

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17715 of 2015

Birendra Kumar Singh S/o Late Bharat Raut Resident of Mohalla - Sirani
Siswan, P.O. - Sirani Bazar, P.S. - Malahi, District - East Champaran.

... .. Petitioner/s

Versus

1. The Lalit Narayan Mithila University through its registrar, Kameshwar Nagar, Darbhanga.
2. The Vice Chancellor, Lalit Narayan Mithila University Kameshwar Nagar, Darbhanga.
3. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
4. The Establishment Committee for appointment of the Employees on Compassionate Ground, Kameshwar Nagar, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Suman Kumar Singh, Advocate
For the Respondent/s	:	Mr.Ajay Behari Sinha, Advocate
For University	:	Mr. Iqbal Asif Niazi, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 15-04-2024

1. Heard learned counsel for the parties concerned.
2. The brief facts of the case are that the petitioner was appointed on Class-IV post in Lalit Narayan Mithila University, Darbhanga (hereinafter referred to as “the University”) on compassionate ground on 28.07.1990. The grievance of the petitioner is that since his appointment, no promotion has been granted to him under Class-III post. Earlier, the petitioner was promoted on Class-III post on 08.02.1997 but subsequently, the promotion order was recalled on 27.02.1997, without any notice to the petitioner. In the year, 2005, some of



the similarly situated Class-IV employees were promoted as a Routine Clerk but petitioner was left out.

3. Learned counsel for the petitioner submits that he participated in the process for promotion in the year, 2015 but has again been denied promotion on the ground that petitioner did not secure 45 marks in each of the papers, as per Promotion Statute. Petitioner secured 42 marks out of 100 marks in Paper-I and 55 marks in Paper-II and thereby, obtained more than 45% marks. The submission is that Promotion Statute does not contemplate securing 45% marks in each paper. Learned counsel relies upon the judgment of a co-ordinate Bench of this Court, rendered in *C.W.J.C. no. 6981 of 2020 (Prem Chandra Prasad v. Lalit Narayan Mithila University)*.

4. Learned counsel for the University submits that after coming into force Promotion rule, Promotion Committee was constituted. The Promotion Committee took a resolution on 30.11.2015 that 45 is the pass-marks out of 100. So, it was imperative on the part of the candidate to secure at least 45 marks in each paper in order to qualify. Since the petitioner did not get 45 marks in each of the papers, he was not found fit for promotion. The judgment relied upon by the petitioner is not applicable in the facts of the present case, inasmuch as the



resolution of the Promotion Committee was not under consideration before this Court.

5. I have heard the learned counsel for the parties and gone through the materials on record including the rule for promotion. The relevant provision of the rule regarding appointment/ promotion of Teachers mentioned in column (v) under sub-Rule 6 of Rule 8, is as follows :-

“विभागीय परीक्षा

(i) विश्वविद्यालय तथा महाविद्यालय के कर्मियों के सेवा संपुष्टि एवं प्रोन्नति के लिए विश्वविद्यालय स्तर का विभागीय परीक्षा का आयोजन विश्वविद्यालय द्वारा वर्ष में दो बार किया जायेगा।

(ii) विश्वविद्यालय के विभागीय परीक्षा का पाठ्यक्रम निम्नवत् होगा:

क. विभागीय परीक्षा दो पत्रों में होंगे। प्रत्येक प्रश्न पत्र एक-एक सौ पूर्णांक के होंगे। विभागीय परीक्षा में उत्तीर्णता के लिए कम से कम 45 प्रतिशत अंक प्राप्त करना अनिवार्य होगा। “

6. It is clear from the rule that Departmental Promotion Examination shall be of two papers having a total marks of 100 each. The employee has to obtain 45% of the total marks for being declared pass in the said examination. The petitioner has secured 48.5% in gross. The relevant rule does not contemplate that employee is required to obtain minimum of 45% marks in each paper.



7. A co-ordinate Bench of this Court considered the aforesaid provision of Promotion Rules in the judgment rendered in the case of *Prem Chandra Prasad (supra)* and held that Rule only prescribes that for passing in a departmental examination, a minimum of 45% marks is required. There is no specific requirement under the Rules that such marks have to be obtained by a candidate in all the papers in which he/she appears. In such view of the matter, giving any other interpretation to the Rule would be putting such candidates to unnecessary difficult situation. The Court also took notice of the fact that the basic principle of promotion in this case is seniority-cum-merit and not merit-cum-seniority.

8. The Court further held that apart from this, what strikes this Court is that a Rule has to be interpreted in such a manner that it causes no ambiguity in seniority-cum-merit scheme of promotion. There is no specific requirement under the rules that 45% marks have to be obtained by a candidate in all the papers in which he/ she appears. It would be rather unsafe to read such requirement in a properly worded Rule. Apart from this, there is no minimum pass marks prescribed for each paper and in that view of the matter, raising the threshold of passing marks to number 45 would be asking for more than



what is required for a Class-III post.

9. Considering the aforesaid discussion, in my opinion, the interpretation of the Rules by the Promotion Committee by insisting to secure 45% marks in each paper is not a valid interpretation of rules for promotion on seniority-cum-merit basis. Upon bare reading of the rule, it appears that the requirement to secure 45% of marks in each paper is not there.

10. Accordingly, I direct the University as well as the Promotion Committee to consider the name of the petitioner for promotion, within a period of 03 months from the date of receipt/ production of a copy of this order, on the basis of the marks obtained by the petitioner in the examination held in the year 2015 and without insisting that the petitioner did not secure 45% marks in each paper.

11. With the aforesaid observations and directions, the present writ application stands disposed off.

(Anil Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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