

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.154 of 2019**

Shail Kumari D/o Baldeo Prasad Sahu, 524, near Zila School, Shankar Nagar,  
Post- Ramna, Police Station- Kazimohammadpur, Muzaffarpur, District-  
Muzaffarpur.

... .. Petitioner/s

Versus

1. Baba Saheb Bhim Rao Ambedkar Bihar University
2. The Vice Chancellor, Baba Saheb Bhim Rao Ambedkar Bihar University,  
Bihar University, Muzaffarpur.
3. Registrar, Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
4. Smt. Kamla Kumari, Wife of not known to the petitioner, Presently posted as  
Head-up of the Department of Philosophy, Baba Saheb Bhim Rao  
Ambedkar, Bihar University, Muzaffarpur.

... .. Respondent/s

**Appearance :**

|                              |   |                                                               |
|------------------------------|---|---------------------------------------------------------------|
| For the Petitioner/s         | : | Mr.Sanjay Kumar<br>Mr. Sarvadeo Singh                         |
| For the Respondents No. 1-3: |   | Mr. Pushkar Narain Shahi, Sr. Advocate<br>Mr. Indrajesh Kumar |
| For the Respondent No. 4     | : | Mr. Abhinav Shrivastava<br>Mr. Ujjawal Bhushan                |

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**C.A.V. JUDGMENT**

**Date : 13-08-2020**

The present writ petition has been filed for quashing the order dated 04.11.2018, as communicated to the petitioner vide letter dated 24.11.2018 by which the representation of the petitioner has been rejected. The petitioner has further prayed for quashing the office order dated 30.08.2017, issued by the respondent University by which the private respondent has been appointed as the Head of the University, Department of Philosophy and the Notification dated 10.08.1999, whereby and where under the private respondent has been granted merit promotion to the post of Reader as also the Notification contained in Memo dated 12.12.2011, whereby and where under the private respondent has been promoted to the post of



Professor under the merit promotion scheme. Consequently, it has been prayed that the petitioner's case be considered for appointment as Head of the University, Department of Philosophy.

The brief facts of the case according to the petitioner is that she was appointed as Lecturer in the Department of Philosophy on 02.11.1982 and her appointment was confirmed/ approved vide notification dated 25.07.1997 with effect from 02.11.1982. Thereafter, the petitioner was promoted to the post of Reader vide Notification dated 02.11.1990 and to the post of Professor with effect from 02.11.1998 by a Notification dated 19.05.2015. It is further stated in the writ petition that the private respondent was initially appointed on purely temporary basis by the Vice-Chancellor on 22.12.1978 and her services were absorbed vide Notification of the respondent University dated 25.02.1984 against the post available in B.P.S. College, Bhore, Gopalganj. It is the submission of the petitioner that the initial appointment of the private respondent no. 4 on temporary basis was made in M.J.K. College, Bettiah on 22.12.1978 and the appointment was only for six month's, however, the services of the private respondent was not concurred by the Bihar Public Service Commission, but still she continued to work for more



than a year. In the meantime, fresh notification dated 25.02.1984 was issued, absorbing the services of the private respondent, however, the date of absorption and confirmation have not been mentioned. The private respondent was promoted to the post of Reader with effect from 22.12.1986 vide Notification dated 24.09.1991. Thereafter, vide Notification dated 22.04.1997, the private respondent has been promoted to the post of Professor with effect from 22.12.1994 on account of completion of 16 years of service.

The learned counsel for the petitioner has also referred to the Notification dated 29.09.1999, issued by the respondent University, whereby and where under the private respondent has been confirmed as Lecturer in the University, in the Department of Philosophy with effect from 01.01.1980. Accordingly, another Notification is stated to have been issued by the respondent University dated 10.09.1999, whereby the Notification contained in Memo dated 16.12.1992 has been withdrawn and the date of promotion of the private respondent to the post of Reader has been declared to be 22.12.1986. Attention of this Court has also been drawn to the Notification of the respondent University dated 12.12.2011, whereby and where under the private respondent has been granted promotion



to the post of University Professor with effect from 23.09.1995.

The learned counsel for the petitioner has further submitted that the private respondent had challenged the Notification issued by the University fixing the date of absorption as 01.01.1981 before the Hon'ble S.N. Jha Commission, constituted by this Hon'ble Court to adjudicate upon the matter relating to shifting of the date of confirmation and shifting of the date of promotion and the Hon'ble S.N. Jha Commission by an order dated 10.02.2015 held that the initial appointment of the private respondent was not against a sanctioned post, hence her initial appointment cannot be said to be valid so as to entitle her to count the past period with effect from the date of her initial appointment i.e. 22.12.1978, as such, her seniority having been reckoned from 01.01.1981, does not warrant any intervention. It is submitted that since proper facts were not be placed before the Hon'ble S.N. Jha Commission, the date of absorption/ initial appointment of the private respondent was treated to be 01.01.1981 whereas the same should have been fixed as 25.02.1984.

The learned counsel for the petitioner has submitted that the entire career of the private respondent has been marred by controversies and illegal benefits in the form of undue



promotions being granted to her. It is stated that though the private respondent was appointed on a temporary basis on 22.12.1978 and her services were absorbed only on 25.02.1984 in the vacant post at B.P.S. College, Bhore, Gopalganj, however, no date of confirmation/ absorption was mentioned, hence, it would be assumed that the private respondent was absorbed in her services with effect from 25.02.1984 whereas the petitioner was appointed on 02.11.1982, hence admittedly the petitioner is senior than the private respondent but nonetheless the respondent University, illegally, by a Notification dated 22.09.1999 has absorbed the services of the private respondent with effect from 01.01.1980, thus, the confirmation/absorption of the private respondent is itself doubtful. It is further stated that the promotion granted to the private respondent was initially granted under the time bound promotion scheme, hence, the same was cancelled and a fresh Notification dated 10.09.1999 was issued, granting illegal promotion to the private respondent to the post of Reader with effect from 22.12.1986 under the merit promotion statutes. Thus, once the private respondent was granted promotion under the time bound promotion scheme vide Notification dated 16.12.1992, her case could not have been considered for promotion to the post of



Reader again on 10.09.1999. Accordingly, the Notification issued by the respondent University granting promotion to the private respondent to the post of Professor i.e. the Notification dated 12.12.2011 is also illegal.

The learned counsel for the petitioner has submitted that the petitioner had approached this Court earlier by filing a writ petition bearing CWJC No. 11277 of 2018 for directing the respondent University to consider the case of the petitioner for appointment to the post of Head of Department of Philosophy, L.S. College, Muzaffarpur as well as for quashing the Notification dated 30.08.2017, whereby and where under the private respondent has been appointed as Head of the University, Department of Philosophy, however, this Court by an order dated 09.08.2018 had remanded the matter back to the Vice Chancellor, Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur (hereinafter referred to as the 'University'), for disposing off the representation already filed by the petitioner by passing a reasoned order, in accordance with law. It is submitted that in pursuance to the order of this Court dated 09.08.2018, the Vice-Chancellor of the respondent University has passed a reasoned order dated 04.11.2018, whereby and where under the representation of the petitioner



has been rejected illegally inasmuch as the said Order has taken into account the date of appointment of the private respondent as Lecturer to be 22.12.1978 without there being any proof or Notification regarding the same. The learned counsel for the petitioner has further submitted that the Vice Chancellor of the respondent University has also failed to consider the Notification of the University dated 25.02.1984, whereby and where under the petitioner was absorbed in the services as Lecturer and in fact on the contrary the Hon'ble S.N. Jha Commission has held the date of reckoning the seniority of the private respondent as 01.01.1981. Thus, it is submitted that the rejection of the case of the petitioner by the Vice-Chancellor of the respondent University is perverse and illegal, hence, the order dated 04.11.2018 is fit to be set aside. It is further submitted that the date of appointment of the private respondent as Lecturer is required to be considered as 25.02.1984 and accordingly, the date of subsequent promotions of the private respondent to the post of Reader and Professor are required to be re-worked, from which, it will be apparent that the petitioner is senior to the private respondent no. 4 herein and, accordingly, the petitioner is required to be made Head of the Department of Philosophy of the respondent University.



The learned senior counsel appearing for the respondent University, referring to the counter affidavit filed on behalf of the respondent nos. 1 to 3, has submitted that the private respondent is senior to the petitioner herein at all the three levels i.e. Lecturer, Reader and Professor as is apparent from the table set out in the impugned order passed by the Vice-Chancellor dated 04.11.2018. It is further submitted that even if the case of the private respondent is considered in light of the Hon'ble Justice S.N. Jha's Commission order, the seniority of the private respondent is to be reckoned with effect from 01.01.1981 whereas the petitioner was initially appointed as Lecturer on 02.11.1982, hence, the private respondent is still senior to the petitioner herein and the appointment of the private respondent as Head of University, Department of Philosophy is legally justified.

The learned senior counsel for the University has further submitted that in case the petitioner is appointed as Head, University, Department of Philosophy, two statutes would be violated i.e. (i) Article 3(7) of statute named as General Condition of Services of employees of Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila, K.S.D. Sanskrit Universities, approved by the Chancellor on 20.09.1980 vide letter no. BSU



36/80-5270 GS (1) dated 18.11.1980 (statue no. 1), which reads as follows:-

*“Notwithstanding anything to the contrary as contained in the statutes, it is hereby provided that if an employee serving in any university of this State is appointed in the services of another university or Bihar Inter University Board, Patna on a temporary or substantive basis in the same or higher grade shall in the event of his joining within the time allowed by the competent authority be allowed continuity of his service of the former university for the purpose of protection of his pay and allowance drawn, leave and half pay leave earned in that university and the age of retirement and grant of retirement benefits as attributed to him in that university but not for determination of seniority.”*

In the aforesaid context it has been submitted that Dr. (Mrs.) Shail Kumari i.e the petitioner herein joined B.R.A. Bihar University on 09.11.1996 from another university in the State of Bihar i.e. L.N. Mithila University, Darbhanga, hence she could claim everything but seniority as per statutes referred to above. Thus giving seniority to Dr. (Mrs.) Shail Kumari over and above Dr. (Mrs.) Kamala Kumari will violate the above mentioned statutes.

(ii) Revised statutes for scheme of rotation of Headship in



the Department of Universities/College for the Universities of Bihar (except Rajendra Agriculture University, PUSA and Nalanda Open University, Patna). Letter No. BSU-26/2008-2155GS(1) dated 30.06.2008 reads as follows:-

*“1. Headship of the Department be rotated only amongst the first four senior most teachers (Professors and Readers) as the case may be of the subject concerned.*

*For Headship of P.G. Departments first four senior most teachers shall essentially be posted in the Department concerned.*

*2. Where there is no Professor, the Headship will be rotated among four senior most Readers.*

*3. If there is neither a Professor nor a Reader in the Department, the Headship of the Department may be rotated amongst teachers of the Department.”*

The aforesaid statute clearly states that for appointment as Head of P.G. Department, prior posting in the P.G. Department is essential. The petitioner is working in L.S. College, not in the P.G. Department, hence, she cannot be appointed as Head of P.G. Department of Philosophy. Thus, if the petitioner is appointed as the Head of P.G. Department of Philosophy, the same will violate the above mentioned statutes dated



30.06.2008.

The learned senior counsel for the respondent University has further submitted that the private respondent had represented to the Chancellor when one Smt. Manorma Kumari was appointed as Lecturer in her place, although the name of the private respondent was higher in the panel pertaining to appointment of Lecturers, whereupon the Chancellor of the University had directed for termination of the services of the said Smt. Manorma Kumari, Lecturer, Department of Philosophy, M.J.K. College, Bettiah and had further directed for appointment of the private respondent as Lecturer, whereafter she was appointed vide Notification dated 22.12.1978, hence, apparently the private respondent was appointed on a sanctioned post. It is further submitted that the services of the petitioner was then regularized upon a decision taken by the syndicate vide Notification dated 25.02.1984.

The learned senior counsel, as regards the objection raised regarding the merit promotion of the private respondent to the post of Reader and Professor, has submitted that every employee has a right to improve his/her profile and employer supports employees in his/her such manoeuvre. After the first time bound promotion statutes came into force, the private



respondent was promoted to the post of Reader & Professor under time bound promotion scheme. However, when the Merit Promotion Scheme came into being, the private respondent applied under the Merit Promotion Scheme, whereupon, considering her qualification and academic achievements, Bihar State University (Constituent Colleges) Service Commission recommended her case for promotion to the post of Reader under merit promotion scheme, whereafter the University notified her promotion to the post of Reader w.e.f. 22.12.1986 under the merit promotion scheme and withdrew the promotion granted to her under the time bound promotion scheme vide Memo No. B/2291 dated 10.09.99 (Annexure-11 to the writ petition). Similarly, when the private respondent applied for promotion to the post of Professor under the merit promotion scheme, the Selection Commission considering her qualification and academic achievements recommended her case for promotion to the port of Professor under the merit Promotion Scheme w.e.f. 23.09.1995. Accordingly, the University withdrew her promotion to the post of Professor under the time bound promotion scheme (vide Memo No. 2056/R dated 03.12.2011) and notified her promotion to the post of Professor under the merit promotion scheme vide Memo No. B/3530 dated



12.12.2011. It is stated that the cases of the petitioner and the private respondent were considered for promotion to the post of Professor under the merit promotion scheme by the same selection Commission, however, as far as the case of the petitioner is concerned, it has recommended to consider her case for promotion as and when a vacancy arises in future, which impliedly means that the selection Commission found better merit in the case of the private respondent, over and above the petitioner herein. It is also stated that the seniority of the private respondent was being reckoned with effect from 01.01.1981, as per the second absorption statutes and the same has not been interfered with by the Justice S.N. Jha Commission, with a clear stipulation that the finding would be confined to the dispute involved in the said petition, without affecting the service career of the private respondent. It is submitted that though the seniority of the private respondent cannot date back prior to 01.01.1981, however, the promotion granted to the private respondent on the basis of continued services cannot be faulted with since the same has been granted on the recommendation of the Selection Commission / the Commission, which has never been challenged by the petitioner herein.

The learned senior counsel for the petitioner has further



submitted that the petitioner entered the services of L.N. Mithila University, as a Lecturer, on 02.11.1982, she was promoted to the post of Reader w.e.f. 02.11.1990 by the L.N. Mithila University and then as a Professor w.e.f. 02.11.1998 by the B.R.A. Bihar University by a notification dated 19.05.2015. Thus apparently, before the petitioner could be promoted further, she had already joined B.R.A. Bihar University on 09.11.1996 from another University in the State of Bihar i.e. L.N. Mithila University, hence, the petitioner, as per the Statutes referred to herein above, shall be entitled to all other benefits of her previous employment in the L.N. Mithila University like, continuity in service of the former university for the purpose of protection of pay and allowance drawn, leave and half pay leave earned in that university, the age of retirement, grant of retirement benefits as attributed in that university, but not for determination of seniority. It is submitted that promotion granted about two decades back cannot be a matter of challenge indirectly and that too after a great delay since as long as order of Promotion remains in force, the petitioner cannot get any benefit. Thus, it is the submission of the learned senior counsel that the impugned order dated 24.11.2018 passed by the Vice-Chancellor of the respondent University, cannot be faulted with



and is just, legal and fit to be upheld.

Per contra, the learned counsel for the private respondent, by referring to the counter affidavit filed on behalf of the private respondent no. 4, has submitted that an advertisement was published in the English daily 'Indian Nation' on 05.10.1977 by the concerned authorities of the erstwhile University of Bihar, Muzaffarpur, inviting applications from eligible candidates for appointment as Lecturers on temporary basis in different subjects including in the Philosophy subject, whereafter the petitioner had also submitted her application for being appointed as Lecturer in the Philosophy subject and then interview was conducted by the Selection Commission whereupon a select list was published and the name of the petitioner was recommended by the Selection Commission for being appointed as Lecturer in the Philosophy subject under the respondent University. However, another person, namely, Smt. Manorma Kumari was appointed instead of the private respondent no. 4 as Lecturer in Philosophy in the services of the University, leading to the private respondent filing representation before the Hon'ble Chancellor of the University and after conducting the hearing, the Hon'ble Chancellor passed an order dated 29.11.1978, wherein he had taken into account the various facts and



circumstances of the case and remanded the case of the petitioner to the Vice-Chancellor of the University to take a decision as to whether the petitioner is required to be appointed or the said Smt. Manorma Kumari is required to be appointed as a Lecturer. Thereafter, various aspects of the matter were examined and after due deliberations, a Notification dated 22.12.1978 were issued, whereby and where under the services of the aforesaid Manorma Kumari was terminated and in her place the private respondent was appointed as Lecturer in the Philosophy subject at the said M.J.K. College, Bettiah, however, it was indicated under the said Notification that for the time being, the respondent no. 4 would join at L.S. College, Muzaffarpur in the leave vacancy chain of one Smt. Nirmala Kumari Jha and it was further stipulated that upon her return, the private respondent no. 4 would join at M.J.K. College, Bettiah. It is further stated that subsequently, an office order dated 20.03.1979 was issued by the University, on the order of the Vice Chancellor, by which the aforesaid notification of appointment of the private respondent dated 22.12.1978 was practically modified and the services of the answering respondent, in the capacity of Lecturer in Philosophy subject, was directed to be retained at L.S. College, Muzaffarpur against



the vacant post of Reader in the Department of Philosophy, till the said post was filled up by the University.

The learned counsel for the private respondent no. 4 has further submitted that subsequently, pursuant to a decision taken by the concerned authorities of the University, a letter dated 09.07.1980 was issued by which it was directed that persons who have been appointed as temporary Lecturers in the services of the University and have completed or likely to complete one year of service, shall be allowed to continue against their posts with a breakage in their service of one day only, as per the instructions of the State Government. It has been further stated that in the meantime, in terms of the provisions contained under the Statutes regarding regularization of services of purely temporary Lecturers, duly approved by the Hon'ble Chancellor of Universities, as contained in the notification bearing Memo No. 5240 dated 18.11.1980 and on the basis of a report submitted by a Commission constituted by the orders of the Hon'ble Chancellor of Universities, services of a number of persons appointed as temporary Lecturers, who had completed 24 months of service as on 31.12.1980 were directed to be regularized and amongst them the name of the private respondent had also found place and she was shown to be



working at L.S. College, Muzaffarpur. Subsequently, a notification dated 25.02.1984 was issued by the concerned authorities under the erstwhile University of Bihar, Muzaffarpur, by which services of a number of temporary Lecturers, including that of the private respondent herein, working in different subjects in the services of the University were absorbed, after being approved by a resolution of the Syndicate of the University passed in its meeting held on 24.08.1993. In this notification dated 25.02.1984, the services of the private respondent was shown to have been absorbed against the post of Lecturer in Philosophy available at one B.P.S. College, Bhorey, which was also a constituent unit of the said University during the relevant time. The learned counsel for the private respondent has also referred to a certificate dated 30.03.1987 issued by the then Principal, L.S. College, Muzaffarpur, wherein it has been certified that the private respondent no. 4 had been working as a Lecturer in the Department of Philosophy of the said college ever since her initial joining on 22.12.1978. It is submitted that while the private respondent was working in the capacity of Lecturer in Philosophy subject at L.S. College, Muzaffarpur, a notification dated 16.12.1992 was issued by the concerned authorities of the erstwhile University of Bihar, Muzaffarpur, by



which, on the basis of the recommendation made by the erstwhile Bihar State University (Constituent College) Service Commission, Patna, the answering respondent was granted promotion against the post of Reader in Philosophy in the services of the University with effect from 22.12.1988, in terms of the provisions contained under the Statutes regarding Time Bound Promotion Scheme. In the meantime, while the answering respondent was continuing in the capacity of Reader in Philosophy subject at L.S. College, Muzffarpur, pursuant to the orders passed by the concerned authorities of the University, she was transferred to the Post-graduate Department of Philosophy of the University on 14.12.1995, where she submitted her joining and started discharging duties in accordance with law and subsequently a notification dated 22.04.1997 was issued by the University, by which, on the basis of the recommendation made by the erstwhile Bihar State University (Constituent Colleges) Service Commission, Patna, she along with one other person, was granted promotion in the rank of University Professor in Philosophy in terms of the provisions contained under the Statutes regarding Time Bound Promotion Scheme.

The Ld. Counsel for the private respondent has further



contended that subsequently, the private respondent had applied in the prescribed manner for consideration of her case for promotion in the rank of Reader in Philosophy in terms of the provisions contained under the Statutes regarding Merit Promotion Scheme and then a notification dated 10.09.1999 was issued by the University whereby the private respondent was granted promotion in the rank of Reader in Philosophy in the services of the University w.e.f 22.12.1986 in terms of the Merit Promotion Scheme and the earlier notification dated 16.12.1992, by which the private respondent was granted promotion as Reader in Philosophy, under the time Bound Promotion Scheme, was withdrawn. Thereafter, on the basis of the recommendation made by the pay fixation Commission of the University, the pay fixation of the answering respondent was also done and she was extended payment of current salary, arrears of salary, etc. as per her entitlement in accordance with law. It has been further contended on behalf of the private respondent no. 4 that while she along with other similarly situated persons had been working in the services of the University as a teacher, an illegal office order dated 02.07.2010 was issued by the University, purportedly pursuant to the orders passed by the Hon'ble Patna High Court in C.W.J.C. No. 5859 of 1996 and L.P.A. No. 1515



of 2001 as also the order passed by the Hon'ble Supreme Court of India in S.L.P. No. 24570 of 2008, whereby and whereunder the date of absorption of the services of the answering respondent as a Lecturer in Philosophy subject was shifted to 01.01.1981 and accordingly, the dates of promotion granted to her to the post of Reader and University Professor, under the Merit Promotion Scheme, were shifted to 01.01.1989 and 01.01.1997, respectively. The said office order dated 02.07.2010 was assailed by the answering respondent before this Hon'ble court along with other similarly situated persons in a writ petition bearing C.W.J.C. No. 11307 of 2010, and by an order dated 03.08.2010 passed by this Hon'ble Court, the operation of the said office order dated 02.07.2010 was stayed whereafter, the initial date of absorption as well as the initial date of promotions granted to the answering respondent to the post of Reader and University Professor were kept intact and the answering respondent continued to discharge her duties in the services of the University in accordance with law. Subsequently, on the basis of a report submitted by the Syndicate sub-Commission as well as the recommendation made by the University Selection Commission of the University, a notification dated 12.12.2011 was issued by the University, by which, amongst other persons,



the answering respondent was granted promotion to the post of University Professor in Philosophy with effect from 23.09.1995 in terms of the provisions contained under the Statutes regarding Merit Promotion Scheme and then by an office order dated 09.02.2012, the salary of the answering respondent was fixed, along with others, upon grant of promotion to her on the post of Professor under the Merit Promotion Scheme. It is stated that it is evident from the pay fixation statement issued by the University, as enclosed with the office order dt. 09.02.2012, that the initial date of appointment of the answering respondent on the post of Lecturer has been clearly mentioned as 22.12.1978 and accordingly, the dates of promotion on the posts of Reader and University Professor has also been indicated therein.

The learned counsel for the respondent no. 4 has further referred to the order dated 10.02.2015, passed in the case of the private respondent, by the Hon'ble Justice S.N. Jha commission, constituted for the Universities teachers by the Hon'ble Patna High Court by an Order dated 18.03.2013 passed in CWJC No. 10032 of 2009 for determining the qualifying period of service of University Teachers whose date of regularization of services had been shifted, to contend that the said commission has though held that the appointment of the private respondent was not



against a sanctioned post and so her initial appointment could not be said to be valid so as to entitle her to count the past period with effect from the date of her initial appointment i.e 22.12.1978, thus her seniority, which has been reckoned from 01.01.1981, did not warrant any intervention but has clarified that the said finding shall be treated as confined to dispute involved in the said petition and will not in any way effect the service of the private respondent. It is further submitted that the said order dated 10.02.2015, passed by the Hon'ble S.N. Jha Commission was affirmed by this Court by an order dated 18.09.2018 passed in the writ petition filed by the respondent no. 4 herein bearing CWJC No. 11307 of 2010, however, with liberty to the respondent no. 4 to challenge the report of the One Man Commission by way of a fresh writ petition in case she was aggrieved by the order/judgment passed by the Hon'ble S.N. Jha Commission and the interim order, if any, passed in the said case was directed to remain operative for a period of four weeks. It is submitted that the private respondent had then challenged the said order of the Hon'ble S.N. Jha Commission dated 10.02.2015 by filing a writ petition bearing CWJC No. 10202 of 2019 wherein this Court by an order dated 07.05.2019 has been pleased to direct for maintaining status quo. Thus, it is submitted



that it is apparent that the action on the part of the concerned authorities of the University in appointing the answering respondent as the Head of Department, Department of Philosophy, under the University, by an office order dated 30.08.2017, does not suffer from any infirmity whatsoever, since the answering respondent is the senior most teacher in the Department of Philosophy of the University. It is also contended that as far as the petitioner is concerned, she had been initially appointed against the post of Lecturer in Philosophy on 02.11.1982 and even for the sake of argument if it is assumed, although not admitted, that the seniority of the answering respondent is to be reckoned w.e.f. 01.01.1981, as per the order dated 10.02.2015, passed by the aforesaid Hon'ble Mr. Justice S.N. Jha Commission, the answering respondent still stands senior to the petitioner.

Lastly, the learned counsel for the respondent no. 4 has submitted, in reply to the claim of the writ petitioner regarding the promotion granted to the private respondent no. 4 on the post of University Professor vide notification dated 12.12.2011 being untenable in the eyes of law, that a bare perusal of the order dated 10.02.2015 passed by the Hon'ble Mr. Justice S.N. Jha Commission would clearly demonstrate that it has been directed



in no certain terms that the said order is to be treated as confined to the dispute involved in the petition in which the said order has been passed and is not to affect the services of the answering respondent in any manner, as such, it is clear that having taken note of various facts and circumstances involved in the case of the answering respondent, her seniority has been directed to be reckoned w.e.f 01.01.1981 but no order with respect to interfering with her promotion and other benefits has been passed by any authority till date, thus the promotions granted to the answering respondent in the rank of Reader as well as University Professor, on the basis of decision taken by different authorities of the University do not suffer from any infirmity whatsoever in the eyes of law.

In reply, the learned counsel for the petitioner has submitted that though the Hon'ble S.N. Jha Commission has held that the seniority of the respondent no. 4 shall be reckoned with effect from 01.01.1981 but no Notification has been issued by the respondent University with regard to the same. It is further submitted by the learned counsel for the petitioner, by referring to statute 12 regarding regularization of the services of purely temporary Lecturer, as approved by the Chancellor on 18.11.1980, that a purely temporary Lecturer, who is in the



service of the University or of a College, shall be appointed by the Syndicate or the Governing Body, as the case may be, in the regular services of the University or the College concerned, if he fulfils the conditions mentioned in the said statutes, relevant for the present case being clause-1 (c) and (d) thereof, which postulate that the incumbent should be working on a post which is duly sanctioned and the post, on which the incumbent has completed or will complete 24 months of service as on 31.12.1990, was duly sanctioned. It is thus submitted that the date of absorption of the services of the respondent no. 4 is 25.02.1984. It is also contended that Article 3(7) of the Statutes, as referred to by the learned senior counsel for the University, postulates that if an employee serving in any university of this State is appointed in the services of another university or Bihar Inter University Board, Patna on a temporary or substantive basis in the same or higher grade shall in the event of his joining within the time allowed by the competent authority be allowed continuity of his service of the former university for the purpose of protection of his pay and allowance drawn, leave and half pay leave earned in that university and the age of retirement and grant of retirement benefits as attributed to him in that university but not for determination of seniority, however, Section 9(7) of



the Bihar State Universities Act, 1976 provides that the Chancellor shall have the power to transfer the officers and teachers of the University from one University to other and the transferees shall retain their respective seniority, hence, it is submitted that the Bihar State Universities Act, 1976, would prevail over the aforesaid statutes being referred to by the learned senior counsel for the University and the petitioner will be entitled to retain her seniority.

I have heard the learned counsel for the parties and perused the materials on record. First of all, this Court finds that though the date of absorption of the services of the respondent no. 4 as Lecturer was fixed as 01.01.1980 vide Notification issued by the University dated 29.09.1999 but the petitioner has never challenged the same, thus, the same cannot be disputed. Nonetheless, this Court further finds that the Hon'ble S.N. Jha Commission by its order dated 10.02.2015 has held that the seniority of the respondent no. 4 shall be reckoned with effect from 01.01.1981 and the same has also been upheld by this Court by an order dated 18.09.2018 passed in CWJC No. 11307 of 2010, with liberty to the respondent no. 4 to challenge the same in case she is aggrieved by the same whereupon the same has also been challenged by the respondent no. 4 in CWJC No.



10202 of 2019 and this Court by an order dated 07.05.2019 has also directed to maintain status quo in the matter, however on the contrary, the petitioner has not challenged the said finding of the Hon'ble S.N. Jha Commission dated 10.02.2015, qua the respondent no. 4 herein, thus there cannot be any dispute regarding the date of reckoning of the seniority of the respondent no. 4 w.e.f 01.01.1981. Therefore, the admitted position which emerges and remains unchallenged by the petitioner herein is that the date of absorption of the respondent no. 4 in the services of the University as Lecturer is 01.01.1981 and as per the Hon'ble S.N. Jha Commission report/order dated 10.02.2015 also, the seniority of the respondent no. 4 has to be reckoned with effect from 01.01.1981. Thus, admittedly the respondent no. 4 has been appointed prior to the petitioner herein and, accordingly the subsequent promotions have been granted to the respondent no. 4.

This Court further finds that on account of the order of status quo granted by this Court in the writ petition filed by the respondent no. 4 bearing CWJC No. 10202 of 2019, the promotions granted to the respondent no. 4 cannot be disturbed till the said order is vacated or the said writ petition attains finality by being disposed off either way. This Court also finds



that the petitioner herein was appointed on 02.11.1982, was promoted as Reader on 02.11.1990 and as Professor with effect from 02.11.1998 whereas the respondent no. 4 was appointed on 22.12.1978, though her services was absorbed with effect from 01.01.1980 and as per the Hon'ble S.N. Jha Commission order dated 10.02.2015, her seniority is to be reckoned with effect from 01.01.1981, whereafter she was promoted as Reader with effect from 22.12.1986 and as Professor with effect from 23.09.1995, as such, it is clear that the respondent no. 4 is senior, right throughout, qua the petitioner herein. In fact the learned counsel for the petitioner has failed to show any infirmity in the orders of promotion of the respondent no. 4 dated 10.09.1999 and 12.12.2011, issued by the University.

This Court is also of the considered view that the revised statutes pertaining to the scheme of rotation of headship in the Department of Universities/College for the Universities of Bihar, dated 30.06.2008 clearly provides that for appointment as Head of P.G. Department, prior posting in the P.G. Department is essential, however, in the case in hand, since the petitioner has been working at L.S. College and not in the P.G. Department, she cannot be appointed as Head of P.G. Department of Philosophy. This Court is thus of the considered view that since



the respondent no. 4 is admittedly senior to the petitioner herein, as aforesaid and the learned counsel for the petitioner has not been able to point out any infirmity in the impugned Notification dated 30.08.2017, issued by the respondent University, appointing the respondent no. 4 as Head of the Department of Philosophy B. R. A Bihar University, by virtue of being the senior most teacher of the Department of Philosophy in the University, the said Notification dated 30.08.2017 does not suffer from any illegality so as to warrant any interference with the order dated 04.11.2018, passed by the Vice Chancellor of the respondent University, rejecting the representation of the petitioner. Consequently, it is held that there is no merit in the present writ petition, hence, the same is liable to be dismissed.

Nonetheless, this Court owes a duty to further declare that the attempt of the petitioner, in the garb of the present writ petition, to challenge the Notification of the year 1999, issued by the University granting promotion to the respondent no. 4 to the post of Reader, w.e.f. 22.12.1986 i.e. after a lapse of about 20 years as also seeking to challenge the Notification of the year 2011, granting promotion to the respondent no. 4 on the post of Professor, i.e. after a lapse of about 8 years, is marred by the principles of delay and laches and on this ground as well the writ



petition is bound to fail and is accordingly dismissed. In this connection, this Court would like to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Ex. Capt. Harish Uppal vs. Union of India*** reported in ***1994 SCC, Supl. (2) 195***, paragraph No. 8 whereof is reproduced herein below:-

*“8.The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.”*

In the case of State of Uttar Pradesh & Ors. Vs. Arvind



Kumar Srivastava & Ors. (Civil Appeal No. 9849 of 2014) decided on 17.10.2014, the Hon'ble Apex Court, while dealing with the question of delay and latches, held that in such like cases, the Court should be very slow in granting relief to the incumbent specially when the claimants lost time and did not rise to the occasion in time for filing the writ petitions. The relevant paragraphs of the said Judgment are being reproduced herein below:-

*“(23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:*

*(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not*



*to be treated differently.*

*(2) However, this principle is subject to well recognized exceptions in the form of latches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and latches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”*

Similarly, the observations of the Single Bench of the Calcutta High Court in the case of Mithi Mukherjee Vs. State of West Bengal and ors. (W.P. No. 14028 of 2013) and other connected petitions decided on 20.01.2014 are also relevant, which are extracted herein below:-

*“The inviolable conclusion deducible from the above noted decisions are that the stale and dead claims should not be encouraged in exercise of the discretionary relief under Article 226 of the Constitution of India. A line of distinction is to be drawn between a vigilant and a non-vigilant litigant*



*and they cannot be equated on the same footing. A litigant who was sitting on a fence and waiting for the result of the litigation initiated by other litigant promptly and after the favourable result approaches the Court to seek equality, should not be encouraged. Delay and latches is one of the important factor to push away the recalcitrant or invariable litigant who was watching the proceeding of the other and ventilated the grievance only after a favourable decision is obtained by the other litigant. The plea of inordinate delay is not applicable in case of an infringement of the fundamental rights. The proceeding may attract dismissal, more so, when a third parties' right are created in interregnum. It is not an inflexible rule but depends upon the rational and satisfactory explanation and, therefore, varies from case to case.”*

Having regard to the facts and circumstances of the present case and for the reasons mentioned herein above in the preceding paragraphs, this Court finds that there is no merit in the present writ petition, hence the same stands dismissed, however, without any order as to costs.

**(Mohit Kumar Shah, J)**

S.Sb/-

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