

(2013) 03 PAT CK 0075
In the Patna High Court
Case No : CWJC No. 16449 of 2009

Dr. Anirudh Prasad

APPELLANT

Vs

The Tilka Manjhi Bhagalpur University

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Bihar State Universities (Constituent Colleges) Service Commission Act, 1987 —
Section 10(a), 10(b)
Bihar State Universities Act, 1976 — Section 7

Citation : (2013) 2 PLJR 876

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Siya Ram Shahi, Radha Raman Verma and Mrs. Shally Kumari, for the Appellant; Ashok Kumar Keshari, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Petitioner is a retired employee of Tilka Manjhi Bhagalpur University. He superannuated on 31.12.2007 from the substantive post of Assistant Librarian. Two years after his retirement, he has approached the High Court seeking quashing of Annexure-5, which is dated 2.1.2002. By virtue of this order, the promotion on the post of Deputy Librarian granted to the petitioner on 29.4.1998 vide order contained in Annexure-4, was withdrawn. The reason for issuance of Annexure-5 is said to be "non-receipt of the concurrence of the Bihar State Universities (Constituent Colleges) Service Commission" (hereinafter referred to as "the Service Commission"). At the very outset learned counsel appearing for the Bhagalpur University takes a strong objection to the maintainability of the writ on the ground of delay, laches as well as acquiescence, which is reflected from the conduct of the petitioner. It is his stand that the above three reasons are good enough reasons to dismiss the writ application of the petitioner and no relief ought to be extended to him taking into consideration the time frame when the cause of action arose as well as the time frame when such a challenge has been thrown by the petitioner before this Court by invoking

its jurisdiction. In support thereof, reliance has been placed on a few decisions, mostly of the Hon''ble Apex Court reported in- Bhakra Beas Management Board Vs. Krishan Kumar Vij and Another, ; Union of India (UOI) and Others Vs. A. Durairaj (Dead) by L.Rs., as well as Suneeta Aggarwal Vs. State of Haryana and Others, .

2. Contention of the counsel for the University would be considered and dealt with in subsequent part of the order but at the outset, the Court would like to disclose its mind that in the given facts and circumstances and the materials, which have emerged behind the decision making contained in Annexure-5 as well as subsequently, it may not be one of those matters, which is required to be dismissed at the threshold.

3. A perusal of Annexure-4 would show that the Promotion Committee, duly constituted by the University considered the case of the petitioner for promotion on the next higher post. He was holding the post of Assistant Librarian and was eligible for promotion to the post of Deputy Librarian. On the recommendation of the Promotion Committee, promotion was granted and the benefit accrued in favour of the petitioner. He worked in that capacity after 29.4.1998 till the communication on the basis of a decision taken by the Vice-Chancellor was made to him indicating withdrawal of his promotion from the post of Deputy Librarian. From reading of the said communication, it is evident that the only reason given for taking away the benefit of promotion of the petitioner is non-receipt of the concurrence of the Service Commission. There is nothing to indicate from that decision that the petitioner suffered any kind of impediment in terms of ability, eligibility or non-fulfillment of any other consideration, which goes in grant of such promotion.

4. Learned counsel representing the petitioner first meets the arguments on delay and laches by relying on a few decisions of the Hon''ble High Court, which are Shri Keshan Kumar Singh and another Vs. The State of Bihar and others, , a Division Bench decision. Attention of the Court has been drawn to paragraph 7; Rameshwar Prasad Sinha Vs. State of Bihar and Others, , here [: Dr. Jagannath Mishra Vs. State of Bihar and Others, ; Dr. Jagannath Mishra Vs. State of Bihar and Others, in this case paragraphs 16 and 18 have relevance as well as State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, .

5. The thrust of the arguments based on the above ratios of those decisions is that there is no straightjacket under which issue of delay, laches and acquiescence can be put into. It all depends on the facts and situation of individual cases and even a time frame cannot be put to such objections.

6. Petitioner''s counsel has reason to say so on two considerations. One, that the ground on which the promotion of the petitioner was taken away is based on a mistaken ground for the reason that on 24.1.2007, a communication has been made by the Secretary of the Service Commission to the Registrar of the Bhagalpur University stating that no concurrence or consent of the Commission

was required in matter of grant of such promotion to the officer or officers in question. It is the stand of the petitioner that if the ground on which the order for promotion was undone was not a tenable ground or a mistaken ground, which stands confirmed by Annexure-8, which is the communication made to the University by the Secretary of the Commission then the reason for denying promotion to the petitioner is faulty and is required to be interfered with. Further since the communication of the Service Commission was made to the University in the year 2007 the petitioner chose to move the Court thereafter when a clear and unambiguous picture emerged on the issue of concurrence.

7. Counsel for the University thereafter takes a stand that there has been delay on the part of the petitioner even after the letter of the Service Commission was issued in the year 2007 as the petitioner chose to approach the Court in the year 2009. This also is an unexplained delay on his behalf.

8. In this regard the Court would only like to indicate that the petitioner has brought certain representations, which he had filed before the University including the one in the year 2007, existence of which has not been denied. If there has been some delay for the petitioner awaiting some kind of response from the respondent University on the issue, which never came, then it cannot be said that there has been inordinate delay by the petitioner to move the High Court. In the opinion of this Court, therefore, the ground of delay, laches and acquiescence should be allowed to rest and the matter should be decided on the merits as such.

9. The stand of the University, which has evolved during course of the argument, is that the concurrence of the Service Commission was a must and in its absence, the decision contained in Annexure-5 cannot be said to be valid. In this regard, he submits that when the petitioner was granted promotion on the post of Assistant Librarian, concurrence was taken, it was granted and the petitioner was a beneficiary of such a decision. It is not open to the petitioner now to say that once a procedure had been adopted earlier for grant of benefit to him, another procedure was required to be taken.

10. The stand of the petitioner is that what the University had done in the past is of no relevance. What is of importance is whether any law or statute or any rule confers a responsibility upon the University to obtain concurrence of the Service Commission for grant of promotion to the persons like the petitioner. The touchstone for the contention of the University should be law and law alone.

11. To demonstrate that there was requirement of concurrence from the Service Commission, attention of the Court has been drawn to certain provisions of the Bihar State Universities Act, 1976 as well as the Bihar State Universities (Constituent Colleges) Service Commission Act, 1987. So far as the State Universities Act is concerned, attention of the Court has been drawn to Section 7 which defines officers of the University. Section 7 is quoted hereinbelow:--

7. Officers of the University.-

The following shall be the officers of the University:--

- (1) The Chancellor,
- (2) The Vice-Chancellor,
- (3) The Pro Vice-Chancellor,
- (4) The Financial Adviser
- (5) The Dean, Students Welfare,
- (6) Proctor,
- (7) Registrar,
- (8) Inspector of Colleges,
- (9) Finance Officer, and
- (10) Such other person or persons as may be declared officers of the University by the Statutes.

12. Emphasis of the counsel for the University is on Section 7(10), which indicates that besides the persons or the holder of the post indicated in Sections 7(1) to 7(9), any other person or persons may be declared as officers of the University and in this case petitioner is an officer of the University for more than one reason, one of them being the kind of pay scale which the petitioner was drawing as well as the privilege, which he was drawing by virtue of the post he held. Even otherwise by conduct as well as procedure adopted with regard to such kind of persons, he could be declared as an officer of the University.

13. Counsel representing the petitioner taking cue from the provisions of Section 7(10) submits that no doubt the discretion is vested in the University to declare certain persons to be officers of the University but that has to be done by statutes. Since the counsel for the University has failed to produce any statute or notification to show that an Assistant or Deputy Librarian or a Librarian has been declared to be an officer of the University, therefore, any harping on the point that it is discretion of the University to treat any person as an officer of the University is misconceived kind of stand.

14. This Court is in agreement with the contention of the counsel for the petitioner that discretion is vested in the University in terms of Section 7(10) but then such discretion has to be exercised by following the procedure prescribed in the said provision itself which has not been done. Since it is not so, we have to revert to the provisions, which has now been relied upon by the counsel for the University to buttress the argument that there was requirement of concurrence from the Service Commission. In this regard the Court would like to take notice of some of the other provisions, which have been relied upon at the Bar under the Service Commission Act, 1987.

15. The only relevance in the said statute, if at all it has any co-relation to the present issue, pointed out by the counsel for the University is Section 10 of the Act. Section 10 is reproduced herein below:--

10. Duty of the Universities to consult the Commission in certain matters.--It shall be the duty of the Universities to consult the Commission in respect of:--

(a) all disciplinary matters affecting the officers and teachers of the Universities in respect of dismissal, removal or reduction in rank;

(b) the principle, to be followed in making promotion, as also, the suitability of the candidates for such promotion.

16. Stand of Mr. Keshri representing the University is that reading of Section 10(b) would show that there was requirement of the University to consult the Commission in certain matters indicated in sub-clause (a) as well as sub-clause (b). The case of the petitioner for consultation comes within Section 10(b) because even in matters of making promotion as well as suitability of such candidates for promotion, the Commission was required to be consulted.

17. The interpretation, which is sought to be given by Mr. Keshri to the provision contained in Sections 10(a) and (b), would be doing violence to the provisions therein. This Court on reading of Section 10(b), from where the so-called power or residuary power or mandate to consult the Commission emerges, as is the stand of the University, cannot be accepted in toto. The words used in Section 10(b) is "it shall be the duty of the Universities to consult the Commission in respect of--(b) the principle, to be followed in making promotion, as also, the suitability of the candidates for such promotion". Meaning thereby that the Universities have an obligation to consult the Commission only with regard to the broader aspect or "principle", which is required to be followed in making such promotions as well as suitability of candidates for such promotion. The meaning of the word "principle" means that the broader perspective of such decision making is required to be obtained from the Service Commission. It does not mean that for every case a consultation is required to be made. Section 10(a) only talks about matters relating to officers and teachers of the Universities. By no stretch of imagination, the present petitioner can be treated an officer of the University and the stand of the University in this regard is totally untenable and unacceptable by plain reading of Section 7 of the Bihar Universities Act, 1976 or Section 10(a) or (b) of the Bihar State Universities (Constituent Colleges) Service Commission Act, 1987.

18. The question, therefore, finally boils down to the facts, taking into consideration the communication contained in Annexure-8, by the Service Commission made to the University, is whether the reason for withdrawal of benefit of promotion on the post of Deputy Librarian as communicated to the petitioner in terms of Annexure-5 is based on a cogent valid reason, which stand the test or scrutiny of law or not? The answer to the said question is that it does not. Merely because in the past the University had chosen to obtain the

concurrence in matter of grant of promotion on the post of Assistant Librarian in case of the petitioner, it does not mean that there is a legal requirement or there was a legal requirement to take concurrence of the Commission. In addition to that, the reason given in the said communication is non-receipt of concurrence. On a pointed question being put to the counsel for the University as to what is the meaning of the word "non-receipt" and whether it amounts to refusal, he was not in a position to take a firm stand. Non-receipt can never be seen to be a reason for withdrawal of the promotion. If there was necessity to obtain concurrence of the Commission and if there was non-receipt, the matter should have been followed up with the Commission to clarify as to why the concurrence was not coming forth. But if it was not a case of refusal, there was no occasion for the University to withdraw the benefit of promotion, which the petitioner was enjoying on the recommendation of the Promotion Committee, right from April 1998.

19. Before parting, one other parting shot, which was fired by the counsel for the University, is that the petitioner had taken responsibility of a higher kind, accepted the position till his retirement and in support thereof, he wants to rely on Annexure-7, annexed with the writ application by the petitioner himself. This is a communication by which the petitioner was deputed to work as the Director of Central Library, which, in the opinion of the counsel for the University, was a bigger responsibility, which the petitioner did not resist. In fact, he accepted and retired in that capacity.

20. On the question of the said post of Director being of any higher magnitude or responsibility, the counsel for the University is not in a position to reply whether this was a post which was to be held by a person superior in status to the present petitioner. A reading of the said notification would show that the petitioner has been described as an Assistant Librarian and has been assigned the responsibility to work as a Director of the Central Library. Assignment of responsibility in no manner can said to be the prejudice to the interest of the petitioner in matter of assailing the impugned order contained in Annexure-5.

21. In totality, therefore, the reason for withdrawal of the benefit of promotion to the petitioner from the post of Deputy Librarian was based on non-est ground. The requirement of concurrence has not been established in accordance with provisions noted above.

22. In view of the same as well as the fact that the petitioner has suffered and is suffering by a wrong decision contained in Annexure-5, it is required to be quashed. Quashing of Annexure-5 would not mean that the petitioner would be entitled to the past benefits by way of emoluments and payments of salary etc. as he did not hold the promoted post after issuance of Annexure-5. The maximum petitioner can derive from quashing of Annexure- 5 is fixation of his pension etc. on the post of Deputy Librarian and nothing more. Writ application stands allowed in terms of the order as above.