

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18702 of 2015

Dr. Bharti Sinha W/o Late Kapileshwar Prasad, resident of Gajipur Sadpura,
P.S.- Kazi Mohammadpur, District- Muzaffarpur, a Superannuated Reader in
the subject of Hindi from R.D.S. College Muzaffarpur, a constituent unit of
B.R.A. Bihar University Muzaffarpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Higher Education, Govt. of Bihar, Patna
3. The Vice Chancellor, B.R.A. Bihar University, Muzaffarpur.
4. The Registrar, B.R.A. Bihar University Muzaffarpur
5. The Finance Officer, B.R.A. Bihar University Muzaffarpur
6. The Principal, R.S.S. Mahila College, Sitamarhi
7. The Principal, R.D.S. College, Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
For the Respondent/s : Mr. Kamlesh Kishore, AC to SC 12
For the University : Mr. Zaki Haider, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 26-04-2024

1. The petitioner has filed the present writ application for quashing the order dated 13.08.2015 passed in Case No. 70 (BRABU) by the Hon'ble Justice (Retd.) S.N. Jha Committee whereby the Commission has directed to absorb / count the services of the petitioner with effect from 30.06.1977. The petitioner further prays that her services be counted from 29.10.1968 i.e. the date when she was initially appointed by the



Governing Body in R.S.S. Mahila College, Sitamarhi (BRABU, Muzaffarpur).

2. The case of the petitioner is that the Governing Body of the proposed R.S.S. Mahila College, Sitamarhi appointed her as Lecturer in Hindi vide Memo No. 100 dated 29.10.1968 and pursuant thereto the petitioner joined the post on the same very day. The College was not affiliated at that time. Affiliation was granted later vide order dated 05.04.1973 for two sessions from 1971-1972. The petitioner thus alternatively claims that her seniority may be reckoned at least from 01.06.1971 when the College got affiliation, if not from 29.10.1968 .

3. Learned counsel for the petitioner contended that the College sent requisition before the University Service Commission for temporary concurrence / recognition and the same was granted on 09.08.1972 by the University Service Commission.

4. The University Service Commission recommended the name of the petitioner for appointment and the same was accepted by the Ad-hoc Managing Committee of the College and also by the University vide Annexure - 2 dated 13.02.1974. The approval was granted with effect from 01.06.1971. The petitioner was thereafter appointed as Temporary Lecturer in



M.D.D.M. College, Muzaffarpur vide letter no. 272/R dated 06.03.1975 for three months pursuant to the advertisement made by the Vice Chancellor following the procedure of selection. The petitioner worked up to 31.05.1975 and again returned back to the previous college i.e. R.S.S. Mahila College, Sitamarhi. The period during which she was in M.D.D.M. College, she was on leave with lien. Subsequently, the petitioner was relieved from R.S.S. Mahila College, Sitamarhi.

5. Learned counsel further submits that on 07.08.1975 a fresh advertisement was published for appointment by the University. The petitioner applied pursuant to the advertisement and on 20.02.1976 the petitioner was appointed afresh by the Vice Chancellor and was posted at M.S. College, Motihari. On 01.03.1976 the petitioner was posted at R.D.S. College, Muzaffarpur vide notification dated 18.02.1981 and she was absorbed in regular service of the University in terms of the First Absorption Statute. The further contention of the petitioner is that at every occasion the petitioner's service was counted from 01.06.1971. The University Screening Committee sent the name of the petitioner before the Bihar State University (Constituent Colleges) Services Commission for grant of promotion to the post of Reader vide Memo No. B/6376 dated



12.12.1984 counting the service of the petitioner from 01.06.1971 which was accepted and thereafter the same was notified vide Memo No. B/801 dated 16.03.1996. The petitioner continued in service from 29.10.1968 to 31.03.2004 i.e. the date on which she retired. Since there is no break in service, therefore, her service may be counted from the date of initial appointment.

6. The petitioner in support of his arguments relied upon the following judgments:-

AIR 1988 Supreme Court 335 Sharadendu Bhushan v. Nagpur University, Nagpur & Ors; AIR 1992 Supreme Court 780 Banaras Hindu University, Varanasi and Another v. Dr. Indra Pratap Singh & 2007 (2) PLJR 478 Shatrughana Sharan Singh vs The Chancellor of Universities.

7. Learned counsel for the University submits that there is no infirmity in the order passed by the Hon'ble Justice (Retd.) S.N.Jha Committee and the date of absorption / seniority of the petitioner has rightly been reckoned with effect from 30.6.1977. The petitioner was appointed afresh on 20.02.1976. The petitioner appointment on 20.02.1976 / 02.03.1976 may not be taken into consideration because as found by the Committee she was not qualified for absorption under the First Absorption



Statute as she had not completed 18 months service.

8. I have heard learned counsel for the parties and perused the impugned order. It may be taken note of that while considering the case of the University teachers regarding absorption and referring the matter before One Man Committee, this Court had taken a view that if initial appointment of a person was valid, he would be entitled to seniority from the date of initial appointment notwithstanding the cut off / effective date of absorption prescribed in the absorption statute.

9. From the aforesaid facts it appears that initial appointment of the petitioner dated 29.10.1968 was made at a time when the College was not even established and the same was just a “proposed” College. The College was not affiliated and the posts were not sanctioned. The petitioner has not brought on record the copy of the recommendation of the University Service Commission dated 06.07.1973 and in any case it is not known if it was made after advertisement as well interview etc.

10. The petitioner relies upon Annexure - 2 in order to support her case that the Ad-hoc Committee of the College recommended the name of the petitioner on 23rd September, 1973 and the University has approved the appointment of the



petitioner with effect from the date of her appointment. Notwithstanding the aforesaid, it is specific case of the petitioner and taken note of by the Committee that the petitioner was appointed afresh by the Vice Chancellor by order dated 20.02.1976 pursuant to fresh advertisement dated 07.08.1975. The One Man Committee has rightly arrived at the conclusion that the petitioner on her own volition applied in the fresh advertisement for the post of Lecturer and participated in the interview etc. and accepted the offer of appointment. There can be no doubt that it was a fresh appointment and the appointment being a fresh one, the petitioner cannot claim seniority on the basis of earlier appointment. Pursuant to fresh appointment she was posted in M.S. College, Motihari and on 01.03.1976 another order was issued and she was posted in R.D.S. College, Muzaffarpur against a temporary vacancy created on account of suspension of one Shri Uday Shankar Singh of the said college. The petitioner was duly absorbed in R.D.S. College in terms of the First Absorption Statute vide notification dated 18.02.1981. The judgment relied upon by the petitioner is not applicable in the facts of the case. The Commission has rightly come to the conclusion that the petitioner can not claim the benefit of past service rendered in R.S.S. Mahila College on the basis of her



appointment dated 29.10.1968 and has rightly held that absorption / seniority should be reckoned with effect from 30.06.1977.

11. Considering the aforesaid discussions, I do not find any merit in this application. The same is accordingly dismissed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27-05-2024
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