

**(2011) 12 PAT CK 0017**  
**In the Patna High Court**  
**Case No : CWJC No. 13760 of 2011**

|                               |    |            |
|-------------------------------|----|------------|
| Dr. Rameshwar Nath Pandey     |    | APPELLANT  |
|                               | Vs |            |
| The State of Bihar and Others |    | RESPONDENT |

**Date of Decision :** 15-12-2011

**Acts Referred:**

Bihar State Universities Act, 1976 — Section 26(6)(iv), 26(ii)(iii)

**Citation :** (2012) 3 PLJR 369

**Hon'ble Judges :** Ramesh Kr. Datta, J

**Bench :** Single Bench

**Advocate :** Kumar Kaushik and J.P. Sharma, for the Appellant; R.S. Pradhan and Amarendra Narain Rai for the Respondent; No. 7, M/s Anil Kumar Sinha and Mritunjay Kumar for the University and Mr. Dharendra Kumar Jha for the State, for the Respondent

**Final Decision :** Allowed

## Judgement

Ramesh Kr. Datta, J.—Heard Learned Counsel for the petitioner, Learned Counsel for the State and Learned Counsel for the University and for respondent No. 7. By the present writ petition, the petitioner seeks quashing of the order contained in letter dated 6.1.2011, by which the Principal of the College of Commerce, Patna has appointed respondent No. 7 as Head of the Department of Chemistry in place of the petitioner and also for quashing the order dated 19.5.2011 passed by the Registrar of the Magadh University, by which he has directed the Principal of the College of Commerce, Patna to appoint the respondent No. 7 as Head of the Department of Chemistry in place of the petitioner.

2. A prayer has also been made for declaring that the petitioner is senior to respondent No. 7 but Learned Counsel for the petitioner submits that he does not press the said prayer in the present writ petition but seeks liberty to raise the said issue in appropriate proceedings, including another writ petition. Permission is granted and the writ petition shall remain confined to the other reliefs regarding the principle of rotation of Headship in the Department of College.

3. The dispute in the present matter arises out of the provision for rotation of headship of departments introduced by the Bihar State Universities (Amendment) Act, 2008. Sub-clauses (ii), (iii) and (iv) of subsection (6) of Section 26 of the Bihar State Universities Act, 1976 after the amendment reads as under:--

26(6)(ii) Subject to the provisions of this Act and the provisions of the statute made thereunder the Head of the Department shall be appointed by the Vice-Chancellor by observing, as far as possible, the principle of rotation. Such appointment's shall be reported to the syndicate of the University.

(iii) The Head of the Department shall hold office for a period of three years. A person shall not ordinarily be appointed as Head of the Department for a second consecutive term.

(iv) The Principal shall hold office for a maximum period of five years in one college.

4. The said Act was enforced from 23.4.2008 upon its publication in the Official Gazette. Subsequently Revised Statutes for the Scheme of Rotation of Headship in the Department of University/College for the Universities of Bihar (except Rajendra Agricultural University, Pusa and Nalanda Open University, Patna) were enforced on 30.6.2008. The statutes are quoted below:--

(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 P.G. Deptts. First four seniormost teachers shall essentially be posted in the Deptt. concerned.

2. Where there is no Professor, the Headship shall be rotated amongst the four seniormost 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 seniormost 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.

5. The respondent No. 7, who was already holding for nearly two years the post of Head of the Department of Chemistry in the College of Commerce at the time when the Amendment Act came into force or when the Statutes came into force on 30.6.2008, continued on the said post till 15.1.2011 when respondent No. 7 was declared junior to the petitioner by the order of the Human Resources Development Department, Government of Bihar, but the said order was recalled in view of the interim order passed in another writ petition and respondent No. 7 was again restored on the post of head of the Department of Chemistry in the College of Commerce on 1.6.2011.

6. The main submission of Learned Counsel for the petitioner is that the Statutes clearly apply to the University's Departments and to the Departments in the Colleges maintained by the University as per the amended provisions of the Act and thus respondent No. 7 having completed three years as Head of the Department of Chemistry after coming into force of the Statutes, the principle of rotation of Headship must be applied and the petitioner should be made the Head of the Department of Chemistry. It is submitted that even if the period from 16.1.2011 to 31.5.2011 is excluded, i.e., a period of 4½ months even then the term of the petitioner as Head of the Department cannot be extended beyond 15th November, 2011 and thus the petitioner must be made the Head of the Department of the College.

7. Since the stand of respondent No. 7 is that Section 26(6) of the Act only applies to the University's Departments, hence, Learned Counsel for the petitioner points out different provisions of the Act, apart from the Statutes. In this regard, he refers to Section 2(g) & (h) as also Section 24 (1)(5) and Section 28(1)(i) of the Act, which are quoted below:--

2(g) "Head of College Department" means the head of any department of the College;

(h) "Head of a University Department" means the head of any department maintained by the University for imparting instruction to the students of the University in the post-graduate standard under conditions prescribed in the Statutes and includes the Director of any institute maintained by the University [or the Government] for the promotion of research or for imparting instruction to the students of the University in the post-graduate standard.

24. The Academic Council.--(1) The Academic Council shall consist of--

(5) all Heads of University Departments;"

28. Departmental Council.--(1) There shall be a Departmental Council for each University Department and each College consisting of the following members:--

(i) the Head of the Department;

8. On the basis of the aforesaid provisions read with Sections 26(6)(ii), (iii) &

(iv) of the Act, Learned Counsel for the petitioner submits that the Head of the Department of the College and the Head of the Department of the University have been separately defined in the Act and wherever the reference is made only to the University Department the specific phrase has been used as in Section 24(1)(5). On the other hand, where reference is made both to the University Departments and the Departments of the College as in Section 28(1)(i), the term used is "the Head of the Department". Thus, according to Learned Counsel for the petitioner, the use of the term Head of the Department in clauses (ii) and (iii) of subsection (6) of Section 26 of the Act on the same parameters must be read as a reference to both the University Departments and the Departments of the College.

9. The aforesaid correct reading of the law has also been understood when the revised Statutes were framed for the scheme of rotation of Headship, which clearly refers to the Department of University/College of the Universities of Bihar. Thus, according to Learned Counsel for the petitioner, the clear interpretation of the provisions of Section 26(6) clauses (ii) and (iii) introduced by the Amending Act 16 of 2008 can only be that reference is both to the University Heads of the Departments and the Heads of the Departments of the College.

10. Moreover, Learned Counsel submits that the word "University Head" cannot be read into the enactment when the provisions themselves are very clear. It is also the contention of the Learned Counsel for the petitioner that merely because Section 26 of the Act provides the heading of "Faculties", it cannot be held that the reference in Section 26 of the Act is only to the University Departments which are governed by the Faculties. It is submitted that where the provisions of the Act are clear then they cannot be controlled or governed by the Head of the Section.

11. In this regard, Learned Counsel for the petitioner relies upon a decision of the Supreme Court in the case of M/s Frick India Ltd. vs. Union of India and Others: AIR 1990 Supreme Court 689, the relevant part of paragraph No. 8 thereof is quoted below:--

8. It is well-settled that the headings pre-fixed to sections or entries cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision with the words used in the provisions are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only, in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.

12. The above interpretation, according to Learned Counsel for the petitioner is further corroborated by the fact that the amendments have been introduced by a subsequent Amending Act, 2008 and thus the newly introduced provisions have to be read as independent of the rest of the provisions of Section 26 of the Act

which is also the normal rule of interpretation of any provision of the Act. He also refers to the provisions of clause (iv) of Section 26(6) of the Act which refers to the tenure of the Principal of the College and obviously has no connection with the Faculties of the University Departments.

13. Learned Counsel for the respondent No. 7, on the other hand, submits that Section 26 of the Act relates to the Faculties and thus the reference in sub-section (6) of Section 26 and clauses (ii) and (iii) thereof is only to the Departments of the University and not to that of the Colleges. Thus, according to Learned Counsel, the scheme of rotation of Headship is meant only for the University Departments and the Statutes in so far as they have been extended to the College Departments have to be read in keeping with the principal provisions of the Act themselves under which they have, been framed. It is also the submission of Learned Counsel that the provisions of the Act only apply to the University Departments and the Statutes have to be kept confined only to the same.

14. Learned Counsel for the University, on the other hand, on the basis of the counter affidavit filed on behalf of the University submits that the scheme of rotation of Headship under the provisions of Section 26(6) of the Act and Statutes are not confined only to the Department under the Faculties of the University, but also apply to the different Departments of the Colleges.

15. It is further submitted by Learned Counsel for the University that even if it is assumed that the other Universities have not applied Section 26(6) of the Act to the Colleges, that cannot be any ground in favour of respondent No. 7, as there can be no estoppel against Statute and if the provisions of the Act and revised Statutes require the application of the principle of rotation to the Departments of the Colleges, the same has to be applied by all:

16. On a consideration of the rival submissions of Learned Counsel for the parties, this Court finds substantial force in the submission of Learned Counsel for the petitioner. It is evident that the provisions of Section 26 sub-clauses (ii) and-(iii) of Section 26(6) of the Act have been inserted by the Amending Act of 2008. Those provisions cannot be controlled by the fact that Section 26 relates to the Faculties as they are independent provisions not directly connected with the other provisions of Section 26 of the Act and the mere fact of their being placed u/s 26(6) of the Act cannot change the purport of the said provisions. The golden rule of interpretation is that a provision has to be read literally and grammatically and the question of interpretation can only arise if the provision itself is not clear or is vague or indefinite.

17. So far as the Bihar State Universities Act, 1976 is concerned, there are separate definitions given in Section 2(g) and (h) of the Act to the terms "Head of College Department" and "Head of the University Department" and further the term "Head of the Department" has been specifically used in Section 28 of the Act when reference was being made to each University Department and the

Department of the College. The non-use of the term "Head of a University Department" in sub-clauses (ii) and (iii) of Section 26(6) of the Act clearly shows that the scheme of rotation of Headship was meant to apply not only to the Departments of the University but also to the Departments under the Colleges since specific definitions have been made of the terms "Head of a University Department" and "Head of College Departments" under the Act, as it was in existence before the introduction of the rotation provisions by the Amendment Act of 2008.

18. That being the position, it cannot be said that the Statutes have gone beyond the provisions of the Act in referring to the scheme of rotation of the Headship of both the University and College Departments. The Statutes are clear in themselves and admit of no interpretation at all and they appear to have been framed reading correctly the provisions of Section 26(6) clauses (ii) and (iii) of the Act.

19. That the newly introduced provisions by the Amendment Act, 2008 have been placed u/s 26(6) of the Act does not make any difference as they do not have any connection with the rest of the Section. This is evident also from the fact that under clause (iv) of Section 26(6) of the Act which has also been inserted by the same Amending Act there is a reference to the fact that the Principal shall hold office for a maximum period of five years in one college. Thus the newly introduced provisions by the Amendment Act of 2008 were not with a view to only refer to the Faculties of the University.

20. In the light of the aforesaid discussions, the only conclusion that can be drawn is that the scheme of rotation of Headship has been introduced by the Amendment Act and elaborated by the revised Statutes to apply to rotation of Headship both in the University Departments and the College Departments.

21. In view of the aforesaid conclusion the only thing that remains to be considered is as to whether the respondent No. 7 has remained as the Head of the Department for more than three years and is liable to be replaced by another person in the Department irrespective of the issue of seniority vis-a-vis the petitioner and respondent No. 7. The fact is that respondent No. 7 has continued for more than five years from the date of initial appointment as Head of the Department and even if the date for application of rotation of Headship under the amended provisions is taken from 23.4.2008 when the Amendment Act of 2008 came into force or giving him the best possible benefit as from 30.6.2008 when the revised Statutes of Rotation of Headship were enforced then accounting for the loss of four and half months between 16.1.2011 and 31.5.2011, he would still complete three years tenure as Head of the Department of Chemistry in the College of Commerce by 15th November, 2011. Therefore, he has overstayed his term as Head of the concerned Department. Thus, in view of the aforesaid findings, the writ application is allowed and the respondent authorities are directed to appoint the petitioner as Head of the Department of Chemistry in the College of Commerce, Patna, if there is no other person senior to the petitioner

in the said Department apart from respondent No. 7, who shall cease to function forthwith as Head of the Department of Chemistry in the College.