
(2007) 10 PAT CK 0020
In the Patna High Court
Case No : CWJC No. 6609 of 2005

Dr. Sachchidanand Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-10-2007

Acts Referred:

Citation : (2008) 1 PLJR 641

Hon'ble Judges : S.K. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Sinha, J.—Heard the learned counsel for the petitioner and for the respondents. The petitioner is aggrieved by the order dated 20.4.2005 communicated as per Memo No. 1003 dated 27.4.2005 (Annexure-6), whereby and whereunder the appointment of the petitioner as Incharge Principal, Hare Ram College, Mairwa, Siwan has been set aside by the respondent No. 2, the Chancellor of the Universities of Bihar, and in his place the respondent No. 5 has been directed to be appointed after declaring him senior to the petitioner as Reader in the aforesaid College. However, presently, on retirement of the respondent No. 5, the respondent No. 8 has been appointed as Incharge Principal till further order vide Memo No. 983 dated 30.5.2005, as contained in Annexure-8 to the I.A. No. 3086 of 2006 filed by the petitioner.

2. The real controversy between the parties hinges on the question of seniority between the Lecturer promoted under the Time Bound Promotion Scheme and Lecturer promoted under the Merit Promotion Scheme under the two relevant statutes of the University.

3. The petitioner was promoted in the rank of Reader on the recommendation of the Bihar University (Constituent Colleges) Service Commission under the Merit Promotion Scheme under Statute 20 vide notification bearing Memo No. B/28 dated 25th January, 1997, as contained in Annexure-1 to the writ application

followed by the notification granting substantive promotion on the post of Reader with effect from 20.9.1988 as contained in Memo No. 1666 dated 18th March, 1997. The further case of the petitioner is that on retirement of Dr. Nagendra Singh, Principal Incharge of Hare Ram College, Mairwa, Siwan where the petitioner was a Lecturer since 13.11.1978, and later, promoted to the rank of Reader, as stated above, was appointed as Incharge Principal till regular Principal not appointed by the order of the respondent No. 4 vide Memo No. 490 dated 1.9.2004 as contained in Annexure-2.

4. The respondent No. 5, who was in service at the material time, on being aggrieved by such appointment of the petitioner, filed a representation before the respondent No. 2, the Chancellor of the Universities of Bihar, challenging the appointment of the petitioner as Incharge Principal claiming himself to be senior to the petitioner, as he was appointed as Lecturer on 23.6.1971 in another College namely, Nand Lal Singh College, Chapra, and on his transfer he joined the Hare Ram College, Mairwa on 17.10.1981 vide letter dated 17.10.1981, as contained in annexure-3 to the writ application. Later he was promoted as Reader under the Time Bound Promotion Scheme.

5. The petitioner asserts that he being promoted under the Merit Promotion Scheme in substantive capacity would rank senior to the respondent No. 5. However, the respondent No. 2 upon hearing, by its order dated 30.4.2005, held the respondent No. 5 senior to the petitioner primarily on the ground that he was granted time bound promotion to the rank of reader prior to the promotion of petitioner as Reader even though the petitioner was granted substantive promotion to the post of Reader on the basis of Merit Promotion Scheme, and accordingly, set aside the notification dated 1.9.2004 (Annexure-2), whereby the petitioner was appointed as Incharge Principal and directed the J.P. University, Chapra to appoint the respondent No. 5 as Incharge Principal of the said college being senior most teacher of the College,

6. Counter affidavits have been filed on behalf of the respondents 2, 3, 4, 6 & 7. The respondents have, supported the order dated 20.4.2005 passed by the respondent No. 2 communicated as per Memo No. 1003 dated 27.4.2005 (Annexure-6) to the Vice-Chancellor of the J.P. University, Chapra (respondent No. 4).

7. It is relevant to state here that during the pendency of the writ application, the respondent No. 5 superannuated. Later, the respondent Nos. 6 & 7 were appointed as Incharge Principal, who too superannuated, and presently, the respondent No. 8 is functioning as the Incharge Principal who did not choose to appear despite service of notice.

8. After having considered the pleadings of the parties and their rival submissions, the primary issue under consideration is with regard to seniority between the Reader promoted under the Time Bound Promotion Scheme vis-a-vis the Lecturer promoted as Reader under the Merit Promotion Scheme. The

relevant statutes of the University are therefore necessary to be examined.

9. The statutes of the University nowhere deals on the question of seniority between the aforesaid two class of Readers. The relevant provision of the Statute with regard to Promotion of Lecturers under the Time Bound Promotion Scheme and under the Merit Promotion Scheme, to the post of Reader, are quoted herein below:--

Extract of Statute No. 17 for time bound promotion of lecturers to the post of readers and for readers to the Post of university professors.--"1. Notwithstanding anything to the contrary as contained in the Statutes, it is hereby provided that:--

(1) A lecturer, serving in a University department or in a degree college managed and maintained by the University shall on the recommendation of the Bihar State University (Constituent Colleges) Service Commission, be promoted on the basis of time bound scheme; to the post of Reader, subject to the following conditions:--

(a) That, he holds the qualification as prescribed for the post of Lecturer under the Statute enforced at the time of his appointment as lecturer and has fulfilled the conditions, if any attached thereto as laid down in the Statute:--

(b) That, he holds substantive appointment on the post of a Lecturer; and

(c) That, he has completed at least ten years of continuous service as Lecturer in one or more Universities:

Provided that the service rendered in a degree college during the period the college was not affiliated in the subject concerned even up to the Intermediate standard, shall not be taken into account for the purpose of this Statutes:

Provided further that the service rendered in more than one University shall be deemed to be continuous if the period elapsed between leaving the service of a University and joining he service of another University does not exceed the normal joining time as prescribed in the service Statute:

Provided that the qualifications prescribed for the appointment of lecturers mentioned above may be relaxed in case of such teachers who were absorbed in the Services of the University under the Statutes enforce from time to time and also in case of Demonstrators promoted to the post of Lecturers under the Statute framed for that purpose.

2. Such promotion shall be deemed to be personal promotion. It shall not be automatic but shall be made on the recommendation of the Bihar State University (Constituent Colleges) Service Commission on consideration of experience and C.C. Roll of the teacher concerned.

3. Promotion under the above clauses shall be admissible only in the faculties in which the fifth plan U.G.C. scale of pay have been implemented by the University, but a teacher who did not opt for the U.G.C. scale of pay shall also be

eligible to be considered for promotion to the post of Reader or University Professor, as the case may be, under this Statute in the old scale of pay.

4. Where a teacher is promoted to the post of Reader or University Professor, as the case may be, such a promotion shall take effect from the date on which the lecturer entered the 11th year of his qualifying service or the Reader entered the 26th year of his qualifying service as the case may be, or from the 1st February, 1985 whichever is later.

5. The case of teacher, who is -not recommended by the said Commission for promotion as Reader or University Professor may again be considered for promotion after a period of one year has elapsed since his name was last considered. The promotion in such a case shall effect from the date of the recommendation of the Commission.

6. The post held by the Lecturer or Reader who is promoted to the post of Reader or University Professor shall be deemed to be upgraded with effect from the date of such promotion and shall remain upgraded as such till the incumbent continues to hold the post, but the same shall be converted in to the post of Lecturer or Reader, as the case may be in the event of retirement, resignation, death or otherwise provided that if the post of Reader or Lecturer was itself an upgraded post which was further upgraded as that of Reader or University Professor, the same shall be converted into the Lecturer's post in the event of vacancy.

7. The upgraded post shall be deemed to be a substantive post till the promotee hold it but any temporary vacancy on the post on account of promotee being on leave or on foreign service or officiating in or holding another post on temporary basis shall be that of Lecturer or Reader (not being as upgraded post), as the case may be.

8. The Lecturer who is promoted as Reader or the Reader who is promoted as University Professor shall from the date of promotion draw his pay in the higher scale which shall be fixed under the relevant provision of the service statute of the University.

9. The interse seniority of the teachers will not be adversely affected by time bound promotion.

10. Appointment to the duly created post of Readers or University Professors as also promotion under the Merit Promotion Scheme for Readers shall continue to be made on the basis of the prescribed qualifications and in the manner prescribed in the Act and the Statutes."

Extract of Statutes 20 regarding Merit Promotion of Lecturers as Readers.--"1. Notwithstanding anything to the contrary as contained in the Statutes of the University, Lecturers in the University engaged in advanced teaching and research and whose contribution and achievements are such as to merit recognition; may be considered for merit promotion after completing at least

eight years of continuous service as Lecturer of which at least four years should be in the department where he/she is being considered for such assessment and promotion.

2. The basic objection of such promotion shall be:--

(i) to recognize outstanding work by the University teachers in the areas of teaching and research;

(ii) to subject such work to objective evaluation by experts in the subject/areas concerned; and

(iii) to provide for reasonable opportunities for professional advancement to such teachers, who merit academic recognition on a competitive basis.

3. The procedure for promotion under this Statutes shall be as follows:--

(a) Not more than one-third of the number of total permanent position of lecturers within a department may hold such merit promotion as Readers, provided that if in calculating the number of positions for purposes of merit promotion wherever more than point five (0.5) fraction arises, it will be rounded up as one (1.0) for giving such promotion:

Provided further that in case there is only one permanent position of lecturer in any department the case of the teacher holding that post may be considered for merit promotion if he fulfils all other conditions prescribed under these Statutes for such promotion.

Note.-- Permanent position of Lecturers in any department shall include the permanent posts of lecturers duly sanctioned and created plus the posts being held by promotee Lecturers in that Department.

(b) Such promotion shall be deemed to be personal promotion. The main criteria for such promotion would be the merit or work and not the seniority of teachers.

(c) The post of lecturer who is promoted as Reader shall be deemed to be upgraded with effect from the date of such promotion and shall remain upgraded as such till the incumbent continues to hold the post, but the same shall be converted to the post of lecturers in the event of the incumbent's appointment to a higher post or when the post fall vacant due to his/ her retirement, resignation, death or otherwise. Nothing in these Statutes shall construe to have created any vacancy on the post of Lecturer which has been upgraded as that of Reader.

(d) The upgraded post shall be deemed to be a substantive post till the promotee holds it but any temporary vacancy on the post on account of the promotee being on leave or on foreign service or officiating or holding any other post on temporary basis, shall be that of lecturer.

(f) The seniority of teachers promoted under these statutes shall be determined from the date of promotion, but the interse seniority of teachers promoted on the

same date shall be the same as they had on their lower post.

4. The promotion will depend on consideration and assessment of the work done by the teacher, such as research, publications, book's reviews, curriculum development, teaching aids, innovation in teaching methods, equipment developed etc. presented by the individual teachers which shall be referred to at least two referees in the subject/discipline concerned.

7. The entire papers submitted by the teacher concerned alongwith the reports made by the referees shall be referred to the Bihar State University (Constituent Colleges) Service Commission for its recommendation. The Commission shall give due consideration to the opinion of the referees. There shall be at least two outside experts to assist the Commission in making recommendation.

8. The appointment shall be made by the Syndicate in accordance with the recommendation of the said Commission: Provided that if in the opinion of both the referees, a lecturer fulfills the conditions prescribed under these Statutes and is fit to be promoted as Reader, the Syndicate may, on the recommendation of the Vice-Chancellor, pass orders for promotion of such Lecturer on a temporary basis till final decision is taken on the recommendation of the Bihar State University (Constituent Colleges) Service Commission, but in case the Commission does not recommend his case for promotion, temporary promotion given to him shall cease to be effective immediately:

Provided further that if the two referees do not agree, in such a case the papers of the candidate concerned shall be submitted to a third referee selected by the Vice-Chancellor out of the panel of experts prepared by the Inter-University Board under Article 5 above.

11. The University shall furnish to the University Grants Commission necessary particulars each year of the persons promoted under the scheme alongwith the reports of the referees, the recommendations of the Commission and the order of the Syndicate."

10. From perusal of the aforesaid provisions of the statute, as quoted above, it is evident that the criteria for promotion of the Lecturers of the aforesaid two sets are basically quite different notwithstanding the fact that the basic qualification for holding the post of Lecturer and Reader is common. However, for granting time bound promotion, primary criteria is the length of service whereas in the case of merit promotion, the criteria is merit plus requisite length of service.

11. From consideration of the relevant provisions indicated in the statute for merit promotion, it appears that the Lecturers promoted as Reader on the basis of the Time Bound Promotion Scheme and Lecturers promoted as Reader under the Merit Promotion Scheme form two different class.

12. Now, before adverting of the question of seniority amongst the aforesaid two categories of Lecturers promoted as Readers, it is necessary to examine the true meaning and import of the word promotion under Time Bound Promotion and its

effect in the service career of the concerned Teacher. In this connection, reference may be made to the decision of the Apex Court in the case of Dwijen Chandra Sarkar & Anr. vs. Union of India & Anr., reported in 1999(1) slr 39. Paragraph 11 of the said decision reads as under:--

"However, the position in regard to "time bound" promotions is different. Where there are a large number of employees in any department and where the employees are not likely to get their promotion in the near future because of their comparatively low-position in the seniority list, Government has found it necessary that, in order to remove frustration, the employees are to be given a higher grade in terms of emoluments-while retaining them in the same category. This is what is generally known as the time bound promotion. Such a time bound promotion does not affect the normal seniority of those higher up."

13. In the same context, the observation of the Apex Court in the case of Patna University & Ors. vs. Awadh Kishore Prasad Yadav & Ors., reported in 1994 Suppl. 2 SCC 250: 1994 (2) PLJR (SC). 11], wherein in Paragraph-7 of the aforesaid decision it is observed that "It is true that personal promotion under the Time Bound Promotion Scheme cannot be treated at par with promotion from a lower post to a higher post where not only seniority but even merit has to be examined by a duly constituted Committee or Commission".

14. The Hon"ble Supreme Court in the same paragraph also observed to the effect that the exercise for the purpose of giving time bound promotion to the Lecturers need not be on a par with the process adopted for giving regular promotion of the Lecturers.

15. Therefore considering the provisions of the Statutes read with the observations of the Apex Court, as referred to the above, it would appear that the promotees under the Time Bound Promotion Scheme do not get regular promotion as Reader, however entitled to receive higher grade of pay admissible to the Readers. As such, entitlement of their higher pay under the Time Bound Promotion Scheme would not make them Reader as if they have been regularly promoted in higher rank, which has altogether a different parameter for such promotion.

16. There is another important aspect of the matter worth considering, as would appear from the policy decision of the State Government in the Department of Higher Education, Govt. of Bihar, vide letter No. 15/M/218/8(HE) 1300 dated 20th of July, 2001 (Annexure-4). The said letter is issued by the Secretary to the Government and addressed to all the Universities of Bihar in connection with the implementation of the revised pay scale to the Teachers and other Officers of the University. Paragraph-14 of the said letter is worth noticing, and as such the extract of the same is being quoted herein below:--

17. Therefore, it is clear that the Lecturer on being granted Time Bound Promotion as Reader do not really gets regular promotion as Reader, whereas the Lecturer on being granted promotion under the Merit Promotion Scheme under

the aforesaid Statute gets a regular promotion as Reader, and therefore, the Lecturer promoted as reader under the Merit Promotion Scheme on becoming member of the cadre of the Readers, is naturally senior to the Lecturers who merely receives emoluments admissible to the Readers.

18. Now coming to the facts of the present case, which are not in dispute so far as the fact that the petitioner was granted promotion under the Merit Promotion Scheme in terms of the relevant Statute for such promotion, whereas the respondents were allowed time bound promotion, in my opinion, the petitioner stood senior to the respondents.

19. In view of the above discussions, the order passed by the respondent No. 2, as contained in Memo No. 1003 dated 27.4.2005 (Annexure-6) holding the respondent No. 5 as senior to the petitioner and setting aside the order dated 1.9.2004 (Annexure-2) appointing the petitioner as Incharge Principal of the respondent-College, is quashed. Consequently, the order contained in Memo No. 983(R) dated 30.5.2005 issued by the Registrar, J.P. University, respondent No. 3, as contained in annexure-8, appointing the respondent No. 8, a promotee under the Time Bound Promotion Scheme, as Incharge Principal, who despite service of notice did not choose to appear, is also quashed. The respondent-University is directed to take a fresh decision in accordance with law with regard to the appointment of Incharge Principal of the said College till regular appointment of the Principal is not made which is expected to be done and necessary process be initiated without delay preferably within a period of six months on receipt/production of the certified copy of the present order. The writ application is, accordingly, allowed. There shall be no order as to costs in the facts and circumstances of the case.