

(2016) 08 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20524 of 2014

Bhrigunath Singh

APPELLANT

Vs

Magadh University

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 BLJud 24

Hon'ble Judges : Mr. Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Mr. Tej Babadur Singh, Sr. Advocate Mr. Ram Hriday Prasad, Advocate, for the Petitioner; Mr. Rajendra Pd. Singh, Sr. Advocate, Mr. Navjot Yeshu, Advocate, for the Respondent No.6; Mr. Vipin Kumar, Advocate, for the University

Final Decision : Allowed

Judgement

Mr. Ajay Kumar Tripathi, J. (Oral) - The fight over the post of Librarian between the petitioner and private respondent No.6 in Gaya College, Gaya has now travelled to the High Court through the writ application, in view of notification dated 21.06.2012 (Annexure-4/1) to the writ application. By virtue of this notification, issued by the Registrar of Magadh University, the private respondent, Jay Ram Singh, has been promoted to the post of Librarian from the so called post of Assistant Librarian.

2. The submission of learned senior counsel representing the petitioner is that the decision of the University to grant such benefit suffers from many illegalities, both factual as well as legal. There are enough materials and evidence on record to show that the private respondent was appointed as an Assistant. Over a period of time he was deployed to work in the Library as an Assistant. However, that fact has been twisted and the private respondent has been shown that he was working as Assistant Librarian. There is factual error which was deliberately done to show as if the private respondent was given his next promotion from the

post of Assistant Librarian to the post of Librarian.

3. The other aspect which has been pointed out is that on 21.06.2012, when the notification was issued, by virtue of which promotion to the post of Librarian was given to Jay Ram Singh, with effect from 15.05.2012, he did not have the basic qualification to earn such a promotion. The private respondent was not a graduate nor did he have graduate degree in Library science. If this is so then obviously the Statute has been given a go bye. The relevant Statute in this regard is Statute 10 issued under Bihar Universities Act, 1976.

4. No doubt, the private respondent has produced materials on record to show that he has acquired the necessary degrees but these degrees are a subsequent event, much later than the date from which he had been granted promotion. So far as Library Science is concerned, the private respondent had sat for the examination for first semester in December, 2013 and for the second semester in June, 2014 and the result was declared on 16.08.2014.

5. The question, therefore, is whether somebody can earn the benefit of promotion without having the basic eligibility in terms of the Statue and whether he can hold on to the benefit of promotion by virtue of acquiring one subsequently.

6. The submission of learned senior counsel representing the petitioner is that since ineligibility goes to the root of the matter, any benefit which has been acquired by an ineligible person cannot retain so. A subsequent acquisition of an eligibility, in no manner, will have the benefit of rectification relating back to the date of ineligibility as has been held in the decision rendered in the case of Rakesh Kumar Sharma v. State (NCT of Delhi) reported in (2013) XI SCC 58. The relevant paragraphs are reproduced herein below:-

"22. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per requirement of rules/ advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.

23. There is no obligation on the court to protect an illegal appointment. The extraordinary power of the court should be used only in appropriate case to advance the cause of justice and not to defeat the rights of others or create arbitrariness. Usurpation of a post by an ineligible candidate in any circumstance is impermissible. The process of verification and notice of termination in the instant case followed within a very short proximity of the appointment and was not delayed at all so as to even remotely give rise to an expectancy of continuance."

emphasis mine

7. Learned senior counsel representing the private respondent No.6 tried to redeem the situation by relying on a decision rendered by a Division Bench of Hon"ble Supreme Court in the case of Ram Swaroop v. State of Haryana reported in AIR 1978 (SC) 1536. Advantage is sought to be drawn on the observation of Apex Court in paragraph 3 of the said decision.

8. The decision in the case of Ram Swaroop (supra) is distinguishable in fact. In addition to that the court also opines that distinction has to be made with regard to an appointment and a case of promotion. Since promotion can only be claimed after fulfilling all the eligibility condition and subsequently earned eligibility will confer the benefit of such promotion only subsequently, it cannot be allowed to relate back to an otherwise illegal decision of finding a person eligible when admittedly he was not so from the date such promotion was granted in this case on 15.05.2012.

9. A valiant effort was also sought to be made on behalf of learned senior counsel representing the private respondent by raising an issue of maintainability of the writ application because according to him the petitioner was not even an applicant and, therefore, claimant to the post of Librarian in the present case. The petitioner even did not apply for the post in question for promotion. Only as an after thought he has tried to raise objection after private respondent had continued in the capacity as Librarian for more than two years before the writ application was filed.

10. That position does not seem to be entirely true because the petitioner has brought on record Annexure-2 series which does indicate that the case of the present petitioner was also considered and recommendation was forwarded by the college consisting of the promotion committee to the University but for one reason or the other the University did not take any decision on such recommendation and without any advertisement having been called for filling up the post of Librarian, which became vacant subsequently, in a surreptitious manner, if not illegal manner, the private respondent came to be notified to be Librarian showing himself to be working as an Assistant Librarian when all along he was an Assistant and he continued to work as Assistant may be assigned to work in the Library of the college.

11. In view of the above, the order contained in Annexure 4/1 dated 21.06.2012 is quashed.

12. So far as the claim of the petitioner is concerned, the same will be considered in a fresh exercise initiated and taken. The eligibility of the petitioner as well as the private respondent would be required to be considered afresh, preferably, within a period of four weeks after due publicity widely made by way of advertisement.

13. The writ application is allowed.