

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.774 of 2024

In

Civil Writ Jurisdiction Case No.17125 of 2023

Dr. Krishna Murari Sah S/o Late Yamuna Sah R/o Mohalla-Gondapur, Gaya Road, Gandhi Nagar, Nawada, P.S. Nawada, District Nawada, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resource Department, Higher Education, Patna Secretariat, Patna.
2. The Chancellor - cum - Governor of Magadh University, Raj Bhawan, Patna.
3. The Principal Secretary to Governor -cum - Chancellor, Raj Bhawan, Patna.
4. The Vice Chancellor, Magadh University, Bodhgaya.
5. The Magadh University, Bodhgaya through its Registrar.
6. The Registrar, Magadh University, Bodhgaya.
7. Kiran Kumari Sah W/o Dil Mohan Sah R/o 250, Harishchandra Talab Road, Nawada, P.S. Nawada, District - Nawada.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 17125 of 2023

Kiran Kumari Sah Wife of Dil Mohan Sah, Resident of 250, Harishchandra Talab Road, Nawada, Police Station - Nawada, District - Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Department, Higher Education, Patna Secretariat, Patna.
2. The Chancellor - cum - Governor of Magadh University, Raj Bhawan, Patna.
3. The Principal Secretary to Governor -cum - Chancellor, Raj Bhawan, Patna.
4. Vice Chancellor, Magadh University, Bodhgaya.
5. The Magadh University, Bodhgaya through its Registrar.
6. The Registrar, Magadh University, Bodhgaya.
7. Dr. Krishan Murari Sah, Principal Incharge, College.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 774 of 2024)



For the Appellant/s : Mr. Surendra Kumar Singh, Advocate
Md. Kamaluddin, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG-13
For the Respondent no.7 : Mr. Hansraj, Advocate
Mr. Apurva Kumar, Advocate
For the Magadh Uni. : Mr. Siddhartha Prasad, Advocate
(In Civil Writ Jurisdiction Case No. 17125 of 2023)
For the Petitioner/s : Mr. Hansraj, Advocate
Mr. Apurva Kumar, Advocate
For the State : Mr. Raghwendra Kumar, SC-22
For the Respondent no.7 : Mr. Surendra Kumar Singh, Advocate
Md. Kamaluddin, Advocate
For the University : Ms. Manini Jaiswal, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY**

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 28-10-2024

Heard the parties.

2. The appeal (LPA no.774 of 2024) has been preferred against the order dated 20.4.2024 passed in CWJC no.17125 of 2023 whereby the learned Single Judge issued notice to the private respondent in the writ application and further directed that the operation of the order dated 10.10.2023, impugned in the writ application shall remain stayed till further order.

3. On consent of learned counsels for the parties, by order dated 8.10.2024, LPA no.774 of 2024 was ordered to be tagged along with CWJC no.17125 of 2023 and both the appeal



as also the writ application were heard on merits.

4. For the sake of convenience, in this order the parties to the case are being referred to as per their position in the writ application.

CWJC no.17125 of 2023

5. The petitioner filed the instant application for the following relief(s):

“(i) For issuance of an appropriate writ/writs, direction/directions in the nature of certiorari for quashing the order as contained in letter no. 241/GIIB/23 dated 10.10.2023 (Annexure-P/8) issued by the Registrar, Magadh University, Bodhdaya, whereby and where under respondent no.7, Dr. Krishan Murari Sah has been appointed as Principal in the Charge ignoring all the rule and regulation regarding seniority as the basis and one of the essential criteria for the appointment on the post of Principal Incharge.

(ii) For issuance of writ, order or direction of a suitable nature commanding the respondents to prepare seniority list in conformity with University Laws for joining on the post of Principal in Charge and Act accordingly as vide letter no. SRS/P/67/23 dated 31.07.2023, the post of Principal Incharge has been given to the petitioner on the basis of seniority as mentioned in University Laws.



(iii) For issuance of a writ in the nature of mandamus commanding the respondent authorities under the University to give joining to the petitioner on the post of Principal In-charge as vide letter no. SRS/P//67/23 dated 31.07.2023, the post of Principal Incharge has been given to the petitioner on the basis of seniority as mentioned in University Laws.

(iv) For issuance of a writ, order or direction of a suitable nature restraining the respondents from taking any action on the basis of the impugned order (Annexure-8).

(v) For any other relief or reliefs for which the petitioner is entitled in the facts and circumstances of the case.”

6. The case of the petitioner in brief is that having requisite qualification, she was appointed as a Lecturer in English in the Sitaram Sahu College, Nawada by the Secretary on 5.7.1985 and gave her joining on 6.7.1985. Her temporary appointment was confirmed on 15.2.1986. It is further case of the petitioner that Dr. Anil Kumar who was the senior most teacher in the college was appointed as Principal-in-charge of the college on 28.12.2020 and having taken charge on 2.1.2021 continued on the said post till his retirement.

7. Learned counsel for the petitioner submits that having taken consent by his letter dated 5.7.2023, the petitioner



being the seniormost teacher who had given her consent, Dr. Anil Kumar gave charge of the post of Principal-in-charge to the petitioner. It is contended by learned counsel for the petitioner that inspite of the respondent no.7 being much junior to the petitioner, the respondent no.7 was made Principal-in-charge in violation of the Universities laws, and hence the writ application for the reliefs as stated herein above.

8. Counter affidavits were filed on behalf of the Magadh University as also a separate counter affidavit on behalf of the respondent no.7. The case of the respondent-Magadh University is that the Managing Committee of the college in its meeting held on 20.8.2023 appointed respondent no.7 as Principal-in-charge. On a representation having been filed by the petitioner, an enquiry committee was constituted by the University which submitted its report on 30.9.2023 and on the basis of the recommendation of the enquiry committee, the University appointed respondent no.7 as Principal-in-charge on 10.10.2023. It is submitted that appointment of Principal-in-charge has been made as per statute. There is no merit in the writ application and the same be dismissed.

9. It is the case of respondent no.7 that as per law, it is the Managing Committee of the affiliated college which is the



appointing body on the post of teachers which includes the Incharge-Principal of the college. By a notice issued on 1.8.2023 under the signature of one Dr. Sunil Suman, Principal University Representative-cum-Secretary of the Governing body, applications were invited from eligible teachers/lecturers for selection and appointment on the post of Incharge-Principal of the college on account of the then Incharge-Principal having retired on 31.7.2023. Another notice was published on 14.8.2023 giving information about the next meeting of the Governing body of the college scheduled to be held on 20.8.2023. Meeting of the Managing Committee of the college was held on 20.8.2023. The appointment on the post of Incharge-Principal of the college was considered vide proposal no.2 and a decision taken to appoint the respondent no.7 as Incharge-Principal of the college. Learned counsel submits that the appointment of respondent no.7 is in accordance with law after considering the educational qualifications of the senior teachers and there is no illegality in the order impugned. There being no merit in the writ application, the same be dismissed.

10. Heard learned counsel for the writ petitioner, learned counsel for the Magadh University, learned counsel for the respondent no.7 as also perused the material on record.



11. The writ petitioner in the writ application prayed for quashing the order dated 10.10.2023 (Annexure-P/8) issued under the signature of the Registrar of the University appointing the respondent no.7 as Incharge Principal of Sitaram Sahu College. The case of the writ petitioner is that having been appointed and joined as a Lecturer in the college on 5.7.1985, she is senior to respondent no.7 who joined much later. It may be stated here that though the writ petitioner was appointed as a Lecturer in English in the college on 5.7.1985 and gave her joining on 6.7.1985, the respondent no.7 was initially appointed on 2.8.1986 and gave his joining on 4.8.1986. However, while the respondent no.7 obtained his Ph.D. degree in the year 2003, the petitioner got her Ph.D. only in the year 2011.

12. The relevant statutes ie the University Grant Commission (Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education) Regulations, 2018 provides for the minimum qualification required for the post of Assistant Professor, Principal etc. which is that, besides fulfilling the qualification mentioned therein, the candidate must have cleared the National Eligibility Test (NET) conducted by the UGC or by the CSIR or



the candidate must have obtained a Ph.D. degree. It is not in dispute that while the petitioner obtained her Ph.D. degree in the year 2011, the respondent no.7 had acquired the same in the year 2003 itself. The respondent no.7 thus had acquired the eligibility much prior to the petitioner.

13. It further transpires from the counter affidavit of the Magadh University filed in the writ application that the University constituted an enquiry committee which submitted its report on 30.9.2023, wherein also the Committee was of the opinion that amongst the petitioner and respondent no.7, the respondent no.7 was senior.

14. So far as the judgments relied on by learned counsel for the petitioner are concerned, the Hon'ble Supreme Court in the case of *The Direct Recruit Class II Engineering Officer's Association and Ors. vs. State of Maharashtra & Ors. [1990 (2) PLJR 23 (SC)]* has held that once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. As seen above, the instant judgment is of no assistance to the petitioner in the instant case for the reason that Ph.D. being one of the essential criteria for appointment, it not being in dispute that the petitioner obtained



her Ph.D. eight years subsequent to the respondent no.7, she would in no manner rank senior to respondent no.7.

15. In the next case relied on by learned counsel for the petitioner ie ***Government of A.P. and Another vs. A.V. Venugopala Rao [(1995) 1 SCC 179]***, this Court held that pending finalization of seniority list, seniormost eligible employee in the provisional list being made Incharge of the promotional post, to avoid administrative hardship, is rational and reasonable. This judgment also is of no assistance to the petitioner as admittedly having obtained her Ph.D. only in the year 2011 ie eight years subsequent to the date on which respondent no.7 obtained his Ph.D., she would in no manner be senior to respondent no.7.

16. In view of the facts and circumstances of the case stated herein above, the undisputed fact of the respondent no.7 having obtained his Ph.D. ie eligibility to occupy the post of Assistant Professor eight years prior to the writ petitioner together with the findings of the enquiry committee, there remains no doubt that the respondent no.7 ranked senior to the writ petitioner and was rightly made Incharge Principal of the college.

17. The Court finds no merit in the writ application



(CWJC no.17125 of 2023) and the same is dismissed.

18. The writ application having been dismissed, the appeal (LPA no.774 of 2024) arising out of an interim order passed in the said writ application is also dismissed as infructuous.

(Partha Sarthy, J)

K. Vinod Chandran, CJ: I agree.

(K. Vinod Chandran, CJ)

Saurabh/-

AFR/NAFR	
CAV DATE	21.10.2024
Uploading Date	28.10.2024
Transmission Date	

