

(2024) 05 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3988 Of 2024

Dr. Ramjee Sah

APPELLANT

Vs

Baba Saheb Bhim Rao Ambedkar

RESPONDENT

Date of Decision : 29-05-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2024) 05 PAT CK 0029

Hon'ble Judges : Anjani Kumar Sharan, J

Bench : Single Bench

Advocate : Lalit Kishore, Sarvdeo Singh, Sanjay Kumar, Vijay Kumar Singh, Abhinav Shandilya, Nikhil Kumar Agrawal

Final Decision : Disposed Of

Judgement

1. Heard Mr. Lalit Kishore, learned senior counsel assisted by Mr. Sarvdeo Singh, learned counsel, for the petitioner, Mr. Vijay Kumar Singh, learned counsel for the respondent no.4 and Mr. Nikhil Kumar Agrawal, learned counsel for the Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur

2. By the present writ application, the petitioner seeks quashing of the office order dated 23.12.2023, as contained in Memo No.B/2796, by which private-responder no.4 has been transferred and appointed as Head of the University Department of Chemistry in Baba Saheb Bhim Rao Ambedkar, Bihar University, Muzaffarpur (hereinafter in short as 'University').

3. It is contended on behalf of the petitioner that initially the petitioner was appointed as Lecturer in the subject of chemistry at the Samastipur College, Samastipur, on 12.09.1994. Later on, he was promoted to the rank of Lecturer senior scale with effect from 12.09.1998. Thereafter, he was promoted to the rank of Reader with effect from 12.09.2003 in the University Department and lastly he was promoted to the post of Professor with effect from 12.09.2011. When the tenure of present head of the Department Dr. Sayed Mumtazuddin was

completed on 31.12.2023, the process of consideration for the post of Head of the Department was initiated and the petitioner made a representation before the Vice-chancellor of the University for consideration of his case for appointment as head of the department of Chemistry being a senior most Professor after Dr. Sayed Mumtazuddin. Dr. Sayed Mumtazuddin has issued a certificate on 11.12.2023 in favour of the petitioner that petitioner, having an unblemished and brilliant carrier, is intelligent, hardworking and reliable person who will prove to be asset in any capacity where the authority choose to perform the duty including as head of the University Department of Chemistry and also he is next most senior professor just next to him working as a faculty member in the University Department. The petitioner further made a representation before the Vice-chancellor of the University on 02.01.2024 against the decision of the University dated 23.12.2023 regarding the headship in the Department of the University.

4. On the other hand, it is contended on behalf of respondent no. 4 that the services of the respondent no. 4 was absorbed/regularized as Lecturer on R-1 Post with effect from 27.11.1985, whereas the petitioner was appointed as Lecturer on 12.09.1994. Respondent no. 4 was promoted from the post of Lecturer to Lecturer (senior scale) under Career Advancement Scheme with effect from 27.07.1998, whereas the petitioner was promoted with effect from 12.09.1998 by the same notification. Further, respondent no.4 was promoted from the post of Lecturer (senior scale) to the post of Reader with effect from 27.07.2003, whereas the petitioner was promoted to the post of Reader with effect from 12.09.2003. It is further contended that the petitioner was promoted to the post of Professor with effect from 12.09.2011, whereas respondent no. 4 was promoted with effect from 27.07.2011. The respondent no. 4 and the petitioner both were promoted to the rank of Lecturer (senior scale) under Career Advancement Scheme from the due date i.e. 27.07.1998 and 12.09.1998 respectively. It is further contended that the promotion of the petitioner and the respondent no. 4 to the post of University Professor was made from due date by two different notifications i.e. vide memo no. B/1108 dated 07.07.2015 with effect from 12.09.2011 and memo no. B/148 dated 26.03.2017 with effect from 27.07.2011 respectively.

5. It is further contended on behalf of respondent no. 4 that the University has rightly appointed him as head in the Department of Chemistry with effect from 01.01.2024 as the respondent no. 4 is senior most teacher in the Department of Chemistry.

6. It is contended on behalf of the University that right from the time of appointment as Lecturer, the respondent no. 4 is senior to the petitioner. Due to impending litigation, the order for promotion of respondent no. 4 was issued later than that of the petitioner. Hence, the respondent no. 4 was appointed as the Head of the Department of Chemistry on rotational basis for a period of three years or till his retirement, whichever is earlier. The petitioner is due to retire in

March, 2028 and the respondent no. 4 is due to retire in March, 2025. Being the second senior most teacher, the petitioner will be appointed as the Head of the Department of Chemistry in May, 2025 and he will continue to officiate the post till his retirement in 2028. Hence, no prejudice is being caused to the petitioner. There is no change in pay scale if a person is appointed as a Head of a Department nor is there any additional monetary benefit attached to the post of Head. Hence, there is no financial loss to the petitioner also. It is further contended that the respondent no.4 is senior to the petitioner as such his name was recommended for the post in question.

7. Having heard learned counsel for the respective parties, the actual date of appointment and promotion of the petitioner and the respondent no. 4, which is the crux of the matter, may be discernible from the table given herein below:-

Sr.

No.

Rank

Petitioner (Dr. Ramjee Sah)

Respondent no. 4 (Arun Kumar)

Department

1.

Lecturer

12.09.1994

27.11.1985

Dept. of

Chemistry, KCTC College

2.

Lecturer (Senior Scale)

Memo No. B/35 dt. 09.12.2009 w.e.f.

12.09.1998

Memo No. B/2014 dt. 10.10.2009 w.e.f.

27.07.1998

Dept. of

Chemistry, KCTC College

3.

Reader

Memo No. B/10081 dt. 07.03.2011 w.e.f.

12.09.2003

Memo No. 406/R dt. 17.05.2014 w.e.f.

27.07.2003

Dept. of

Chemistry, KCTC College

4.

Professor

Memo No. B/1108 dt. 07.07.2015 w.e.f.

12.09.2011

Memo No. B/149 dt. 26.03.2017 w.e.f.

27.07.2011

Dept. of

Chemistry, KCTC College

8. It is admitted fact that the petitioner filed representation on 25.09.2023 and 02.01.2024 before the Vice-chancellor of the University for considering his case for appointment to the post of head of the Department of Chemistry but the same was not entertained by the University and vide order dated 23.12.2023, respondent no. 4 was appointed as Head of the Department of Chemistry. It is also admitted fact that the petitioner has not challenged the same before the Hon'ble Chancellor of the University, which remedy was available to him, but, without availing the efficacious and alternative remedy, which was available to him, he has directly moved before this Court to challenge the same. It is well settled that, in matters of academic policy, the Courts have to be extremely slow in interfering. The Hon'ble Apex Court in catena of decisions has held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. The Hon'ble Apex Court has strongly deprecated the practice of entertaining writ petitions ignoring the availability of statutory remedies. I am conscious of the fact that though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still I am oblivious of the rules of self imposed restraint. The rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion.

9. In the present case, the office order under challenge ought to have been challenged by the petitioner before the Hon'ble Chancellor, who is the highest

authority of the University.

10. In view of the aforesaid factual position, I have no option but to dispose of this writ petition with a direction to the petitioner to challenge the office order dated 23.12.2023 before the Hon'ble Chancellor of the University within a period of four weeks from today and the office of the Hon'ble Chancellor is expected to take a decision by reasoned and speaking order, after affording proper opportunity of hearing to all the parties, within a period of eight weeks thereafter.