

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20382 of 2018

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Guru Sharan Singh Son of Ram Prasad Singh, Resident of East of Rajendra Chowk, Hajipur, P.O. and P.S. Hajipur, District-vaishali at Hajipur, the retired Store Keeper, Raj Narain College, Hajipur.

... .. Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director Higher Education, Education Department, Government of Bihar, Patna.
4. The Vice Chancellor Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
5. The Registrar, Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
6. The Finance Officer, Baba Sheb Bhim Rao Ambedkar Bihar University, Muzaffarpur.
7. The Principal Raj Narain College, Hajipur.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Vijay Kumar Singh, Advocate Mr. Santosh Kumar, Advocate Mr. Pankanj Kumar Singh, Advocate
For the Respondent State:		Mr. Jitendra Kumar Roy 1, S.C.-13
For the Respondent University :		Mr. Vikas Ratan Bharti, Advocate Mr. Arvind Nath Pandey, Advocate Mr. Satyendra Nr. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date : 05-07-2021

Heard learned counsel for the parties *on-line* because of COVID-19 Pandemic restrictions.

2. The petitioner is seeking a direction to fix his pay and pensionary benefits on the basis of provisional pay fixation done by the respondent University in pursuance of University Memo



No. 445/R and 446/R dated 24.01.2017. It is the petitioner's case that he was appointed as Storekeeper in the Department of Chemistry in Raj Narain College, Hajipur, by the governing body of the College on 20.07.1979 against a vacant post after following due process of selection and pursuant thereto he had submitted his joining on the said date itself.

3. It has also been stated that the petitioner held the qualification of Bachelor of Science as on the date of his appointment. The petitioner's service was regularized by the University by Memo No. B/2499 dated 05.04.1986 with effect from 25.03.1986. It has further been stated that the petitioner's service was confirmed by the University on 22.09.2017. It is the petitioner's case that pay scale of Rs.5500-9000 is admissible for the post of Storekeeper of a College, which post is to be treated to be equivalent to Assistant of Colleges and the University. Relying on a decision of the Supreme Court in case of *State of Bihar and Another vs. Sunny Prakash and Others*, reported in (2013) 3 SCC 559, the petitioner claims fixation of his pay, grant of Assured Career Progression and fixation of his post retiral benefits accordingly.

4. A counter affidavit has been filed on behalf of respondent University stating therein that it has categorically been



mentioned in letter No. 1139 dated 18.06.2014 issued by the State Government in compliance of the directives issued in the case of ***Sunny Prakash*** (supra) by the Supreme Court that the scale of Rs.5500-9000 shall be payable to only those Storekeepers of the University and its constituent Colleges, who had been appointed against duly vacant sanctioned post after following the prescribed procedure of advertisement and selection by a selection committee. It has been stated that the petitioner was not appointed against vacant sanctioned post and due procedure for his appointment was also not followed by the governing body of the said Raj Narain College, Hajipur, and, therefore, the petitioner does not meet the criteria of fixation of his pay in the scale of Rs.5500-9000. It has also been stated that the University, through letter dated 18.01.2019, had requested the Principal, Raj Narain College, Hajipur, to submit service details of the petitioner, pursuant to which the report was communicated through letter dated 26.03.2019 from which it is found that only one post of Storekeeper was sanctioned by the State Government in the said College, against which, one Shambhu Nath Singh was working till 1986. It was only after said Shambhu Nath Singh left the said post, the service of the petitioner was regularized against the said post with effect from 25.03.1986 as is evident from the office order



dated 05.04.1986 (Annexure-P/1). It has been specifically stated that no advertisement was ever issued by the Principal or the governing body of the College for appointment against the post of Storekeeper nor any selection committee was constituted for screening of the candidates before appointment against the said post. Apparently, it is the case of the University that the petitioner was appointed as Storekeeper by the College without following the proper procedure of advertisement and selection by a selection committee.

5. A rejoinder affidavit has been filed on behalf of the petitioner to the said counter affidavit stating therein that there were two separate laboratories in the Department of Chemistry, one for the Intermediate Science and another for the Bachelor's (Hons.) and, therefore, there was need of two Storekeepers in the Department of Chemistry in the College in question. According to the petitioner, against the first sanctioned post of Storekeeper in the Department of Chemistry, one Shambhu Nath Singh was appointed and against the second post of Storekeeper in the Department of Chemistry, the petitioner was appointed. It has been asserted that since there was urgent need of a Storekeeper in the Department of Chemistry, for the second post an advertisement was issued by the governing body of the College, which was



placed on the notice board of the College and in pursuance thereto the petitioner had submitted his application.

6. Though it has been stated in the rejoinder affidavit that the petitioner had been selected for the post pursuant to the said notice inviting application, there is no averment therein as to what method of selection/screening was adopted by the governing body.

7. From the facts asserted in the writ application, counter affidavit and the rejoinder affidavit, it can be easily inferred that there was only one duly sanctioned post of Storekeeper in Chemistry Department of the College. The said post was admittedly held by one Shambhu Nath Singh as on 20.07.1979, when the petitioner claims to have been appointed under the order of the Principal. The appointment letter has been brought on record by way of Annexure-R/1 to the counter affidavit filed on behalf of the University, which is dated 20.07.1979 and reads as under :-

“सेवा में,

श्री गुरुशरण सिंह

ग्राम— मजलिसपुर, पो0— मधुरा (वैशाली)

महाशय,

आपकी नियुक्ति रसायन विज्ञान विभाग में भंडार पाल के पद पर की जाती है। दिनांक 20/7/79 तक अपना कार्य भार ग्रहण करें।



प्राचार्य

रा० ना० कॉलेज, हाजीपुर”

8. The said appointment letter does not disclose issuance of any notice, submission of any application nor adoption of any selection process. It is reiterated that evidently the said letter was issued for appointment against a post, which was already held by one Shambhu Nath Singh. This fact stands corroborated by the office order issued by the Registrar of the University dated 05.04.1986, whereby the petitioner's services were regularized, which reads as under : -

“The Vice-Chancellor on the recommendation of the Principal, R.N.College, Hajipur, has been pleased to regularize the services of Sri Guru Sharan Singh, Store-keeper in the Deptt. Of Chemistry, R.N.College, Hajipur against the vacant sanctioned post of Store-keeper held by Sri Shambhu Nath Singh with immediate effect from 25th March, 1986.”

9. In view of the aforesaid, it is clear that the petitioner's initial appointment itself was without following any procedure. The contention of the petitioner that notice inviting application was placed on the notice board of the College does not inspire any confidence, which is not supported by any material including the appointment letter itself.



10. I have carefully perused the decision of the State Government as contained in the letter dated 18.06.2014 issued in compliance of the Supreme Court's order in case of ***Sunny Prakash*** (supra). It has been clearly mentioned in the said letter that only legally appointed Storekeepers against vacant sanctioned post are eligible for the scale 5500-9000. Since the petitioner's appointment as Storekeeper in 1979 cannot be said to be in accordance with law against vacant sanctioned post, though subsequently regularized, he cannot claim said scale of Rs.5500-9000 on the strength of the said decision of the State Government as contained in letter dated 18.06.2014 issued in the light of decision in case of ***Sunny Prakash*** (supra). In any case, if such relief is granted, the same shall amount to perpetuating illegality through which the petitioner was appointed as Storekeeper in 1979.

11. For the aforesaid reasons, this application has no merit and it is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	29.06.2021
Uploading Date	12.07.2021
Transmission Date	N/A

