
(2001) 12 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 6190 of 2001

Dr. Gopal Krishna Palei

APPELLANT

Vs

The Chancellor Universities and Others

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Citation : (2002) 1 PLJR 269

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—Heard Mr. P.K. Shahi on I.A. No. 3494 of 2001. The prayer for intervention made in the I.A. is allowed and the intervenor Shri S.P. Rai is directed to be added as a party Respondent.

2. Heard Mr. S.P. Mukherjee, learned Senior Counsel appearing in support of this writ petition. Mr. R.B. Mahto, learned Senior Counsel appearing for the Chancellor, Respondent No. 1. Also heard Counsel for the Patna University and Mr. P.K. Shahi appearing for the intervenor.

3. Both the Petitioner and the intervenor are teachers in Mathematics in Patna University and it appears that a dispute of seniority between them first led to the case of the Petitioner's promotion to the post of Professor, under the merit promotion scheme, being kept in abeyance and later on further led to his promotion to the post of Reader granted earlier itself coming on the threshold of being cancelled.

4. The Petitioner was granted promotion as Reader w.e.f. 13.1.1991 and the intervenor w.e.f. 2.2.1991. The promotion was granted by the Vice Chancellor in anticipation of the concurrence of the Bihar State University (Constituent Colleges) Service Commission. Later on, when the case of the Petitioner and the intervenor, along with a few others, was sent to the Commission for its concurrence to their promotion to the post of Reader, the Commission gave its concurrence for the promotion of the intervenor and four others but denied

concurrence in the case of the Petitioner (and two others).

5. According to Mr. Mukherjee no reason was assigned for denial of concurrence in the case of the Petitioner.

6. As a consequence the Petitioner was reverted to the post of lecturer.

7. The Petitioner then made a representation which was forwarded by the University to the Commission whereupon the Commission gave concurrence for promotion in the case of the Petitioner as well. It needs to be noted here that the Petitioner's representation was filed within one month from the date of the Commission's decision denying concurrence for promotion in his case.

8. On receipt of the Commission's concurrence the University issued notification, dated 25.4.1998 allowing promotion to the Petitioner to the post of Reader with effect from the initial date of his promotion i.e. 13.1.1991. As a result of this notification, the Petitioner regained his seniority over the intervenor whose date of promotion, as seen above, was 2.2.1991.

9. In course of time cases of both the Petitioner and the intervenor became ripe for consideration for promotion to the post of Professor under the merit promotion scheme and by letter, dated 28.7.2000 addressed from the Commission to the Vice Chancellor, four teachers were found suitable for promotion to the post of Professor. In this letter, the name of, the Petitioner was shown at serial No. 2 and that of the intervenor at serial No. 4. The matter was now required to be placed before the Syndicate for its final approval for their promotion to the post of Professor.

10. In the meantime it appears that a dispute of seniority was raised and the matter was brought to the notice of the Chancellor. Apparently, before the Chancellor, the promotion allowed to the Petitioner as Reader was itself questioned as being irregular and contrary to the provisions of the Statutes Regarding Merit Promotion To Lecturers as Readers.

11. As the matter came under investigation, first a letter, dated 12.2.2001 was issued from the Chancellor's Secretariat to the Vice Chancellor, Patna University calling all the relevant materials with the direction that no further action should be taken in regard to the promotion under the merit promotion scheme in the case of the Petitioner. From the materials brought on record it appears that comments were also called for from the Commission and the Commission gave its reply by letter, dated 4.5.2001. On examination of the matter it was noticed that concurrence was accorded for the Petitioner's promotion as Reader on the basis of a representation filed by him within one month of the Commission refusing to give concurrence in his case. This was held to be contrary to Clause 9 of the Statutes which provides as follows:

Any teacher who has been considered and not selected for merit promotion in the initial presentation will be eligible to submit his work again only after a lapse of two years.

12. In the Chancellor's office, it was found and held that once the Commission had refused concurrence to the Petitioner's promotion as Reader, the matter could be reconsidered not before two years and the concurrence given by the Commission for his promotion as Reader within a period of one month was contrary to the afore-quoted provision.

13. Having thus taken this view the Officer on Special Duty in the Chancellor's Secretariat wrote to the Vice Chancellor, Patna University, under his letter No. 1188, dated 12.6.2001 (Annexure "C" to the counter affidavit filed on behalf of the Patna University). In this letter it was clearly held that the promotion given to the Petitioner to the post of Reader was in violation of Clause 9 of the Statutes inasmuch as his case was reconsidered within one year from the date of the earlier decision, rejecting concurrence to his promotion. Having thus declared the position a request was made to review his case in the light of the provisions of the Statutes.

14. Another letter, dated 6.8.2001 was similarly issued by the Officer on Special Duty in the Chancellor's Secretariat to the Vice Chancellor, Patna University enclosing a letter from the Commission and requesting the University to review the promotion given to the Petitioner to the post of Reader.

15. In view of these communications issued from the Chancellor's office, I have no doubt in my mind regarding the final order that would be passed by the University on a review of his promotion to the post of Reader. A finding having been, already recorded that his promotion was in violation of Clause 9 of the Statutes, the University will have no option but to cancel his earlier promotion as directed in the Chancellor's communication.

16. At this stage I will not like to express any opinion on the view taken by the Chancellor or on the question of applicability of Clause 9 of the Statutes to the case of the Petitioner. This is for the reason that the Chancellor's directions to the University are to be set aside as being volatile of the principles of natural justice. It is to be noted that the proceedings in the Chancellor's office went on without any show cause notice or an opportunity of hearing to the Petitioner. Even if Clause 9 of the Statutes applied in his case and the subsequent grant of concurrence by the Commission was bad for violation of Clause 9 of the Statutes, the findings should have been arrived at only after giving a show cause notice to the Petitioner and after giving him an opportunity of hearing.

17. Both Mr. Mahto and Mr. Shahi submitted that the matter was still at large and the Chancellor had only asked the University to review and reconsider the promotion granted to the Petitioner to the post of Reader. But as seen above the case is too heavily loaded against the Petitioner to allow for any objective and independent consideration and any review or reconsideration by the University in the facts and circumstances as narrated above would lead to only one decision and one order.

18. In these facts and circumstances the Petitioner, to my mind, can legitimately

raise the grievance of violation of his natural rights.

19. This Court is, therefore, of the view that the Chancellor would be well advised to give both the Petitioner and the intervenor an opportunity of hearing before taking a decision on the disputed issue and giving directions to the University authorities to act accordingly.

20. The directions contained in Annexure "C" and Annexure "15" are accordingly set aside and the matter is remitted to the Chancellor for reconsideration of the matter.

21. As the matter involves an old dispute of seniority and both the Petitioner and the intervenor are on the threshold of their promotion as Professor, it needs to be finally decided without any undue delay. In order to facilitate an early disposal of the matter the Petitioner and the intervenor are directed to appear before the Officer on Special Duty in the Chancellor's office with a copy of this order on 20.12.2001. The Officer on Special Duty will bring this matter to the Chancellor's notice and apprise him of this Court's anxiety that this matter should be decided at an early date. The Chancellor will then decide the matter after giving an opportunity of hearing both to the Petitioner and the intervenor and any other person who may be likely to be affected by the final order.

22. The merit promotion to the post of Professor shall remain in abeyance till a final order is passed by the Chancellor and shall abide by the Chancellor's order in this dispute.

23. This writ petition thus stands disposed of with the aforesaid observations and directions.

24. Let a copy of this order be handed over to Mr. Shivendra Kishore.