

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10636 of 2020

Dr. Pankaj Kumar Son of Dudh Nath Sharma, Resident of 55, Bhagwanpur Hat, P.O.- Dilshadpur, P.S.- Hulsera, District- Siwan, Pin Code- 841408.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Director, Higher Education Department, Bihar, Patna.
3. Principal Secretary, Rural Development Department, Bihar, Patna.
4. Chancellor of Universities of Bihar, Raj Bhawan, Patna.
5. Magadh University, Bodh Gaya through its Registrar.
6. Vice Chancellor, Magadh University, Bodh Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Abhinav Srivastava, Advocate
For the Magadh University: Mr.Alok Kumar Rahi, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

5 24-02-2023

The petitioner has prayed as under :

“(i) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Magadh University, Bodh Gaya (hereinafter referred to as "the University") to allow the petitioner to submit his joining in the capacity of Assistant Professor in Political Science in the services of the University on the basis of his appointment having been made pursuant to the recommendation made by the concerned authorities under Bihar Public Service Commission (hereinafter referred to as "the Commission"), Patna, pursuant to advertisement no. 57/2014;

(II) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the University to extend all the



consequential benefits in favour of the petitioner in terms of arrears of salary, seniority, length of service, continuity of service, etc., as he may be found to be entitled to which the petitioner has been hitherto denied on account of highhandedness and illegal disposition on the part of the concerned respondent authorities under the University without there being any fault on his part;

(iii) Issuance of a declaration holding that the petitioner is entitled for being permitted to submit his joining in the capacity of Assistant Professor in Political Science in the services of the University along with all the consequential benefits in terms of pay fixation, length of service, continuity of service, seniority, etc.;

(iv) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”

2. Learned counsel for the petitioner submits that the petitioner was selected as the Assistant Professor in the subject of Political Science in the Magadh University by the Commission on 24.04.2019 and whereafter appointment order was issued by the respondents on 07.09.2019 with a direction to the petitioner to join the post of Assistant Professor within a period of one month i.e. up to 06th October, 2019 and it was postulated in the order that if he does not assume duties, it would be presumed that he does not have any interest in the appointment. The petitioner submitted a representation pointing out that he has to be relieved from his present posting



so that he may join the post of Assistant Professor and sought time for the said purpose. It is stated that the petitioner was relieved from his present place of posting i.e. Block Development Officer in the cadre of Bihar Rural Development Services of Bihar Government on 31.10.2019, however, the petitioner could not join on the post of the Assistant Professor as he was suffering from serious illness on account of liver cirrhosis. The petitioner on having recovered submitted his joining on 31.01.2020, however he was not allowed to perform his duties and, therefore, he preferred another representation on 04th of March, 2020 and 28th of May, 2020 but he was not allowed to perform his duties and therefore, he has prayed as above.

3. The respondents have filed their counter affidavit stating that as per the provisions relating to joining, the candidate is required to join within the stipulated period as provided in the appointment letter, however, on the request of the candidate, the joining could be extended up to six months.

Keeping in view the request made by the petitioner, as he was not being relieved from the State Government, extension was granted up to the date when he was to be relieved but the petitioner has not joined even after being



relieved and therefore, the University sent the matter to the Committee, which took a decision on 4.12.2020 not to allow the petitioner to join, as it was belated.

4. Having noticed the aforesaid facts, this Court finds that the petitioner had reasonable and plausible grounds for not joining within the stipulated period as required in the appointment letter. The petitioner had also informed about his illness to the respondents and on having recovered, he has submitted his joining report on 31st of January, 2020 but the University kept silent on his joining report. In the counter affidavit, they do not deny the submission of joining report on 31.01.2020 or about his representations made from time to time. The decision, for not allowing the petitioner to join, has been taken by the University based on the Committee's report dated 04.12.2020. Thus, for one year, the University has kept the matter in abeyance. At the same time, this Court finds that the petitioner was earlier holding a responsible post of Block Development Officer in the State Government. He has already been relieved from his services. A person, on account of health reasons, may not be able to join within the time stipulated, however, the date of joining as prescribed can not be said to be of mandatory nature but is essentially directory as the same



can be extended.

5. Keeping in view the said provisions, this Court is satisfied that the delay occurred in joining can not result in cancelling of his appointment on the post of Assistant Professor of Political Science. Therefore, the report of the Committee dated 04.12.2020 and the decision of the University dated 12.07.2021 and consequential decision dated 12.10.2021 are quashed and set aside. The respondents have wrongfully not allowed the petitioner to perform his duties. Since the petitioner had submitted his joining on 31.01.2020, he shall be treated to be in service from 31.01.2020 and the period up to date of passing of this order shall be treated notional and the actual salary from the date of passing of this order shall be paid.

6. The petitioner shall be allowed to perform his duties forthwith by the University. Order shall be implemented positively within seven (07) days.

7. The writ petition is allowed accordingly. No cost.

(Sanjeev Prakash Sharma, J)

Chn/-
Item no.58

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