
(1996) 12 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 2297 of 1996 (R)

Dr. Parsuram Tiwary

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Bihar State Universities Act, 1976 — Section 26(6)(ii), 34, 76

Citation : (1997) 1 BLJR 143 : (1997) 1 PLJR 272

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—I have heard Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the petitioner, Mr. M.S. Anwar, learned Counsel appearing on behalf of the respondents-University and Mr. Tapan Sen, learned counsel appearing on behalf of the respondent No. 4. With the consent of the parties the writ application is disposed of at the admission stage by this order.

2. In this writ application the petitioner has prayed for issuance of an appropriate writ for quashing of the order as contained in Memo No. 9447-50 dated 4.7.1996 issued by the Ranchi University by which the respondent No. 4 has been made Head of the Department of Post Graduate Department of Commerce in the Ranchi University. According to petitioner the impugned order dated 4.7.1996 as contained in Annexure-7 -to the writ application has been issued in utter disregard and contrary to the judgment passed by the Division Bench of this Court in C.W.J.C. No. 1845 of 1994 (R). The petitioner has also prayed for quashing of the order dated 4.7.1996 by which breakage in service of respondent No. 4 from 10.3.1968 to 12.8.1968 has been condoned contrary to the judgment aforesaid and the same has been condoned to accommodate respondent No. 4 in the post of Head of the Department.

3. The petitioner was initially appointed as Lecturer in Marwari College, Ranchi on

27.7.1963 and the concurrence was given by the University Service Commission on 27.7.1963. The petitioner worked as Head of the Department of Commerce in Marwari College, Ranchi for about 24 years and also worked as Incharge Principal for 11 months and further the petitioner worked Ph.D. degree in June, 1975 and, accordingly, the petitioner promoted to the post of Reader on 14.11.1980 and then promoted as University Professor with effect from 1.2.1985. The petitioner was then transferred from Marwari College, Ranchi to Ranchi College, Ranchi, some time in February, 1987. The respondent No. 4 was appointed as a Lecturer in Worker's College, Jamshedpur on 6.12.1966. He got Ph.D. degree in the year 19/7 and promoted as Reader on 14.11.1980 and further got promotion as University Professor on 1.2.1985. According to petitioner, in 1993 the University without considering the case of the petitioner appointed respondent No. 4 as Head of the University Department in the subject of Commerce. The said appointment was made on the ground that respondent No. 4 was the senior most teachers which was not correct. The petitioner, therefore, finding no way out filed a writ petition before this Court which was registered as C.W.J. C. No. 1845 of 1994 (R) challenging the validity of the order dated 5.3.1993 by which the petitioner was made Head of Department of the University.

4. Counter affidavits have been filed on behalf of the respondent No. 4 as also on behalf of the University. The Division Bench of the Court in terms of judgment dated 5.4.1996 after hearing the parties at length has held that service of respondent No. 4 has to be counted from 12.8.1968. this Court further held that the petitioner is senior most teacher and respondent No. 4 is junior to petitioner. The petitioner's further case was that after passing of the judgment of this Court the petitioner filed a detailed representation on various dated last being on 28.6.1996. However, the petitioner surprised to know about the issuance of the impugned order dated 4.7.1996 whereby in compliance of the direction of this Court and the judgment aforesaid respondent No. 4 was again appointed as Head of Department (P.G) of Commerce. The petitioner further came to know that the aforesaid order dated 4.7.1996 was passed after condoning the break in service of respondent No. 4 in terms of an order dated 4.7.1996. These two impugned orders are annexed as Annexure 7 and 8 to the writ application. The petitioner, therefore, assailed the said orders as being illegal, void, without jurisdiction and also in utter discharged of the judgment passed by this Court in the aforementioned writ application.

5. A counter affidavit has been filed on behalf of the University in which beside other facts it was stated that when this Court in its judgment dated 5.4.1996 held that so called leave application of respondent No. 4 was a manufactured document the University treated the period from 10.3.1968 to 12.8.1968 as break in service and the said break in service has been condoned by the University by the impugned order (Annexure-8). It was further stated that the University in past has condoned the break in service of several persons detailed of which have been given in the counter affidavit. It was further stated that there was a provision of Post Graduate Teaching in Commerce (M.Com) at three places

under the Ranchi University, namely, (i) Department of Commerce, Co-operative College, Jamshedpur (ii) Department of Commerce, Ranchi College, Ranchi and (iii) Post-graduate Department of Commerce, Ranchi University and in all places senior teachers have been posted as Head of Department. After condonation of break in service of respondent No. 4 he became senior most teacher and, therefore, in terms of provision of Section 26 (6)(ii) of the Bihar State Universities act, 1976, the senior most teacher in the Department has to be appointed as Head of Department. The respondents-University further stated that in the light of the judgment of this Court the case of the petitioner was also considered but as the petitioner was not a teacher of post-graduate in Commerce, Ranchi University he could not have been appointed as Head of Post-Graduate Department of Commerce. The case of other teacher of the Post-Graduate Department of Commerce, Ranchi University was considered and in view of the fact that respondent No. 4 was the senior most confirmed Reader and Bihar University's Professor he was allowed to work as Head of Post-Graduate Department of Commerce.

6. The respondent No. 4 has filed his counter affidavit whereby besides adopting the counter affidavit filed by the Ranchi University, it was stated that the University has condoned break in service in so many case and he is the most qualified and experienced teacher than that of the petitioner. Respondent No. 4 further justified the impugned orders passed by the Ranchi University.

7. During the course of argument learned Counsel appearing on behalf of the parties have not disputed that in view of the Division Bench Judgment of this Court in C.W.J.C. No. 1845 of 1994 (R) there is a break in service of respondent No. 4 and this Court held that respondent No. 4 became junior to the petitioner. On the basis of the said judgment the impugned order passed by the University dated 4.7.1996 appointing respondent No. 4 as Head of Department is illegal and contrary to the Act and the Statutes of the University. The only question, therefore, arises for consideration by me is as to whether the action of the University in passing the order (Annexure-8) condoning the break in service of respondent No. 4 in between 10.3.1968 to 12.8.1968 is illegal, mala fide and with a view to hoodwinking the judgment and order of the Division Bench of this Court and to accommodate respondent No. 4 in the post of Head of Department. Before coming to determine this question it is worth to be looked into the judgment rendered by this Court in C.W.J.C. No. 1845 of 1994 (R). The said writ application was filed by the petitioner claiming his seniority upon respondent No. 4 and claiming eligibility for being appointed as Head of Post Graduate Department of Commerce, Ranchi University. It was the admitted case of the respondent No. 4 that he was initially appointed as Lecturer in Worker's College, Jamshedpur on 6.12.1966 but he left the College and joined the Bihar Land Development Bank as Land Evaluation Officer in March, 1968. Later he left that job and joined the College pursuant to offer of appointment in the light of recommendation of the University Service Commission on 12.8.1968. Therefore, there was break in service of respondent No. 4 from March, 1968 to August,

1968. In that case respondent No. 4 took the stand that he had duly taken leave for that period from the principal of the College and, therefore, there was no break in service and the entire period must be treated as period of continuous service as required under the promotion Statutes. The Division Bench of this Court in its judgment has held as under:-

It should be kept in mind that the petitioner held the post of temporary Lecturer, the extended tenure of which was to continue upto April, 1968. Prior to that he had submitted application for appointment as Lecturer in the University Service Commission on 8.11.1967 vide Annexure R-4/D. The Commission also recommended his name for appointment on 28.2.1968 vide Annexure R-4/R. He left the job and opted for another job thereafter on 10.3.1968. It is not necessary to go into the question as to whether the offer of appointment vide Annexure R-4/R survived upto 8.8.1968. When the appointment letter was issued purportedly in the light of the said recommendation, pursuant to which he joined the post on 12.8.1968. Having regard to the circumstances of the case, as evident from the documents annexed by respondent No. 4 himself, it appears to me that Annexure R-4/D, the so-called leave application which also contain the sanction order of the principal in its margin, is a got-up document manufactured to make out a case of continuous service; I have no doubt in my mind, not only having regard to the circumstances of the case but also the provisions of the promotion statutes, that the respondent is entitled to claim the period of service only after 12.8.1968 for the purposes of seniority and eligibility for promotion as Reader. As stated above, the College already enjoyed the affiliation upto degree standard as on that date. He holds a doctorate degree. He thus requires minimum of 13 years of service as Lecturer which, counted from 12.8.1968, he acquired on 12.8.1981. In other words, he was not eligible for promotion as Reader with effect from 14.11.1980 or any date prior to 12.8.1981. If he became entitled/eligible for promotion only on 12.8.1981, petitioner No. 1 having admittedly been granted promotion to the post with effect from 26.11.1980, about which there is no dispute, he should rank senior to the respondent. Respondent No. 4 has been granted promotion as Reader with effect from 14.11.1980 taking into account the entire period of service reckoned from 6.12.1966 which in the circumstances of the case, in my opinion, was not correct. I am, therefore, of the opinion that the petitioner No. 1 is entitled to have his case reconsidered for appointment as Head of the Department vis-a-vis respondent No. 4 afresh. As notice above, in terms of para-2 of the promotion statutes a Lecturer promoted as Reader earlier in point of time is to rank senior. If respondent No. 4 became eligible for promotion as Reader only on 12.8.1981 and not on 14.11.1980, it is obvious that he would rank junior to petitioner No. 1.

For the reasons stated above, I would dismiss the writ petition so far as it relates to petitioner No. 2, but allow the in regards petitioner No. 1 and direct the Ranchi University to consider the matter regarding appointment of Head of the Department afresh and issue an appropriate order within a period of three months. The writ application is, thus allowed in part. In the circumstances of the

case, I will pass no order as to costs.

8. From reading the judgment it is abundantly clear that this Court held firstly that the leave application of respondent No. 4 for the period he was out of service was a got-up document manufactured only for the purpose of making out a case of continuous service and secondly it was held that petitioner became senior to respondent No. 4. It appears from the impugned Annexures 7 and 8 which were issued by the University on the same day, by one order dated 4.7.1996 (Annexure-8) the Vice-Chancellor has condoned the break in service of respondent No. 4 and by another order dated 4.7.1996 (Annexure-7) respondent No. 4 was made Head of Post-Graduate Department. Admittedly, this order of condonation of break in service has been passed by the University after about 28 years.

9. Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the petitioner has drawn my attention to the rules governing condonation of break in services of teachers which rule was framed under the Bihar State Universities of Patna, Bhagalpur and Ranchi) Act, 1960 which reads as under:-

RULES GOVERNING CONDONATION OF BREAK IN SERVICES OF TEACHERS.

1. Ordinarily no break in service shall be condoned.

2. In special- cases, however, where the services of an employee is terminated prior to the vacation and the person concerned subsequently appointed on the re-opening date on the recommendation of the Bihar Public Service Commission or is recalled by the University, the intervening vacation may be counted towards the service of the person concerned, Provided that in very special cases, break in service upto a limit of one month, even in continuation of the vacation may also be considered for condonation.

3. In any case, where the break in service has been condoned, as per above rules, the person concerned shall not be entitled to any salary arrear, relative seniority etc. due to condonation, if any, granted.

10. Mr. Sinha submitted that accordingly to the said rule ordinarily the break in service shall not be condoned but in special cases and under special circumstances the University may condone the break in service of a teacher. Mr. Sinha further submitted that in view of Section 76 of the Bihar State University Act, 1976, the said rule is still in force. Mr. Sinha lastly submitted that the order condoning break in service was malafide and motivated only with the purpose to accommodate respondent No. 4.

11. Mr. M.S. Anwar, learned Counsel appearing on behalf of the University, on the other hand, submitted that no illegality has been committed by the University in passing the impugned order condoning the break in service of respondent No. 4. Learned Counsel further submitted that rule quoted herein before was adopted by the Syndicate in 1969 under the Bihar State Universities Act, 1960 which is not in force. On the contrary, under Article 222 of the Statute, the appointing

authority has all power to condone all interruptions in the service of the University servant. Learned Counsel then referred to Section 34 of the Bihar State University Act, 1976 (hereinafter referred to as the 1976 Act) and submitted that the provision of the statutes will prevail with the rule.

12. For better appreciation of the submission of the learned Counsel it would be appropriate to notice the relevant provision of the Act and the Statutes. Section 76 of 1976 Act reads as under:-

Application of Statutes, Ordinances and Regulation-Until statutes, Ordinances, Regulation and Rules are made under the appropriate provisions of this Act, such statutes, Ordinances, Regulations and Rules made or deemed to have been made under the Bihar Act 14 of 1960, Bihar Act 4 of 1962, Bihar Act 21 of 1965 and the Lalit Narain Mithila University (Second Ordinance), 1976 (Bihar Ordinance No. 87 of 1976), as were in force immediately before the commencement of this Act, shall, in so far as they are not inconsistent with provisions of this Act and subject to such adaptations and modifications, if any, as may be made therein by the Vice-Chancellor with the approval of the Chancellor, remain in force and shall be deemed to be statutes, Ordinances, Regulations and Rules made under the corresponding provisions of this Act.

13. From the aforesaid provisions it is clear that all Statutes, Ordinances, Regulations and Rules made under the Old Act of 1960 shall be deemed to be in force unless otherwise they are inconsistent with the Statutes, Ordinances, Regulations and Rules made under the provisions of 1976 Act. Article 222 of the Statutes of 1980 reads as under:-

222-The appointing authority may, upon such conditions as it may deem fit in each case, condone all interruptions in the service of University servant if he were to vacate that appointment at the time the condonation is applied for.

14. I am unable to accept the submission of Mr. Anwar that on the basis of the aforesaid provision of statutes the University has all the power to condone the break in service. On the contrary, Mr. Anwar could not be able to satisfy me that the rule quoted hereinabove is not still in force. The manner in which the respondents-University took a decision of condoning break in service and making respondent No. 4 as Head of Department on the same day cannot be said to be bona fide. Prima facie, it appears to me that the order of condonation itself is against the statutes and the rule of the University inasmuch as it is evident from the rule that under special circumstances the University has power to condone the break in service upto the limit of only one month but, in the instant case, after the lapse of 28 years the condonation has been done and the seniority of respondent No. 4 has been counted in the teeth of the judgment passed by a Division Bench of this Court. In the judgment aforesaid it has been categorically held that the story of the condonation of application and the sanctioned order of the Principal of the College was fabricated for the purpose of making of the case of continuous service. this Court further held that in terms of provisions of the

statutes of the University the said respondent was entitled to claim the period of service only after 12.8.1968 for the purpose of seniority and eligibility of promotion as Reader but in spite of the finding and the direction of this Court the respondents-University have issued the impugned orders and posted respondent No. 4 as Head of Department of the Post-Graduate Department of University. I therefore, no hesitation in holding that the impugned orders passed by the University condoning break in service of respondent No. 4 is not only illegal but arbitrary, mala fide and wholly without jurisdiction. Consequently, the consequential order passed on the same day appointing respondent No. 4 as Head of Department cannot be sustained in law.

15. In the result, this writ application allowed and the impugned orders dated 4.7.1996 as contained in Annexures 7 and 8 of the writ application are hereby quashed. The respondents-University is hereby directed to act fairly and reasonably and take a fresh decision in the matter of appointment of Head of Department of Commerce of the Ranchi University. However, there shall be no order as to costs.