
(2018) 03 PAT CK 0142

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4538 Of 2015, Interlocutory
Application No. 2896 Of 2015

Dr. Daman Chandra Mishra

APPELLANT

Vs

T. M. Bhagalpur University And Ors

RESPONDENT

Date of Decision : 29-03-2018

Acts Referred:

Citation : (2019) 2 PLJR 435

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Purushottam Kumar Jha, Avanindra Kumar Jha, Anjani Kumar,
Shailendra Kumar Singh, Y. V. Giri, Pranav Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner; T.M. Bhagalpur University (hereinafter referred to as the "University") and respondent no. 5.

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2. The writ petition has been filed seeking the following reliefs:

(i) Issuance of an order, direction or a writ in the nature of Certiorari Quashing Notification No. 48/2015 dated 14.03.2015, whereby

and where under, the authorities concerned of the respondent T. M. Bhagalpur University, Bhagalpur has appointed the Respondent No. 4

(Reader, Department of I.R.P.M., Sabour College, Sabour) as the Head of the Post Graduate Department of I.R.P.M. in place of the

petitioner and the petitioner has been repatriated to Sabour College, Sabour, in a complete illegal and arbitrary manner.

(ii) Issuance of an order, direction or an appropriate declaration that the Respondent no. 5 being junior to the petitioner in the rank of

Reader was rightly not made the Head of the Post Graduate Department of I.R.P.M. of the respondent T. M. Bhagalpur University,

Bhagalpur vide Notification No. 175/2014 dated 15.11.2014, and the order of the University in hand in issuing Notification No. 48/2015

dated 14.03.2015, appointing the Respondent No. 5 as the head of Head of the Post Graduate Department of I.R.P.M. of the respondent

T.M. Bhagalpur University, Bhagalpur is out rightly illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts

both and is fit to be quashed by this Hon?ble Court.

(iii) To hold and declare that the Petitioner is senior to the Respondent No. 5 in the Rank of Reader, as such, the petitioner is fully entitled

for continuing as Head of the Post Graduate Department of I.R.P.M. of the respondent T.M. Bhagalpur University, Bhagalpur till the expiry

of its term.

(iv) To hold and declare that the action of the Respondent University in granting promotion to the Respondent No. 5 in the Rank of Reader

under â??Merit Promotion Schemeâ? w.e.f. 19.02.1993, vide Notification No. 17/2013 dated 02.03.2013 (Ann-2) is wholly unsustainable in

the eye of law, since at that point of time, when the Respondent No. 5 was promoted, he was not holding requisite Qualification, as has been

laid down under â??Revised Statute in Respect of the Qualifications of Teachers of Universities/Collegesâ? approved by the Chancellor on

12.12.1983 and amended on 09.09.1988 & 15.12.1990 respectively.

(v) For grant of any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of this case.â??

3. However, the present Interlocutory Application has also been filed seeking a specific relief of quashing part of the Notification No. 17 of 2013

dated 02.03.2013, by which the respondent no. 5 was granted promotion on the post of Reader in the Department of I.R.P.M. of the respondent

University w.e.f. 19.02.1993.

4. Learned counsel for the petitioner submitted that the writ petition having been filed on 23.03.2015, though there was a relief sought at paragraph no.

1(iv) with regard to Notification No. 17 of 2013 dated 02.03.2013 for holding and declaring the action of the University to be unsustainable in the eyes

of law, but inadvertently, a specific prayer for quashing of such part of the

notification having been omitted, realizing the same, immediately thereafter, the Interlocutory Application has been filed.

5. Learned counsel for the respondent no. 5 submitted that the said is a separate cause of action and, thus, the prayer in the Interlocutory Application deserves to be rejected.

6. Having considered the matter, the Court finds that the amendment sought is only by way of a clarification, as substantially the challenge to the portion of the notification has already been made in the main writ petition itself, though technically, quashing of the said part has not been sought.

However, the same having been made immediately thereafter within about two weeks of the filing of the writ petition, the Court finds no laches on the part of the petitioner and, further, the amendment sought is not unconnected or subsequent, so as to relegate the petitioner to file a fresh writ application.

7. Accordingly, the amendment sought is allowed. Prayer for quashing of part of the Notification No. 17 of 2013 dated 02.03.2013, by which

respondent no. 5 was granted promotion to the post of Reader in the Department of I.R.P.M. of the University shall form part of the relief sought in the main writ application.

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8. Learned counsel for the petitioner submitted that the respondent no. 5 was lacking the basic, mandatory and inherent qualification for being promoted to the post of Reader on 19.02.1993, from which date he has been granted such promotion. It was submitted that for the purpose of

promotion, the Court is required to look into three Statutes approved by the Honâ??ble Chancellor of Universities, the same being Statute No. 5,

relating to Revised Statutes in respect of the qualification of teachers of University/colleges dated 12.12.1983; Statute No. 18, which is the Revised

Statute for promotion of Lecturers to the post of Readers dated 14.11.1981 read with its amendment dated 28.11.1986 and Statute No. 20, regarding

merit promotion of Lecturers as Readers dated 22.12.1986. Learned counsel submitted that according to the Statute No. 5, for holding the post of

Reader, a person has to have the qualification of good academic record with a doctoral degree or equivalent published work. He submitted that the

respondent no. 5 had acquired Ph.D. degree only on 26.08.1996 and, thus, he could not have been granted such benefit prior to the said date. It was submitted that Statute No. 18, relating to promotion of Lecturers to the post of Readers, provides that a Lecturer serving under the University or a degree college managed and maintained by the University, on the recommendation of the University Selection Committee, for being promoted to the post of Reader, has to hold a doctorate degree, like Ph.D., D.Litt., D.Sc., and further he should have completed at least 13 years of continuous service as a Lecturer and if he does not possess a doctorate degree, he has to complete at least 18 years of continuous service as a Lecturer, provided that the period of teaching experience below degree standard shall not be included. It was submitted that the respondent no. 5 does not fulfill the requirement. Learned counsel submitted that the Statute No. 20 relating to merit promotion of Lecturers as Readers on the basis of which the promotion has been granted to the respondent no. 5 does not relax the basic qualification and further, even the same requires that only Lecturer in the University engaged in advanced teaching and research and whose contribution and achievements are such as to merit recognition, may be considered for merit promotion after completing 8 years of continuous service as Lecturer of which at least 4 years should be in the department where he/she is being considered for such assessment and promotion. It was contended that without there being anything to show that the respondent no. 5 was engaged in advanced teaching and research and his contribution and achievements merited recommendation, such consideration and grant of promotion under the Statute No. 20 is arbitrary and impermissible. It was submitted that though, at the relevant point of time, when the writ petition was filed, the respondent no. 5 had been appointed as head of the Department of I.R.P.M. which gave the petitioner immediate cause of action for moving before the Court in the present writ application, but due to efflux of time, the respondent no. 5 has already completed his tenure of three years and, thus, for all practical purposes, the present writ is confined to the challenge relating to promotion of respondent no. 5 to the post of Reader with effect from 19.02.1993. Learned counsel also drew the attention of the Court to the order of the Pay Verification Cell of the Education Department in the case of the petitioner which indicates that he was allowed the pay of Reader

of Rs. 12,000/- with effect from 01.01.1996 after pay revision but in the case of the respondent no. 5, the said scale of Reader was granted to him with effect from 26.08.1996 i.e., day on which he acquired the Ph.D. degree which is the correct position as per the provisions of the relevant Statutes and the Bihar State Universities Act, 1976. It was submitted that the petitioner had acquired Ph.D. degree on 22.03.1990.

9. Learned counsel for the University submitted that though the petitioner and the respondent no. 5 were absorbed in the service of the University in

terms of the order of the Honâ??ble Supreme Court and recommendation of the committee constituted by the Syndicate by notification dated

17.02.2005, on the post of Lecturer in the erstwhile L.S.W. Department, which has later been renamed as I.R.P.M. Department, with effect from

03.09.1980 and 11.12.1979 respectively, the respondent no. 5 is clearly senior to the petitioner in terms of his effective date of absorption which has

not been challenged by the petitioner. Learned counsel submitted that thereafter, when the petitioner was appointed on the post of head of the

Department of I.R.P.M. in the University by notification dated 15.11.2014, the same came to be challenged by the respondent no. 5 in C.W.J.C. No.

20976 of 2014, in which the University had filed counter affidavit taking the stand that the University had carefully scrutinized the relevant records of

the petitioner and the respondent no. 5, and it was found that the respondent no. 5 was senior to the petitioner and, thus, the respondent no. 5 was

appointed as Head of the Post Graduate Department of I.R.P.M. of the University. He further submitted that in terms of the University having

rectified its mistake, C.W.J.C. No. 20976 of 2014 was dismissed as not pressed. Learned counsel submitted that the Notification No. 17 of 2013 dated

02.03.2013 clearly states that the order of promotion was in terms of the Statute regarding Merit Promotion of Lecturers as Readers (Statute No. 20).

It was submitted that a specific Statute was made with the basic objective to recognize outstanding work in the area of teaching and research and

after subjecting such work to objective evaluation by experts in the subject/areas concerned and provide reasonable opportunities for professional

advancement to such teachers, who merit academic recognition on a competitive basis. Learned counsel emphasized the fact that the aforesaid

Statute No. 20, coming into effect from 22.12.1986, will have the effect of

overriding Statute No. 5, which is dated 12.12.1983 and, thus, the contention of learned counsel for the petitioner that the respondent no. 5 does not possess the basic qualification is clearly erroneous. Learned counsel further submitted that the petitioner has not pointed out to any lacunae in the consideration of the case of the respondent no. 5 under the Statute No. 20 to indicate any violation of any of the conditions enumerated in the said Statute. It was further contended that nowhere in the pleadings it has been stated as to whether the petitioner himself had acquired Ph.D. degree on 10.06.1993, from which date he has been granted promotion to the post of Reader. Learned counsel submitted that such order of the Pay Verification Cell is not sacrosanct and cannot be held to be the last word on the issue as has also been held by a Bench of this Court by judgment dated 15.01.2015 in C.W.J.C. No. 7636 of 2014 in the case of Dr. Kedar Nath Pandey & Ors. vs. The Magadh University & Ors. Learned counsel submitted that Statute No. 5 and Statute No. 20 are to be read harmoniously and if the contention of learned counsel for the petitioner is accepted then the provisions of Statute No. 20 relating to grant of promotion from the post of Lecturer to the post of Reader would become redundant and ineffective, which cannot be the correct interpretation of the relevant Statutes, as ultimately the provisions of the Statute have to be given effect to without there being any discrepancy or disharmony in implementing and reading of the Statutes.

10. Learned counsel for the respondent no. 5, while adopting the submissions of learned counsel for the University, submitted that both the petitioner and the respondent no. 5 were granted promotion under the Time Bound Promotion Scheme with effect from 10.06.1995 and 19.02.1995 respectively under notification dated 27.02.2013, but subsequently by notification dated 02.03.2013, they were promoted to the post of Reader under the Merit Promotion Scheme with effect from 10.06.1993 and 19.02.1996 respectively. It was submitted that both of them had jointly filed a representation before the University on 09.03.2013 praying that their case be considered only under the Merit Promotion Scheme as they did not want to avail their promotion under the Time Bound Promotion Scheme. Learned counsel submitted that once the petitioner has approached the University only with the grievance that instead of his case for promotion to the post of Reader be

considered under the Merit Promotion Scheme and not the Time Bound

Promotion Scheme, without raising any objection relating to the effective date from which such promotion has been granted, he shall be deemed to

have acquiesced and is thus estopped from raising such grievance before the Court, having accepted the position willingly.

11. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the impugned

order of the University granting promotion to the respondent no. 5 on the post of Reader cannot be sustained. The issue falls in a very narrow

compass. Admittedly, the Statutes governing the field in the present case are Statutes No. 5, 18 and 20. Statute No. 5 relates to qualifications of

teachers of University/Colleges. Clearly the said Statute is independent of Statute No. 18 and Statute No. 20. It is only this Statute which lays down

the qualification of teachers for being eligible to hold the post of University Professor, Reader or Lecturer. It covers both the modes of

recruitment/appointment to such post, i.e., through promotion and direct recruitment. The same with regard to Reader reads as under:

â??5. REVISED STATUTES IN RESPECT OF THE QUALIFICATIONS OF TEACHERS OF UNIVERSITY/COLLEGES.

(BSU-25/33-2377-GS(I) dated 12.12.1983)

Subject- Revised statutes in respect of the qualifications of teachers of University/ Colleges.

Notwithstanding anything to the contrary as contained in the Statues, the following shall be the minimum qualification and pay scales for

different categories of posts of teachers in the service of the University and colleges affiliated to it, provided that any relaxation in the

prescribed qualifications can only be made by the University with the prior approval of the University Grants Commission:- xxxxx

(2) Reader:

Pay scale Rs. 1200-50-1300-60-1900.

Qualification-

Good academic record with a doctoral degree or equivalent published work. Evidence of being actively engaged in (i) research or (ii)

innovation in teaching methods or (iii) production of teaching materials.

About five years experience of teaching and/or research provided that at least three of these years were as lecturer or in an equivalent position.

This condition may be relaxed in the case of candidate with outstanding record of Teaching/Research.

Explanation- For determining good academic record the following criteria shall be adopted:-

(i) A candidate holding a Ph. D. degree should possess at least a Second Class Master's degree, or

(ii) A candidate without a Ph. D. degree should possess a High Second Class Master's degree and second class in Bachelor's degree; or

(iii) A candidate not possessing Ph. D. degree but possessing Second Class Master's degree should have obtained first class in the

Bachelor's degree.

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12. Coming to Statue No. 18 relating to promotion of Lecturers to the post of Readers, the same reads as under:

18. REVISED STATUE FOR PROMOTION OF LECTURERS TO THE POST OF READERS

(As approved by the Chancellor vide letter no. BSU-41/81-2779 GS (1) dated 14.11.1981 alongwith amendments vide letter no. BSU

"26/86-3813/GS (1) dated 28.11.1986.)

1. Notwithstanding anything to the contrary as contained in the Statues it is hereby provided that a Lecturer, serving in University

department or in a degree college managed and maintained by the University shall on the recommendation of the University Selection

Committee be promoted to the post of Reader, subject to the following conditions:-

(a) If he holds a doctorate degree (e.g., Ph.D., D.Litt., D. Sc.), he has completed at least thirteen (13) years of continuous service as a

Lecturer, [in one or more University], or

If he does not hold a doctorate degree, he has completed at least eighteen years of continuous service as a Lecturer, [(in one or more

University;] Provided that the period of teaching experience below degree standard shall not be included

(b) He holds substantive appointment on the post of Lecturer.

xxxxxâ??

13. It stipulates that a Lecturer serving in University department or in a degree college managed and maintained by the University shall on the

recommendation of the University Selection Commission be promoted to the post of Reader subject to the condition that he holds a doctorate degree

like Ph.D., D.Litt., D.Sc., and has completed at least 13 years of continuous service as a Lecturer in one or more University; and if he does not hold a

doctorate degree, he is required to have completed 18 years of continuous service as Lecturer, provided that the period of teaching experience below

degree standard shall not be included, and further, that he holds substantive appointment on the post of Lecturer. Thus, Statute No. 18 is the Statute

which relates to promotion of Lecturers to the post of Readers which clearly stipulates that either he holds a doctorate degree, like Ph.D., D.Litt.,

D.Sc. and should have completed 13 years of continuous service of Lecturer or in the absence of a doctorate degree he would require to complete 18

years of continuous service as a Lecturer. The basic mode of promotion under normal circumstances, from the post of Lecturer to that of Reader, is

therefore, Statute No. 20 which came into effect from 22.12.1986 and which provides for Merit Promotion of Lecturers as Readers. However, the

same contemplates that not more than 1/3rd of the number of total permanent position of Lecturers within a department may be held by such merit

promotion as Readers. The same is reproduced hereinunder for ready reference:

â??20. STATUTES REGARDING MERIT PROMOTION OF LECTURERS AS READERS

(As approved by the Chancellor vide letter No. BSU-6/86-3975/G.S. (1), dated the 22nd December, 1986).

1. Notwithstanding anything to the contrary as contained in the Statutes of the University, Lecturers in the University engaged in advanced

teaching and research and whose contribution and achievements are such as to merit recognition; may be considered for merit promotion

after completing at least eight years of continuous service as Lecturer of which at least four years be in the department where he/she is

being considered for such assessment and promotion.

2. The basic objective of such promotion shall be :-

- (i) to recognize outstanding work by the University teachers in the areas of teaching and research;
- (ii) to subject such work to objective evaluation by experts in the subject/areas concerned; and
- (iii) to provide for reasonable opportunities for professional advancement to such teachers, who merit academic recognition on a competitive basis.

3. The procedure for promotion under the Statutes shall be as follows:-

(a) Not more than one-third of the number of total permanent position of lecturers within a department may hold such merit promotion as

Readers, provided that if in calculating the number of positions for purposes of merit promotion wherever more than point five (0.5)

fraction arises, it will be rounded up as one (1.0) for giving such promotion:

Provided further that in case there is only one permanent position of lecturer in any department the case of the teacher holding that post

may be considered for merit promotion if he fulfills all other conditions prescribed under these Statutes for such promotion.

xxxxxâ??

14. Though the same does not prescribe any qualification, but it cannot be read without taking recourse to or reading the provisions of Statute No. 5

and Statute No. 18, for the reason, that for being eligible to hold a post of Reader under the University, irrespective of the mode and manner of such

appointment which may be direct or through promotion, the qualification as prescribed in Statute No. 5 is the only qualification, which has neither been

diluted nor given a go-by nor superseded nor supplanted by Statute No. 20. Thus, for the purposes of qualification, the condition prescribed in Statute

No. 5 are mandatory. The relaxation to the same is also as has been provided in Statute No. 5 itself. What Statute No. 20 has done is that it has only

added another mode of promotion i.e., on the basis of merit, and in that context, power has been given to promote such Lecturers in the University

who are engaged in advanced teaching and research and whose contribution and achievements are such as to merit recognition. This would not mean

that the very basic qualification which a Lecturer has to possess to hold the post of Reader would also stand diluted or obliterated. However, if any

other interpretation is given, then there cannot be harmonious or conjoint

reading of Statute No. 5 and Statute No. 20. Once the Court has held that the qualification to hold a post is mandatory as per Statute No. 5, which is the only Statute prescribing qualification, then Statute No. 20 is harmoniously balanced and no issues or contradictions arise requiring any serious interpretation. The same will be the case with the normal mode of promotion which is provided in Statute No. 18 where a Lecturer in the normal course of his career can be considered for promotion to the post of Reader.

15. In the background of the discussions made hereinabove and taking an overall view, the Court holds that the promotion given to the respondent no.

5 with effect from 19.02.1993 is unsustainable and is accordingly, set aside. Him having acquired the degree of Ph.D. as has been asserted at

paragraph no. 11 of the writ petition i.e., 26.08.1996, not having been controverted, it is held that he cannot be granted such promotion to the post of

Reader with any date prior to 26.08.1996. The University is directed to make changes in its records relating to the same within one month from the

date of production of a copy of the order before the respondents no. 2 and 4 and issue consequential orders, as may be required.

16. As there is no issue with regard to the eligibility of the petitioner relating to his effective date of promotion to the post of Reader, the Court was not

required to and has not gone into such question in the instant case.

17. The writ petition stands allowed in the aforementioned terms.