
(2006) 08 PAT CK 0102
In the Patna High Court
Case No : CWJC No. 9939 of 2005

Prof. (Dr.) Nihar Nandan Pd. Singh	Vs	APPELLANT
The Chancellor of Universities and Others		RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Patna University Act, 1976 — Section 10(4), 35(3)

Citation : (2006) 3 PLJR 505

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Mihir Kumar Jha and Vinay Krishna Tripathy in 9939, S.N. Jha, Ray Shivaji Nath, Jayanandan Singh, Ray Saurabh Nath, Asim Jha and Binodanand Mishra, for the Appellant; Ram Balak Mahto, Shivendra Kishore for the Chancellor, M/s Ajay Kumar Sinha, Iqbal Ahmad for the P.U., M/s Mihir Kumar Jha and Vinay Krishna Tripathy (in 8001 and 8858), for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties. In all the writ applications notification vide memo No. G/792 dated 29.6.2005, issued by the Patna University, is substantially under challenge, whereby and whereunder pursuant to the orders of the Vice-Chancellor the date of promotion of the petitioners as Professors under Clause 1 (3) of the Time Bound Promotion Statute, has been changed and shifted to a later date. Ancillary prayer has also been made to quash the University notification No. G/ 174 dated 3.2.2005, whereby and whereunder all notifications of promotions issued earlier were cancelled without getting the cases of promotions examined and scrutinised by the screening committee as per direction of the Chancellor. Consequential prayers have also been made to restore the dates of promotion of the petitioners to their original dates duly notified after due concurrence of the Bihar State Universities (Constituent Colleges) Service Commission (hereinafter to be referred to as "Commission") and resolution of the syndicate.

2. In C.W.J.C. No. 8001 of 2005 petitioner Dr. (Smt.) Prabha Shukla and in C.W.J.C. No. 8858 of 2005 petitioner Dr. (Mrs.) Maya Sinha have also prayed for setting aside the orders of reversion by making respondent No. 5 in both the cases as seniors.

3. It appears from pleadings of the parties that the matter pertaining to seniority of the petitioners under the Time Bound Promotion Statutes (hereinafter to be referred to as "Statutes") was under scrutiny before the Chancellor pursuant to directions of this Court in Letters Patent Appeal of 2001.

4. The Chancellor took a decision in the matter vide order dated 14.1.2005, which is part of these writ applications, setting aside the notification dated 31.3.2000 of the Patna University granting promotion/ shifting back the date of promotion of Readers to the posts of University Professors in exercise of his power u/s 10(4) read with Section 35(3) of the Patna University Act, 1976 and directed the University to rescreen the eligibility/suitability/ fitness of Reader concerned for promotion as University Professors under Rule 1(3) of the Statutes. The decision of the Chancellor's office was communicated to the Patna University and also to the other Universities.

5. On receipt of the order passed by the Chancellor, the Patna University by way of a follow-up action cancelled the other notifications of promotion vide memo No. G/174 dated 3.2.2005 on the basis of the resolution of the syndicate dated 31.1.2005 and thereafter constituted a screening committee and pursuant to recommendation of the screening committee and the concurrence of the Commission, issued the impugned notification dated 29.6.2005.

6. Learned counsel for the petitioners challenged the impugned notifications by contending that the whole exercise done by the University in issuance of the impugned notification is wholly without jurisdiction, violative of the principles of Natural Justice and discriminatory. It is contended that firstly, the Chancellor's office cancelled the promotions granted to the petitioners under the Statutes without considering the relevant aspects of the matters and in view of Rule 9 of the Statutes it should not have shifted back the dates of promotion of the petitioners without affording them an opportunity of hearing. It is further contended that the University while taking up the follow-up action pursuant to the direction of the Chancellor's office in hot haste cancelled other notifications as well granting promotion and improperly constituted a screening committee, which also had not considered the respective cases of the petitioners in accordance with law and the requirement of the Statutes. It is further contended that action of the University while issuing impugned notification is arbitrary and discriminatory, inasmuch the cases of all such promotees were not scrutinised nor the same were cancelled whereas the cases of the petitioners alone were scrutinised and the promotion was cancelled shifting the date of promotion of the petitioners by the University, which entail adverse civil consequences.

7. Mr. Ram Balak Mahto, learned counsel appearing for the Chancellor, contended

that these writ applications are not maintainable, as the order of the Chancellor as a sequel to which follow-up actions were taken by the University, has not been challenged and in view of ratio laid down in case of Government of Maharashtra and Ors. vs. Deokar's Distillery [(2003)5 Supreme Court Cases 669] these writ applications are liable to be dismissed.

8. Counsel for the respondent University submitted that the office of the Chancellor took the decision cancelling the promotion of the petitioners as per direction issued by this Court and since the matter was mechanically considered on earlier occasion not properly taking into consideration the registration of the students for Ph.D., works under the respective teachers, the University authorities passed the impugned notification in consultation with the syndicate and with concurrence of the Commission, and, therefore, the writ applications are liable to be dismissed.

9. Dr. Sada Nand Jha, learned counsel for petitioner Dr. (Smt.) Prabha Shukla in C.W.J.C. No. 8001 of 2005, submitted that the petitioner in all respects was senior to respondent No. 5 and in this regard this Court had already held her senior in C.W.J.C. No. 281 of 2003, reported in 2003(3) Patna Law Journal Reports 735, and, therefore, the order passed by this Court determining her seniority could have been maintained and in no case, she could have been declared junior to respondent No. 5.

10. So far petitioner Dr. (Mrs.) Maya Sinha in C.W.J.C. No. 8858 of 2005 is concerned, she was also senior to respondent No. 5 and the University authorities without giving an opportunity of hearing to her took the decision in a most arbitrary and mechanical manner, which must be held to be wholly without jurisdiction.

11. It appears that the Chancellor vide order dated 14.1.2005 while cancelling the promotion of the petitioners as Professors remanded the matter to the University for reconsideration. The University thereafter was required to constitute a screening committee for proper scrutiny of the same. There is nothing on record to show that the screening committee scrutinised the respective cases of the parties after due notice to them nor it is evident from the counter affidavit of the University that the petitioners had suo motu appeared before the screening committee and had placed their cases pertaining to their seniority. The law requires that the screening committee must give reasons and its recommendation for promotion must be speaking one, so that the University may come to a conclusion as to the seniority of the teachers. In this connection, reference may be made to the case of State of Bihar and Ors. vs. Braj Kumar Mishra and Ors. reported in 1999(3) Patna Law Journal Reports (Supreme Court) 197.

12. In the writ petition, it is stated that the screening committee was not constituted properly in accordance with the guidelines, issued by the Apex Court in the case of Patna University and Ors. vs. Awadh Kishore Prasad Yadav [1994

(Supplementary Vol. 2) Supreme Court Cases 250][: 1994(2) PLJR (SC)11].The University, however, has not given satisfactory explanation in its counter affidavit as to the proper constitution of the screening committee nor its minutes were placed before this Court. It is also not mentioned in the counter affidavit of the University that sufficient opportunities were given to the petitioners to place their cases pertaining to their seniority.

13. For the reasons aforementioned, therefore, it appears that the University issued the impugned notification in hot haste and in violation of the principles of Natural Justice and the University Statutes. The action of respondent University authorities in cancelling other notification granting promotion to the posts of Professors under the Statutes also appears to be wholly without jurisdiction, as it had no material nor there was report of the screening committee to cancel other notification.

14. Mr. Mihir Kumar Jha, learned counsel appearing for respondent No. 5 in C.W.J.C. Nos. 8001 of 2005 and 8858 of 2005, contended that the decision rendered by a learned single Judge of this Court, as reported in 2003(3) Patna Law Journal Reports 735, whereby and whereunder the petitioner [Dr. (Smt.) Prabha Shukla] was held to be senior, is under challenge in Letters Patent Appeal before this Court.

15. So far the objection raised by Mr. Ram Balak Mahto, learned counsel for the Chancellor, is concerned, it appears that though the order of the Chancellor has not been challenged specifically, but reference of the same has been made in all the writ applications and the order passed by the office of the Chancellor has also been brought on record, and, therefore, it will be assumed that the order passed by the Chancellor is also under challenge indirectly and at the same time, the petitioners can mouled prayers even though the specific challenge may not be there with regard to particular order.

16. In this view of the matter, these writ applications are maintainable. For the reasons and discussions aforementioned, these writ applications are allowed, orders impugned in all these writ applications are set aside and the matters are remitted to the respondent University to reconsider the cases of the petitioners in tight of the recommendation of the properly constituted screening committee in accordance with the provisions of the Statutes, as referred to above, and after giving opportunity of hearing to the respective parties.