

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19885 of 2016

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Sunil Kumar S/o Late Lautan Singh R/o Adarsh Nagar Lane No-3, Opposite BHEL Colony, P.O.Khabra
P.S.-Sadar, District-Muzaffarpur, Presently Working as Assistant M.P.S. Sc. College, Muzaffarpur
... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary, Higher Education, Department, of Human Resource Development, Bihar, Patna
3. B.R.A Bihar University Muzaffarpur through its Registrar
4. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur
5. The Registrar, B.R.A. Bihar University, Muzaffarpur
6. The Principal, M.P.S. SC. College, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Manoj, Adv.
For the University	:	Mr. Amit Singh, Adv.
For the State	:	Mr. Vinay Kumar Mishra, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 13-02-2023

1. The petitioner by way of this writ petition prays to direct the respondents to consider the case for promotion to the post of Head Assistant in the M.P.S. Sc College, Muzaffarpur by reckoning the seniority from 29.07.1989.

2. Learned counsel for the petitioner submits that he was appointed on compassionate grounds on 29.07.1989 on the post of Routine Clerk. However, the appointment was shown to be on daily wage basis. Subsequently, vide order dated 21.09.1995, the petitioner was shown to be appointed on 3rd Grade/ Routine Clerk with effect from 09.10.1995.



3. Learned counsel submits that the initial appointment on 29.07.1989 was with reference to the Government's circular dated 12.04.1984 which required to appoint persons on compassionate ground against a post and therefore, the petitioner's services from 1989 up to 1995 ought to be counted as substantive service as he was working on a permanent post and the period of service should be counted for the purpose of seniority and other benefits.

4. Learned counsel submits that the petitioner has attained superannuation and should also be counted for the purpose of grant of pension and other retiral benefits. Per contra, learned counsel appearing for the University has submitted that it is only after the State Government laid down procedure for appointment on compassionate ground in the Universities vide its notification dated 21.08.1995, that the petitioner and other similarly situated persons were appointed against a substantive post and the period of service rendered from 1989 to 1995 cannot be counted to include for the purpose of seniority or otherwise. It is also pointed out that the petitioner has been granted the benefits of A.C.P. and M.A.C.P. counting his period of service from 1995. None of the orders were challenged by the petitioner at any given point of time and merely for the purpose



of promotion, the said period of service cannot be counted.

5. I have considered the submission. The period spent on daily wage basis cannot be said to be on a substantive post. The petitioner was posted on regular basis against a substantive post only vide order dated 24.09.1995 with effect from 09.10.1995 and therefore, prior service could not be counted for the purpose of seniority. This Court also notices that the order dated 24.09.1995 was accepted by the petitioner without challenging it in any Court of law. He has also accepted his appointment from the said date for the purpose of granting A.C.P. as well as M.A.C.P. He therefore, cannot turn around now and claim the said period from 1989 to 1995 for the purpose of promotion or otherwise. The action of the petitioner amounts to acquiescence.

6. Accordingly, no case for interference is made out. The writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

Sachin/-
Item No. 38

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CAV DATE	
Uploading Date	
Transmission Date	

