila University, Darbhanga.



9. Registrar, Lalit Narayan Mithila University, Darbhanga.
10. Jai Prakash University, Chapra through its Registrar.
11. Vice Chancellor, Jai Prakash University, Chapra.
12. Registrar, Jai Prakash University, Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocaste
For the BPSC	:	Mr.Sanjay Pandey, Advocate
For the State	:	Ms. Abhyanjali, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 14-09-2020 Heard Mr. Abhinav Srivastava, learned Counsel appearing on behalf of the petitioners, Mr. Sanjay Pandey, learned Counsel appearing on behalf of Bihar Public Service Commission and Ms. Abhyanjali for the State.

In both the writ application the petitioners are aggrieved by the order as contend in Annexure-11 in both the writ applications to the extent of revised result altering the position of the petitioners.

Learned Counsel appearing on behalf of the petitioners submits that the effect of the order, contained in Annexure-11 is that the petitioner Dr.. Shwet Prakash has been ousted from zone of consideration for appointment as Assistant Professor, whereas the petitioner Rashmi Sharma is now adjusted in other University as Assistant Professor.

As noted in the previous order, the Court has



indicated that while adopting corrective measures the respondents were required to provide opportunity of hearing and if they have not provided the opportunity of hearing then in that situation the order adversely affecting the petitioners cannot sustain. Accordingly the order as contained in Annexure-11 is quashed.

However, quashing of the order contained in Annexure-11 will not, in any manner, be construed as approving the selection of the petitioners and declaration as to entitlement of the petitioners to continue on the post. Since the Court has interfered with the impugned order only on the ground of violation of natural justice, the respondents are directed to provide opportunity of hearing to the petitioner and pass fresh order in accordance with actual merit position of the candidates who appeared in the selection process as no one can be allowed to suffer for the mistake committed by the Selector/ appointing authorities. The respondent BPSC as well as the State is required to provide opportunity of hearing to the petitioners before passing fresh order in accordance with law and after providing opportunity.

If it is found that the case of the petitioners is improved by showing further documents, the respondents will



not only rectify the mistake quo petitioners but also those whose cases have been considered for selection after rectifying mistakes. The entire exercise shall be taken by the respondent-BPSC as well as the State within a time frame of one month from the date of receipt/ production of a copy of this order.

In the process of taking fresh decision, the respondents shall consider whether the petitioners can be accommodated on the existing posts and availability of vacancy on account of non-joining or otherwise to avoid displacement of the petitioners. The course as to displacement of the petitioner(s) shall be resorted only if there is no post available to adjust the petitioner(s).

It is submitted by Mr. Abhinav Srivastava that Dr. Swet Prasakas was gainfully employed under the State as Teacher and on account of her selection she tendered resignation and as such she has to face undue hardship.

In the peculiar facts and circumstances of the case, the Court is of the view that in order to balance equity the respondent State is required to consider the case of Dr. Shwet Prakash for reinstatement on the same post which she was occupying before resignation. The petitioner is required to submit application for withdrawal of resignation and on filing



such application, the respondent-State shall reinstate Dr. Shwet Prakash providing benefit of continuity in service.

If prior to joining the post of Assistant Professor the petitioner was gainfully employed in other employment and tendered resignation for joining the post of Assistant Professor, then the petitioner shall be at liberty to approach the respondents for recall/withdrawal of the resignation as the resignation is not voluntary resignation but was influenced by the State on misrepresentation of the respondents. On filing such representation for recall/ withdrawal of the resignation, the respondents shall permit the petitioner to withdraw the resignation and pay all consequential benefits of continuity of the service as the petitioner cannot be made to suffer on account of the default on the part of the State and its instrumentality which caused serious prejudice to the petitioner.

With the aforesaid observation and direction, both the writ petitions stand allowed and disposed of.

(Anil Kumar Upadhyay, J)

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