

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17317 of 2015

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Dinesh Kumar Singh S/o Sri Mouleshwari Prasad Singh, resident of Village Ranhan, P.O. Mahadeo Simaria, P.S.- Sikandra, District- Jamui, at present working as Typist Asstt. in D.S.M. College, Jhajha, Jamui.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
3. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
4. The Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Principal, D.S.M. College, Jhajha, Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Niraj Kumar
For the State	:	Mr. Prabhakar Thakur, AC to GA 13
For the University	:	Mr. Amit Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 12 09-05-2024 1. The petitioner has filed the present writ application for setting aside the letter no. B/12985, dated 03.09.2015, issued by the Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur (in short, ‘the University’), by which the petitioner has been prevented from participating in the examination for promotion on the post of Head Assistant. It has further been prayed for a direction to the respondent authorities to consider the claim of the petitioner for promotion against the vacant sanction post of Head Assistant with effect from 20.08.2010 in the pay scale of ₹ 9300-₹34,800, with all consequential benefits.



2. The petitioner was appointed as Typist on 28.03.1980 in Deo Sundari Memorial College, Jhajha, Munger (in short, 'the College'), pursuant to the advertisement issued by the Governing Body of the College on 23.06.1979. The College was made constituent unit of the University in the third phase on 18.04.1982. The petitioner was absorbed on the sanctioned post of Typist on 03.05.1984.
3. Learned Counsel for the petitioner submits that pursuant to the notification of the Hon'ble Chancellor, dated 04.03.2014, the petitioner was entitled for promotion on the post of Head Assistant after coming into force the notification regarding merger of posts on 04.03.2014. The post of Head Assistant was vacant and the process for promotion on the post of Head Assistant was initiated by the University. However, the candidature of the petitioner was not approved by the University in arbitrary and capricious manner, preventing him from appearing in the examination for promotion. The petitioner had been working continuously and was discharging the duty of Head Assistant since 20.08.2010.
4. Learned Counsel further submits that vide letter no. 8825, dated 20.12.2000, issued by the Department of Finance,



Government of Bihar, Patna, the post of Typist and other posts were merged as Upper Division Clerk. Hence, the petitioner was eligible for participating in the examination for promotion against the post of Head Assistant. After issuance of the said notification in the year 2000 by the Government, no such notification was issued by the University regarding the post of Typist to be merged as Upper Division Clerk. However, one similarly situated person, who was appointed as Counter Clerk, was given promotion on the post of Head Assistant on 31.06.2007.

5. On the other hand, learned Counsel for the University as well as State submitted that the merger on the post by virtue of the notification of the Department of Finance, Government of Bihar, Patna, dated 20.12.2000, was not made applicable in the services of the University. No direction was ever issued by the Government to the University in this regard for merger of the post in the services of the University and its constituent colleges.
6. Learned Counsel for the University further submits that employees of constituent colleges, who have been appointed on the post of Typist, was not granted the benefit of promotion to the post of Head Assistant,



treating them as Upper Division Clerk. However, learned Counsel accepts that after coming into force the notification, dated 04.03.2014, the post of Typist merged into the Upper Division Clerk and the petitioner was entitled to be considered for promotion on the post of Head Assistant, the process of which was initiated by the University in the year 2015. The petitioner was wrongly prevented from participating in the process of promotion by applying the wrong rules, which were made for promotion of the staffs working in the University. However, one person, namely, Sanjay Kumar Choudhary was promoted to the post of Head Assistant with effect from 01.02.2016, pursuant to the process of promotion initiated in the year 2015, in which the petitioner was prevented from participating. The petitioner has retired from the service on 31.01.2017.

7. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.
8. The Hon'ble Chancellor issued notification on 04.03.2014 for merger of the post of Typist and others as Upper Division Clerk. After coming into force of the aforesaid notification, the petitioner undoubtedly was entitled to be



considered for promotion as Head Assistant. By the impugned letter, dated 03.09.2015, the petitioner was debarred from participating in the examination to be held for promotion on the post of Head Assistant. However, one Sanjay Kumar Choudhary was promoted to the post of Head Assistant with effect from 01.02.2016 pursuant to the process issued in the year 2015.

9. As such, in my opinion, the petitioner was entitled to be considered for promotion along with Sanjay Kumar Choudhary with effect from 01.02.2016, but he was wrongly prevented from participating in the examination.
10. In the result, this writ application is allowed and the Registrar of the University is directed to consider the claim of petitioner for promotion as Head Assistant with effect from 01.02.2016 and grant of all consequential and monetary benefits, including the pensionary benefits within a period of two months from the date of receipt/production of a copy of this order.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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