
(2012) 03 PAT CK 0151
In the Patna High Court
Case No : CWJC No. 19146 of 2011

Dr. Chandradeo Prasad Sinha

APPELLANT

Vs

The Magadh University and Others

RESPONDENT

Date of Decision : 19-03-2012

Acts Referred:

Citation : (2013) 2 PLJR 913

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rajendra Pd. Singh and Shailendra Kumar Singh, for the Appellant; Yugal Kishore for the Respondent No. 4, Mr. Hans Raj and Mr. Dilip Kant Tiwari for the Intervener, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard learned senior counsel for the petitioner, learned senior counsel for private respondent No. 4 and learned counsel representing Dr. B.K. Sinha, intervener, in I.A. No. 1498 of 2012 as well as learned counsel for the University. I.A. No. 1498 of 2012 is rejected in view of the nature of the order which is going to be passed by this Court.

2. Origin of the dispute is with regard to the continuance of the private respondent as Head of Department of Zoology and Dean of Magadh University at Bodh Gaya. According to the petitioner, the private respondent was notified to work as Head of Department by virtue of notification issued on 31.3.2008, contained in Annexure-5. He was also appointed as a Dean and notified as a Dean vide notification dated 23.8.2009, contained in Annexure-6.

3. The Statute does not permit continuance of such person indefinitely. As per the Statute the H.O.D. is supposed to hold the office for 3 years and Dean for 2 years. Thereafter it has to be rotated amongst senior most Professors and Readers of the Department concerned which would be evident from Statute No. BSU-26/ 2008-2155/GS(1) dated 30.6.2008 which is quoted herein below for

ready reference;--

Revised Statute for the scheme of rotation of Headship in the Deptt. of Universities/College for the Universities of Bihar (except Rajendra Agricultural University, Pusa and Nalanda Open University, Patna) BSU-26/2008-2155/GS(1) dated 30.6.2008.

1. Headship of the Deptt. be rotated only amongst the first four senior most teachers (Professors and Readers), as the case may be, of the subjects concerned.

For Headship in PG Deptts. first four senior most teachers shall essentially be posted in the Deptt. concerned.

2. Where there is no Professor, the Headship shall be rotated amongst the four senior most Readers, or less if the number of Readers in the Deptt. is less than four.

3. If there is neither a Professor nor a Reader in the Deptt. the Headship of the Deptt. may be rotated amongst teachers of the Deptt.

The tenure of Headship of the Deptt. will be for three years. If for any reason, the Vice-Chancellor feels that change in the Headship of the Deptt. even prior to the completion of term of existing incumbent, is necessary in the interest of the Deptt. change in the Headship of the Deptt. be made subject to the approval of the Chancellor.

4. During the period of absence or leave of the duly appointed Head of the Deptt. the senior most teacher in the Deptt. shall carry on the office of the Head of the Deptt. provided that if the absence extends over a period of three months or more, the Vice-Chancellor may keeping in view the circumstances entrust the work to the next senior teacher in the subject. If however, the vacancy in the office of Head of the Deptt. is to last or likely to last over a period of one year or more, the Vice-Chancellor may appoint another Head of the Deptt. in accordance with these rules in the vacancy.

4. There is similar provision for Dean-ship as well.

5. If simple calculation is made then the private respondent has outlived his tenure which he was supposed to enjoy in that capacity. However, by virtue of notification dated 10.10.2011 by the Magadh University he has been allowed to continue on the post of Dean as well as H.O.D. to complete his tenure of actual three years or two years of working days.

6. Prima facie the contention of the petitioner with regard to continuity of the private respondent seems to be correct if the Statute is taken into consideration and the provision thereto, especially since it limits the tenure to the period specified therein.

7. The contention of the learned senior counsel representing the private

respondent is that he superannuated at the age of 62 years which was held to bad in law by the decision of the High Court in batch of cases which came before it. Issue under consideration was whether the age of superannuation will be co-terminus with the recommendation of the UGC which was said to be 65 years or 62 years. High Court held it to be 65 years.

8. No doubt on the enhancement of age of retirement the private respondent and many others were restored back on their basic post which he is holding as a Professor. If the contention that since the private respondent did not have a full tenure of 3 years or 2 years, as the case may be, on the post of Headship or Dean-ship, therefore, he should be given opportunity to work as such for the prescribed statutory period in terms of actual working days and it is only with that objective that Annexure-10 came to be issued.

9. Submission of the counsel representing the private respondent is to be considered in the light of the provision of the Statute. The fact that petitioner superannuated on attaining the age of 62 years was not under any fortuitous circumstance but his reinstatement in service was under a fortuitous circumstance. If he had not been restored to the basic post on enhancement of age of retirement, there was no occasion for him to hold either the post of H.O.D. as well as Dean. Since there is specific tenure prescribed for which a person can remain H.O.D. or a Dean, therefore, it is to run concurrently from the date of notification and not counted on the number of days he actually held office as they will be doing violence to the statute and the tenure prescribed therein.

10. According to this Court the tenure which has been prescribed will have to be calculated from the date of such notification made in favour of a person and can never be extended or be added merely because there may be periods of interruption when a person was prevented from working as such. Since the two notifications, contained in Annexures-5 and 6, are dated 31.3.2008 and 28.3.2009 respectively, the tenure in that capacity of the private respondent is way past over and therefore, he cannot hold that post any longer. The Court therefore holds that continuance of the private respondent on the two posts effective tomorrow i.e. 20th March, 2012 shall cease.

11. The University authority namely, the Vice-Chancellor is given a direction to take a fresh decision in this regard in accordance with law and Statute.

12. So far as seniority and other claims on behalf of various claimants are concerned, that will be considered and taken into consideration by the Vice-Chancellor while taking such a decision but he must ensure that such a decision is primarily and essentially based on the Statute and not any aberration thereto.

13. The claim of the petitioner will also be considered accordingly including the claim of the intervener if he fulfils the requirement.

14. The decision in this regard will be taken within four weeks from today.

15. Writ is allowed. The order will be communicated by the counsel for Magadh

University as it has been passed in his presence.