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**(2012) 05 PAT CK 0029**  
**In the Patna High Court**  
**Case No : CWJC No. 7412 of 2011**

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|------------------------------------|----|------------|
| Dr. Sachidanand Sharma, and Others | Vs | APPELLANT  |
| The Patna University, and Others   |    | RESPONDENT |

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**Date of Decision :** 11-05-2012

**Acts Referred:**

**Citation :** (2013) 1 PLJR 28

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

**Advocate :** Abhinav Srivastava, for the Appellant; Pushkar Narain Shahi, Sanjeet Kumar Singh for No. 4 to 6 and Dr. Kumar Amitesh Chandra, for Patna University, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ajay Kr. Tripathi, J.—There are three petitioners before this Court, who were appointed as Head of Department in their respective departments, on the basis of notifications issued by Patna University, contained in Annexures- 2, 3 and 4. The respective dates are 4.2.2010, 16.7.2008 and 28.5.2010 respectively, for the three petitioners. It is evident that these notifications came to be issued in light of the Statute brought into place on 25.6.2008, a copy of which is Annexure-1 to the writ application. Prior to the notification of the Statute the Head of Department was a kind of permanent jamindari and he continued to occupy the post so long as he did not superannuate or by some divine intervention or otherwise was dislodged from his place. There were a lot of resentments, it seems with such permanent arrangement, and therefore, Statute in terms of Annexure-1 came to be in place. The Statute brought in concept of rotation of headship with tenure of three years. How the rotational scheme was to be applied and who would come within the zone of consideration is evident from the notification itself, which is quoted hereinbelow for ready reference:--

Statute for the scheme of rotation of Headship in the Deptts. of Universities/ Colleges for the Universities of Bihar except Agrl. University and Nalanda Open

University:

1. Headship of the Deptt. be rotated only amongst the first four seniormost 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 the 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.

2. The private respondents were Head of Departments prior to the Statute. However, due to the change of the scheme and the Statute, the three petitioners became beneficiaries of the notifications in question. Their tenure, however, came to be cut short by subsequent notifications issued by the University, which are Annexures-5, 6 and 7. This decision to remove the petitioners as Head of Department has led to filing of the present writ application. And a serious challenge is thrown on the correctness and legality of the three notifications removing the petitioners from their post and appointing the private respondents on the basis of their so-called re-worked seniority due to intervention of judicial pronouncement made in some earlier litigations arising from an order passed in LPA No. 607 of 2006.

3. This Court can take judicial notice of the fact that the issue of seniority or re-working of seniority has not attained finality because there are more litigations already before the High Court and a final adjudication would be made as and when the issue is taken up. But as things stand today, what is required to be decided in this writ application is whether the University authorities were correct in cutting short the tenure of these petitioners and appointing the private respondents in their place because of the so-called order of LPA No. 607 of 2006.

4. There is no dispute that when these three petitioners were appointed on the post of Head of Department, they were picked up because of their eligibility and they came within the top four Professors and it was in this background that notifications in their favour were issued and the petitioners occupied the post as Head of Department. They have a fixed tenure of three years though it can be cut short on exceptional circumstance but that can only be done after due approval of the Chancellor.

5. It is the contention of the petitioners that no such approval is evident from any of the documents, which have been brought in opposition to the writ application and there are no indications as to why the three years tenure had to be cut short. It can only be inferred on the basis of the submissions and the contentions which have been made in this regard at the bar.

6. Since the Headship is no longer confined to the seniormost professor and it has become rotational, Court fails to understand the anxiety of the University authorities to oust the petitioners and prevent them from completing their tenure of three years as Head of Department. If subsequently certain changes have come about in terms of seniority, that would have taken into consideration when the next round of decision-making was required to be done but to rush with notifications curtailing the tenure of these petitioners because of certain orders passed by the Court, which have upset the seniority issue, is pre-empting the issue as there is no clear rule in operation to indicate that the seniormost person must get the opportunity to become the Head of Department again. They could have very well waited for their turn to come as they had already enjoyed the perks and prestige of being Head of Department before the concept of rotation of three years was brought into place in the year 2008.

7. The arrangement or appointment of these petitioners on the post of Head of Department was a decision emerging from the implementation of Annexure-1 and therefore, they were not required to be disturbed mid-way through their tenure and the decision to do so therefore will be termed not only to be arbitrary but in breach of the Statute of Headship contained in Annexure-1.

8. Learned Senior Counsel representing the private respondents submits that even his clients are entitled to a tenure of at least three years which they would have been got provided their appointments were made in terms of Annexure-1. What is being submitted on their behalf is a contingent kind of submission and same cannot be accepted for the reason that when the decision to appoint the petitioners on the post was taken after 2008, they were the only eligible candidates at that point of time within the zone of consideration and if something happened in between, that will not in any manner disqualify the petitioners from holding the post of Headships because the Headship has a fixed tenure in terms of the Statute and that should be honoured and respected.

9. The Court also records that if any appointment had been made in favour of the private respondents prior to the coming of the Statute on 25.6.2008, that will

have no effect on their right to continue or being reconsidered because if such an appointment is made and continued, that will change the very purpose and object of amending the Statute and fixing the time frame for such appointments by rotation.

10. In totality, therefore, the Court is of the opinion that the University was somehow misled or the University has rushed into undoing the arrangement already made in favour of the petitioners by issuing notifications contained in Annexures-5, 6 and 7, which was not required to be done. The three notifications therefore are hereby quashed.

11. However, it is clarified that so far as petitioner no. 2 Dr. Bhagwan Prasad Singh is concerned, he will not derive any benefit from the present order for the reason that he had more or less completed his tenure of almost three years, which was short by a couple of months. Even if he was allowed to continue, his tenure would have come to end way back in July, 2011. The University has freedom to appoint an eligible person in his place in terms of Annexure-1, the Statute.

12. So far as petitioners nos. 1 and 3 are concerned, they will be restored to their respective posts of Head of Department of the University forthwith. Writ application is allowed in terms of the above order.