
(2009) 08 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C. No. 12707 of 2003

Dr. M. Azimullah

APPELLANT

Vs

The Vice Chancellor, Patna University and Others

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Citation : (2009) 08 PAT CK 0003

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Heard the counsels for the petitioner, the State, Patna University and counsel representing the private respondent 6, 7 and 8.

2. Question for consideration in the present writ application relates to inter se seniority of petitioner vis-a-vis respondents 6, 7 and 8. The petitioner has assailed the recommendation made by the Bihar State University (Constituent Colleges) Service Commission (hereinafter referred to as, "the Commission") vide its order, dated 04.01.2002, whereby names of four persons, including the petitioner were recommended for merit promotion against three posts of Reader available for promotion. Petitioner has alleged that the recommendation has been made on fortuitous ground of seniority, on the basis of date of joining on the post of Lecturer.

3. The names of petitioner, along with respondents 6, 7 and 8, were recommended by the Commission for appointment on the post of Lecturer in Urdu, vide Notification No. G/14470-502, dated 07.05.1987. The names of the recommendees in the letter of recommendation were in order of merit and the name of petitioner was second in the merit list, above respondents 6 and 8. University issued appointment orders directing the appointees to join duty "after 10.07.1987, on the reopening of colleges, after Summer Vacation". Petitioner joined in the fore-noon of 11.07.1987 in B.N. College, Patna, but, Dr. Israil Raza (first in the list) and Dr. S.N. Jawed Hayat (fourth in the list) gave their joining on 10.07.1987. Petitioner's case is that considering his seniority on the basis of his placement in merit list, the University made the petitioner In-Charge Head of the

Department, Urdu, when the post of Head of the Department, Urdu, in B.N. College fell vacant on account of retirement of the regular Head of the Department. In the year 2002 when names of Lecturers, having eight years teaching experience were recommended by the Commission for merit promotion to the post of Reader, petitioner's seniority based on placement in the Lecturers' list was ignored. Names of respondents 6, 7 and 8 were recommended above the petitioner treating them senior to the petitioner. Petitioner's name was recommended as fourth candidate. Since there were only three posts available for merit promotion, petitioner was not allowed merit promotion to the post of Reader. The inter se seniority of petitioner and respondents 6 and 8 was considered by the Commission on the basis of their joining on the post of Lecturer though petitioner and respondents 6 and 8 were appointed on the basis of same appointment letter, but, they joined on two different dates, as such, Commission treated respondents 6 and 8 senior to the petitioner, without considering this fact that in absence of any specific provision under the Statute available for counting the seniority, while working as Lecturers for promotion to the post of Reader, the deciding factor will be the merit list prepared by the Commission for appointment on the post of Lecturer. On recommendation of the Commission vide notification, dated 19.06.2002, University appointed respondents 6, 7 and 8 to the post of Reader with effect from the date mentioned against their names, i.e., the date when they completed eight years of service as Lecturers. Petitioner has assailed recommendation made by the Commission and the appointment made by University, so far respondents 6, 7 and 8 are concerned.

4. Despite proper service of notice, respondent No. 6 has not appeared.

5. Respondents 7 and 8 have entered appearance and filed their counter affidavits.

6. Counter affidavit has also been filed on behalf of the University and the State.

7. Name of Mr. (Mrs.) Ashraf Jahan is first in the list of recommended candidates for the post of Reader. She has joined Patna University as Lecturer on 01.11.1987 and prior to that she was working as Lecturer in Rajkiya Manila College, Gardanibagh, Patna. Petitioner's assertion is that as provided u/s 3(7) of the Service Statute of Patna University, teaching experience of respondent No. 7 in Rajkiya Manila College, Gardanibagh, should not have been considered for counting her seniority.

8. Respondent No. 7 has stated in her counter affidavit that on being selected for the post of Lecturer in Urdu she gave her joining in Government Women's College, Gardanibagh, Patna, on 14.04.1981 and was regularized vide Education Department's Notification No. 675, dated 20.06.1987 with effect from the date of her joining. She applied for the post of Lecturer in Urdu at Patna University, which was duly forwarded by the Principal of Government Women's College, Gardanibagh, Patna, vide Letter No. 381, dated 20.06.1986. She was selected by

the Commission for the post of Lecturer in Patna University. She was granted two years' lien by the Director, Higher Education, Government of Bihar, and also accorded permission to join Patna University vide Notification No. 1025, dated 24.08.1987. She was relieved by the Principal, Government Women's College, Gardanibagh, Patna, vide Letter No. 404, dated 30.10.1987, and on the next date in the afternoon, i.e., 31.10.1987 she gave her joining. Her lien was further extended for three years and finally her services were confirmed in the Patna University as per University Notification No. G/174, dated 03.02.1999. Since, she gave her joining at Patna University within the time specified in the Statute for giving the joining from one University to another University her service rendered in another University was deemed to be continuous for counting her seniority in terms of Statute 3(7) of Patna University Statute which provides:

3(7) : Notwithstanding anything to the contrary as contained in the Statute, it is hereby provided that if an employee serving in any University of the State is appointed in the service of another University or of Bihar Inter University Board, Patna, on a temporary or substantive basis in the same or higher grade shall, in the event of his joining the post within the time allowed by the competent authority, be allowed continuity of his service of the former University for the purpose of protection of his pay and allowance drawn, leave and half pay leave earned in that University and the age of retirement and grant of retirement benefits as admissible to him in that University but not for determination of his seniority.

9. The counsel for respondent No. 7 has contended that in no case the petitioner can have any grievance against the merit promotion of respondent No. 7. She is much senior to the petitioner and has completed eight years of her service on 13.04.1989 when the petitioner joined his service as Lecturer on 11.07.1987. Petitioner completed eight years requisite teaching experience for merit promotion to the post of Reader on 11.07.1995 much after respondent No. 7. Further, it has been contended that the merit promotion granted to respondent No. 7 being in compliance of Clause 3F of the Statute for merit promotion of Lecturer to the post of Reader, the petitioner has unnecessarily dragged respondent No. 7 in this dispute. The placement of respondent No. 7 at serial No. 1 in the recommendation letter of the Commission suffers no error.

I find substance in the submission made on behalf of respondent No. 7. On perusal of Statute regarding continuity of service as provided under Statute 3(7), merit promotion given to respondent No. 7 is in compliance of Clause 3F of the Statute. Petitioner has no reason to assail the merit promotion granted to respondent No. 7.

10. Promotion given to respondents 6 and 8 have also been challenged by the petitioner for the reason that on fortuitous ground of date of joining on the post of Lecturer, they have been treated senior to the petitioner and recommended for merit promotion to the post of Reader. Date of joining would not have been a ground for deciding inter se seniority, as seniority in any case, in absence of any

Rule or Statute in this regard, could be decided on the basis of the merit list prepared and recommended for appointment on the post of Lecturer by the Commission. Respondents 6 and 8 could not have claimed seniority for the reason that they joined one day prior to the petitioner, when the appointment letter directed all appointees to join after 10.07.1987, on the reopening of the college after Summer Vacation. In compliance of the direction in the appointment letter, joining was to be given after 10.07.1987. Since, petitioner also joined within the time allowed for joining, simply because one has given joining one day prior to the petitioner, it can not have been basis for deciding inter se seniority of petitioner vis-a-vis respondent 6 and 8.

11. Respondent No. 8 has stated that the post of Lecturer and Reader belong to two separate cadres, one can be considered for merit promotion to the post of Reader, only on completion of eight years of service. For counting eight years teaching experience as Lecturer, date of joining has got it's relevance. The letter did not put a bar for joining on the post on 10.07.1987, the respondents have rightly gave their joining after reopening of the College on 10.07.1987. Considering their seniority on the basis of their joining, rightly Commission has placed them above the petitioner in the recommendation letter for promotion to the post of Reader. Petitioner has got no cause of action for filing this application as none of his legal or fundamental rights have been infringed.

12. Counsel appearing for respondent No. 8 has contended that since the appointment letters were issued during vacation, as such, joining was to be given on reopening of the College as provided under Statute 5(9)(b)(ii) of Patna University Statute, which deals with the joining time of an incumbent, who receives the order of transfer during the period of vacation.

If he receives the order of transfer during the period of vacation, he shall not be entitled to any joining time, and must take over charge of his new duties on the first working day after such period of vacation, provided that, if the number of days, from the date of which he receives the order of transfer to the end of the period of vacation, is less than the number of days, joining time ordinarily admissible, he shall be entitled to joining time to the extent of difference in continuation of the period of vacation.

13. I find that the joining time as provided under Statute 5(9)(b)(ii) of Patna University Statute has got no application in the present case as it relates to transfer. The relevant Statute relating to joining time in case of appointment in service is Clause 4(1) of the Statute which reads as follows:

In all letters of appointment the date by which the person appointed is to join his post shall be mentioned.

14. In the present case, joining time as mentioned in the letter of appointment on the post of Lecturer was after 10.07.1987 on the reopening of the College after Summer Vacation. The word "after" should have been read as "on" and the meaning thereby will be on 10.07.1987 after the University reopens after

Summer Vacation. There is no illegality, so far joining of respondents 6 and 8 on 10.07.1987 is concerned, but, it is an admitted fact that till date there is no provision for counting the seniority of persons for promotion to the post of Reader, while working as Lecturer. Respondent No. 8 has also admitted this fact in paragraph 13 of his counter affidavit. In the counter affidavit filed on behalf of the University and it's authorities there is no statement regarding any specific provision under the Statute for counting the seniority while working as Lecturer for promotion to the post of Reader. Counsel for the petitioner has placed reliance on a decision reported in Suresh Chandra Jha Vs. State of Bihar and Others, and Jyoisna Chatterjee Vs. The State of Bihar and Others, It has been submitted by the petitioner's counsel that in these two decisions it has been held that if two persons are appointed at the same time, in absence of Rule, their inter se seniority is to be fixed on the basis of their respective position as recorded by the competent authority at the time of their first appointment and in case no such criteria is adopted then the qualification and date of birth are the relevant consideration for determining their inter se seniority. The Supreme Court has also held in Suresh Chandra Jha Vs. State of Bihar and Others, that in absence of any Rule in operation merit list not the fortuitous circumstance of date of joining should decide the respective seniority.

15. Admittedly, there is no provision for deciding the seniority on the basis of teaching experience, as such, as decided by the Supreme Court, in the given situation, the merit decided at the time of initial appointment should have been guiding factor for deciding the seniority and not the date of joining.

16. In the counter affidavit filed by the State, it has been stated that after coming into force of the Bihar State University (Constituent Colleges) Service Commission Repeal Act, 2007, the power of appointment/promotion of teachers has gone to the Selection Committee at University level as provided under Patna University Amended Act, 2007. The Selection Committee constituted under Patna University Amended Act, 2007, is authorized to consider and recommend for merit promotion. Accordingly, the Selection Committee is directed to consider the case of the petitioner vis-a-vis respondents 6 and 8 for merit promotion to the post of Reader, deciding their seniority on the basis of merit list as recommended by the Commission at the time of their initial appointment to the post of Lecturer. This exercise must be completed by the Selection Committee within eight weeks from the date of production/communication of this order. No fresh consideration is required in the case of respondent No. 7.

17. With these observations and directions, this application is allowed.