

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.618 of 2021**

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- 1.1. Raj Kamal Son of Late Gopal Krishan Gokhle Resident of Mohalla- Dal Dali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
- 1.2. Nil Kamal Son of Late Gopal Krishan Gokhle Resident of Mohalla- Dal Dali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
- 1.3. Rachana Daughter of Late Gopal Krishan Gokhle Resident of Mohalla- Dal Dali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
- 1.4. Ranjna Kumari Daughter of Late Gopal Krishan Gokhle Resident of Mohalla- Dal Dali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.
- 1.5. Rashmi Gupta Daughter of Late Gopal Krishan Gokhle Resident of Mohalla- Dal Dali Bazar, P.O.- Chapra, P.S.- Chapra Town, District- Saran.

... .. Petitioner/s

Versus

1. The Chancellor of the Universities Government House, Patna
2. State of Bihar, through the Secretary, Higher Education, Govt. of Bihar, Patna.
3. The Vice Chancellor, Kameshwar Singh Darbhanga Shanskrit University, Darbhanga.
4. The Registrar, Kameshwar Singh Darbhanga Shanskrit University, Darbhanga.
5. The Principal, Bharat Mishr Sanskrit College, Saran at Chapra.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|--------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Shashi Shekhar Tiwary, Adv.                              |
| For the State        | : | Mr. Kumaresh Singh, AC to S.C.-28                            |
| For the University   | : | Mr. Vindhya Kesari Kumar, Sr. Adv.<br>Mr. Deepak Kumar, Adv. |

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**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**CAV JUDGMENT**

**Date : 19-08-2024**

Heard learned counsel for the petitioners, learned counsel for the State and learned senior counsel for the University.

2. A substitution petition has been filed for substituting



the name of the original petitioner, namely, Gopal Krishna Gokhale and to bring on record the heirs of the original petitioner in his place as stated in para-1 of the I.A. No. 1 of 2024. The original petitioner in question, namely, Gopal Krishna Gokhale died on 04.06.2023, therefore, the name of the petitioner be substituted by bringing on record his legal heirs.

3. By filing the present writ application, the original petitioner has prayed for issuance of a direction commanding the respondents to ensure time bound promotion in favour of the original petitioner from due date of entitlement over the post and pay scale of Associate Professor and may kindly extend the monetary/consequential admissible benefits simultaneously also as after 33 years of regular service, the original petitioner, who has been appointed to work as Assistant Professor/Lecturer has also been allowed to retire as Assistant Professor/Lecturer without getting benefit of time bound promotion and other legitimate benefits from the due date of entitlement.

4. The original petitioner superannuated on 31.07.2013.

5. The issue of appointment of the original petitioner and one Prem Kumari engaged this Court on several occa-



sions.

6. The fact of the case, in brief, is that at the relevant time, the concerned college was under the category of an affiliated college and in an affiliated college, the governing body of the college itself has a competent authority to appoint teaching and non-teaching staff. The governing body of the college on 01.08.1980 has made two appointments on a single sanctioned post i.e., one of the original petitioner and another of one Prem Kumari, in Economics (sanctioned post) and History (unsanctioned post), respectively. The entire controversy arose due to the shifting of the original petitioner to an unsanctioned post and Prem Kumari to a sanctioned post by the governing body of the college, which ultimately caused several rounds of litigation between them.

7. At the relevant time after hearing the parties, both writ petitions one by the original petitioner and another by Prem Kumari, bearing C.W.J.C. No. 5850 of 2003 and C.W.J.C. No. 6816 of 2003 were decided by a common order on 16.8.2010. The coordinate bench of this Court has passed the following order:-

*“In view of the fact that now post is one and there are two claimants, petitioner Gopal Krishna Gokhale by virtue of his ap-*



*pointment on the post of lecturer in Economics and petitioner Prem Kumari on the post of Lecturer in History and both are claiming to be appointed on the same day by the same Governing body at a point of time when the college was only affiliated college and both of them have also claimed to be continuing in the college which became a constituent in the March 1982, this Court would find it necessary that the University in exercise of its power under section 4 (1) (14) of the Act should decide as to who out of the two or whether any one of the two is entitled to be absorbed in the services of the University.*

*Sections 4 (1) (14) reads as follows:*

*“Purposes and powers of the University:-*

*(1) There shall be the following purposes and powers of the University:-*

*(14) to enter into agreement with other bodies and persons for promoting the purposes of this Act and to assume the management of any institution under them and to take over its assets and liabilities;*

*Provided that before entering into such an agreement the University shall obtain the sanction of the State Government, or shall do so upon receiving such a proposal from the State Government;*

*Provided further that if at any time any irregularity is found in determination and payment of any pay, special pay or allowances, or in any appointment in an institution taken over by the University in its management under such an agreement, then, notwithstanding anything to the contrary contained in this Act, the University shall have the powers to take decisions af-*



*ter reviewing it and such a decision shall be final and binding.”*

*Admittedly this college was made constituent in the March 1982 and therefore, the University will have to exercise its power and jurisdiction to decide the case of both the petitioners for their continuance in service and payment of salary from the funds of the State Government. As the provision of section 4 (1) (14) will go to show that in such exercise the University has to also find out as to whether there was any illegality in the earlier determination made and to review such decision, any earlier order passed either in favour of Gopal Krishna Gokhale or Prem Kumari will not stand in the way of the University to take an appropriate decision. In such exercise the University will however take into account the provisions which were then in force at the time of their appointment on the post of Lecturer and if it is found that either of them or both of them did not possess the requisite qualification, there will be no question of their appointment being approved and absorbed with the consequential benefit of payment of salary. The University must take a final decision within a period of six months, but only after affording opportunity of personal hearing to both Gopal Krishna Gokhale and Prem Kumari, who may produce any evidence that they may choose for demonstrating that their appointment was made validly by the governing body and such appointment could be approved by the University.*

*Since there is a provision of only for one post in modern subject, the University will also decide as to who amongst the two*



*will be entitled for payment of salary at least from the date of order. The claim for payment of arrears of salary, in case of Gopal Krishna Gokhale is found to be rightful person for being absorbed in services of the University, would be examined separately, but in case of appointment Prem Kumari is found to be valid, her payment of salary shall be kept continued. However, payment of salary of Prem Kumari henceforth i.e, from the month of September, 2010 shall not be made till the issue as with regard to absorption of services of Gopal Krishna Gokhale and Prem Kumari is finally decided by the University in exercise of power under section 4 (1) (14) of the Act.*

*With the aforementioned observation/ directions this application is disposed of.”*

8. In view of the observation aforesaid, the matter decided on 20.01.2011 in favour of the original petitioner. The said letter dated 20.01.2011 was challenged vide CWJC No. 4202 of 2011.

9. Again the matter was considered in C.W.J.C. No. 4202 of 2011 by another coordinate bench of this Court and vide order dated 06.08.2012 the writ petition was disposed of with a direction to the Vice-Chancellor to grant personal hearing and pass reasoned and speaking order within a maximum period of three months from the date of receipt/production of a copy of this order.



10. In compliance of the order dated 06.08.2012, the Vice Chancellor gave opportunity to both the original petitioner and Prem Kumari to place their respective cases before him. After detailed hearing, the Vice Chancellor decided the matter again in favour of the original petitioner vide order dated 08.03.2013. The Vice Chancellor of the University has recorded specific finding that on 31.07.1980 only one sanctioned post of Lecturer in the subject Economics was available for appointment, on which the original petitioner was qualified for appointment as Lecturer in Economics, while on other side, Prem Kumari had no requisite qualification i.e., Master Degree (M.A.) in the subject of History at the time of initial appointment. The college was taken over as the constituent college of the Kameshwar Singh Darbhanga Sanskrit University in March 1982 and at that time, the original petitioner was working as the Lecturer of Economics already approved by the University. So his claim as the Lecturer against the sanctioned post was established and accepted as valid and lawful, whereas the claim of Prem Kumari working against the sanctioned post was not fit in the eyes of law and hence her claim against the sanctioned post had been rejected. The letter through which she was shifted to the sanctioned post



thus quashed and approval given vide letter No. 2998 on 28.01.1982 to the original petitioner was reinstated and continued.

11. Consequently, Prem Kumari has been removed from service vide order dated 24.06.2013 issued by the Registrar of the University, and a direction was also issued to recover the amount of salary paid to her.

12. The aforesaid order of Vice Chancellor was challenged by Prem Kumari through CWJC No. 15811/2013. The writ petition was heard and disposed of on 21.08.2013 (**Annexure-5/A to the writ petition**) with the observation that *“this Court does not find any error in the decision taken by the University rejecting to recognize the service of the petitioner.”* Herein the petitioner is Prem Kumari.

13. Aggrieved by the decision of this court dated 21.08.2013 in C.W.J.C. No. 15811 of 2013 and of letter dated 24.06.2013 issued by the Registrar of the University, Prem Kumari preferred LPA No. 1716 of 2013, which was partly allowed vide order dated 11.08.2014. The relevant part of the order given in LPA No. 1716/2013 is quoted below:

*“ The real issue is whether the appointment of the appellant was legal and valid. From*



*the above discussion, it is clear that her appointment has indeed been found to be illegal for want of sanctioned vacant post of Lecturer in History. The impugned order made by the University does not call for interference except that the appellant shall be entitled to receive salary for the period she has discharged service from the date of her appointment till the date of her removal from service on the principle of 'Quantum Merit'.*

*The order of the University directing recovery of the salary paid to the appellant is set aside. The impugned order of the learned Single Judge dated 21<sup>st</sup> August, 2013 made in CWJC No. 18511 of 2013 is modified to the aforesaid extent.*

*Appeal is partially allowed in the above terms."*

14. Against the order of this Court passed in L.P.A. No. 1716 of 2023, Prem Kumari has moved before the Hon'ble Supreme Court vide SLP (C) No. 32619 of 2014, which was allowed vide order dated 19.08.2019 after setting aside the termination order of the services of Prem Kumari and it has been directed that "*She be reinstated and be paid all the benefits which would have accrued to her had she been continued in the service.*" It has further been directed that "*Respondent*



*no.6 has attained the age of superannuation, his right shall not be adversely affected to claim the salary as per the impugned order passed by the High Court*". Herein respondent no.6 was Gopal Krishna Gokhle (original petitioner).

15. Thereafter, the original petitioner filed writ application bearing CWJC No. 260 of 2020 primarily for payment of arrears of salary and allowance, in pursuance of his regularization done vide letter No. 3379/13 dated 15.06.2013. This Court disposed of the aforesaid writ application vide order 07.07.2020. The relevant part of the order given in CWJC No. 260 of 2020 is quoted below:

*"Notwithstanding the finality of the judgment up to Apex Court and there is clear decision of the Apex Court that respondent no.6 (the petitioner in this case) has attained the age of superannuation shall not adversely affect to salary as per impugned order passed by the High Court. Unfortunately, even after finality of the decision up to Apex Court dated 19.08.2019, the petitioner is moving pillar to post.*

*Under the aforesaid circumstances, the writ petition is disposed of with a direction to the respondent University as well as Additional Chief Secretary cum Principal Secretary Education Department to ensure payment of en-*



*tire dues with detailed calculation chart to the petitioner within a period of one month from today, failing which the petitioner would be entitled to payment of interest @ 12 per-cent from the date of retirement till the date of actual payment which shall be born by the Officers of University as well as Education Department as the petitioner cannot be made to suffer notwithstanding the finality of the decision up to the Apex Court.*

*With the aforesaid, the writ application stands disposed of.”*

16. For non-compliance of the order dated 07.07.2020, a contempt application bearing MJC No. 1127 of 2020 has been filed by the original petitioner and the said contempt application is disposed of by a co-ordinate Bench of this Court. The relevant part of the order passed in MJC No. 1127 of 2020 is quoted below:

*“The learned counsel for the University, at the outset, submits that the present contempt application has been filed alleging violation of the order dated 07.07.2020 in CWJC No. 260 of 2020. The learned counsel further submits that the order passed by the learned Writ Court has been complied and the petitioner has been paid an amount of Rs. 34 lakhs and odd after deducting the*



*income tax amount. It is next submitted that the learned Writ Court had also directed for payment of interest in the event if the entire dues with detailed calculation chart is not paid and made available to the petitioner within a period of one month from 07.07.2020 then the petitioner would be entitled to payment of interest @ 12 per cent from the date of retirement till the date of actual payment. The learned counsel for the University also submits that the petitioner retired on 31.07.2013 and the final payment was made on 27.03.2023.*

*On query of the Court that as to why the interest has not been paid to the petitioner when the payment in terms of the order dated 07.07.2020 was not made within one month from that date as directed by the learned Writ Court, the learned counsel for the University was not in a position to reply the query of the Court with clarity but submitted that some payments were made after the order passed by the learned Writ Court and the final payment was made in the year 2023.*

*The Court is not impressed with the submission of the learned counsel for the University.*

*The learned counsel for the University, at this stage, submits that the University*



*along with the State after passing of the order dated 27.03.2023 in the present case has constituted a Committee for looking into the grievance of the petitioner with respect to the payment of interest and also to find out who was culpable for not making the payment in time in terms of the order passed by the learned Writ Court.*

*This submission of the learned counsel for the University is fit to be rejected for the reason that the Court is not interested who is culpable or who is not culpable, the Court is only interested in getting the order of the learned Writ Court complied, the payment of interest has to be made to the petitioner since the entire payment was not made in time as directed by the learned Writ Court, as such, for full compliance of the order of the learned Writ Court which has attained finality in absence of challenge, the Court expects that the University and the State Government will calculate the interest with respect to the payment made and shall make the payment of the interest forthwith and thereafter the Committee will decide the culpability of the Authorities who were instrumental in not getting the order of the learned Writ Court complied expeditiously or within the time frame as directed.*

*The Court hopes and expects that the ob-*



*servation made hereinabove shall be complied by the Authority of the University and the State, failing which the petitioner would be at liberty to file a second contempt in the event if the order of the learned Writ Court is not complied in its entirety within a period of three months from today.*

*At this stage, the learned counsel for the petitioner submits that still an amount of Rs.81,000/- is due, the petitioner is directed to file a representation bringing to the notice of the Authorities that an amount of Rs.81,000/- is still due for payment and in the event if the petitioner is able to establish the due by cogent material on record, the Court expects that the said payment shall also be made to the petitioner within the time aforesaid.*

*Accordingly, the contempt application is disposed of.*

17. Learned counsel for the petitioners submits that it is unheard situation in the service jurisprudence that a person admittedly having requisite qualification, appointed against a vacant sanctioned post by the competent authority followed by due selection process, allowed to work till his retirement i.e. 31.07.2013 and his service also stands regularized/confirmed prior to his retirement (**Annexure-4 of the writ peti-**



**tion, not interfered with/set aside or recalled**), still not in a position to get his admissible promotional and post retiral benefit is certainly a shameful situation within the four corners of law but at the same time it is true that the said situation not only been created by the concerned respondents rather the said situation is still getting nourishment.

18. It is further submitted that vide letter No. 3379 dated 15.06.2013, the concerned respondents have decided to regularized/confirmed the original petitioner's services w.e.f 01.08.1980 along with the others while justifying the requisition made towards extension of time bound promotion, which became admissible to the petitioner w.e.f 01.08.1990/ 28.01.1992 in view of the University approval extended vide letter no. 2998 w.e.f 28.01.1982.

19. It is further submitted that as per the official records/fixation made on 24.05.2012 by the concerned respondents, it appears that the original petitioner's pay fixation made at the tune of Rs. 12,675/- w.e.f. 01.01.2006 under pay scale of Rs. 8275-13500/-, but the benefit of the same never been extended to the original petitioner on pretext that a legal battle was going between the petitioner and the said Prem Kumari.



20. In view of the development above said vide letter no. 1462/17 dated 01.09.2017, the name of the original petitioner has been recommended for the promotional post of Associate Professor along with the other candidates and requisition towards the disbursement of fund has also been made accordingly by the concerned respondents at the relevant point of the time, but the same never got logical end so far as the original petitioner is concerned due to the reasons not at all known to the original petitioner.

21. Learned counsel for the petitioners further submits that for the laches of the others the innocent candidate like the original petitioner could not be allowed to suffer at all.

22. Per contra, in para 16 of the counter affidavit, learned counsel for the respondent Kameshwar Singh Darbhanga Sanskrit University, Darbhanga submits that in compliance of order of Hon'ble Supreme Court, the University has paid the entire due salary of the original petitioner, upto the date of his superannuation.

23. It is further submitted that till the date of superannuation service of the original petitioner is under litigation and the post on which original petitioner was appointed, on that post appointment of one Prem Kumari was held valid by the



Hon'ble Supreme Court of India. Moreover, till the date of superannuation, regularization of service of the original petitioner is not approved by the State Government and in such a situation, he is not entitled for promotion.

24. Having heard the submissions advanced on behalf of the parties and on perusal of record, it appears that after hearing both the parties, the Vice Chancellor decided the matter in favour of the original petitioner vide his order dated 08.03.2013, but unfortunately his service was not regularized by the State Government and without approval of regularization, promotion could not be considered. Even after 33 years of regular service, the original petitioner, who has been appointed to work as Assistant Professor/Lecturer, has retired as Assistant Professor/Lecturer without getting benefit of time bound promotion and other legitimate benefit from the due date of entitlement. It is admitted fact that the original petitioner was appointed on sanctioned post.

25. In view of the facts hereinabove, in my opinion, the original petitioner is entitled for time bound promotion as well as other consequential benefits from the due date of entitlement.

26. Accordingly, the respondent Authority is directed to



grant time bound promotion to the original petitioner, who is father of the petitioners in the present case, from due date of entitlement over the post & pay scale of Associate Professor and also extend the monetary/consequential benefits simultaneously. The entire exercise must be completed within a period of three months from the date of receipt/production of a copy of this order.

27. It is also made clear that if the order of this Court is not complied within a period of three months, from the date of receipt/production of this order/copy of this order, the concerned respondent shall be held liable for non-compliance of this order.

28. In the result, this writ application stands allowed.

**(Anjani Kumar Sharan, J)**

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