
(2015) 01 PAT CK 0159

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15667 of 2010

Prof.(Dr.) Sitaram Sharma

APPELLANT

Vs

T.M. Bhagalpur University, Bhagalpur

RESPONDENT

Date of Decision : 19-01-2015

Acts Referred:

Citation : (2015) 2 BBCJ 527

Hon'ble Judges : Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Mr. Binodanand Mishra, Advocate, for the Petitioner; Mr. Rajendra Kumar Giri, Advocate, for the University

Final Decision : Allowed

Judgement

Kishore Kumar Mandal, J. (Oral) - Present writ application under Article 226 of the Constitution of the India has been filed for issuance of appropriate writ in the nature of certiorari quashing the order dated 03.08.2010 passed by the respondent-Vice Chancellor whereunder promotion of the petitioner to the post of Reader under 10 years time bound promotion Scheme vide notification no. 70/97 has been cancelled and his further promotion to the post of University Professor under 16 years time bound promotion scheme by notification no. 179/99 was also cancelled. By the same order the respondent cancelled the promotion granted to the petitioner to the post of Reader under 8 years merit promotion scheme vide notification no. 139 of 2001. The petitioner has also prayed for writ of mandamus commanding the respondents to give effect to the previous orders by which he was granted time bound as well as merit promotion(s).

2. Petitioner was initially appointed as Lecturer of Commerce in Bhagalpur Evening College now known as Bhagalpur National College, Bhagalpur. His salary was fixed by the Principal w.e.f. 03.01.1978 which he claims to have drawn thereafter. An advertisement in the daily newspaper was published for the appointment of Lecturer in different subjects including Commerce. Petitioner along with others claimed to have applied thereagainst. On the recommendation

of the selection committee the petitioner was appointed on the fourth post of Lecturer in the Department of Commerce in the College in-question vide Annexure-2. Three post of Lecturer was sanctioned in the Department of Commerce. The University is said to have made a recommendation for sanction of two additional posts of Lecturer vide Annexure-4. The service of the petitioner was regularized by the governing body of the College from the date of his first joining i.e. 03.01.1976 vide Annexure-3. The College in-question was made constituent College of Bhagalpur University on 05.04.1982. The absorption committee recommended the name of the petitioner for absorption. The Chancellor approved the recommendation of the absorption committee with condition that their absorption will be effective from the date posts held by them were sanctioned by the Government. The aforesaid order has been enclosed as Annexure-6. The University issued the notification of absorption effective from the date(s) post(s) were sanctioned by the State Government. The order passed in this regard has been enclosed as Annexure-7. Subsequently, the petitioner was transferred and posted on the sanctioned /vacant post of Lecturer, Department of Commerce in the Marwari College, Bhagalpur. The grievance of the petitioner and similarly situated other teachers was highlighted by the association of the Teachers before the Government. Five men committee constituted by the Government to resolve the said grievance of the Teachers. The five men committee recommended that Teachers absorbed against the post yet to be sanctioned by the State Government may be adjusted against the vacant and sanctioned post already available. In case vacant posts are not available new posts should be created for their accommodation. The recommendation of the five men committee has been enclosed as Annexure-9. The petitioner was permanently absorbed as a Lecturer in the Department of Commerce in Marwari College, Bhagalpur vide notification dated 02.02.1990 (Annexure-10). Further the case of the petitioner is that on the basis of the report of the screening committee and the recommendation of the Bihar State University (constituent College) Service Commission (for short "the Commission") the petitioner was granted time bound promotion to the post of Reader w.e.f. 02.02.1990. He made a grievance that he ought to have been granted such time bound promotion to the post of Reader w.e.f. 03.01.1986. The said grievance of the petitioner was forwarded by the University to the Commission with a request to take appropriate decision thereon. The Commission on examination recommended to modify the date of time bound promotion of the petitioner to the post of Reader w.e.f. 03.01.1988. This was presumably due to the fact that he was granted a pay scale of the post in the year 1978. The said recommendation of the Commission dated 23.06.1997 is enclosed as Annexure-11. When the case of the petitioner matured for grant of further time bound promotion, the same was placed before and considered by the screening committee constituted by the University which recommended the petitioner for grant of the time bound promotion under 16 years time bound promotion scheme to the post of University Professor vide communication dated 21.9.1999 (Annexure-15). In view of the recommendation of the screening committee, the Vice Chancellor in

anticipation of the approval of the syndicate granted promotion to the petitioner to the post of University Professor under 16 years time bound promotion scheme w.e.f. 03.01.1994 vide order contained in Annexure-16. The syndicate granted approval to such promotion to the petitioner to the post of University Professor under the said scheme on 14.03.2000 vide Annexure-17. With the concurrence of the Commission, the petitioner was subsequently granted merit promotion on 25.08.2001 to the post of Reader w.e.f. 22.12.1986 (Annexure-14). The promotion granted to the petitioner was stayed by the Registrar of the University under the orders of the Vice Chancellor vide order dated 05.09.2001 (Annexure-18). The petitioner challenged the aforesaid order in C.W.J.C. No. 12693 of 2001 filed before this Court. Vide order dated 17.10.2001 this Court stayed the operation of the aforesaid order. The writ application was subsequently disposed of directing the respondents to take a final decision within a time frame. While disposing of the application it was observed that till the final decision is taken by the University the stay granted in favour of the petitioner would continue. The order by which the writ application was disposed of has been enclosed as Annexure-19. The respondent University passed the orders and cancelled all the time bound and merit promotion(s) granted to the petitioner vide order dated 03.08.2010 (Annexure-21) which has been impugned in the present writ petition. By the said order the University also directed for recovery from the salary of March and April, 2010 although the order was passed on 3.8.2010. The petitioner claims to have demitted the office of the University Professor on attaining the age of superannuation w.e.f. 30.09.2014.

3. I have heard Mr. Binodanand Mishra learned counsel for the petitioner and Mr. Giri for the respondents.

4. While assailing the impugned order (Annexure-21) it has been submitted that the main reasons for passing of the said order is that the case of the petitioner while altering his grant of first time bound promotion was not considered by the screening committee. The another reason for passing the impugned order is wholly unsustainable in law in view of law laid down in the case of *Ran Bijay Narayan Sinha v. Lalit Narain Mithila University and Ors.* (C.W.J.C. No. 7172 of 2007) wherein this Court has held that if an incumbent in course of service is entitled to be considered for promotion under more than one scheme or policy, the employer cannot deny such benefit on the ground that it had chosen to consider him/her under one policy. To be very specific, the petitioner by virtue of being a teaching personnel of the University was entitled for being considered for promotion under the merit promotion statute as also under Time Bound Statute. The contention of the petitioner is that this Court in the said writ application specifically directed for grant of promotion on the post of Reader under merit promotion statute. It is further argued that true it is that his case for alteration in the grant of time bound promotion from 1990 to 1988 was not considered and recommended by the screening committee but the University on receipt of the claim of the petitioner on their own directly sent the same to the Commission for considering the matter and grant of approval/sanction. The mistake, if any,

therefore lay on the part of the University for which the petitioner cannot be penalized. Secondly, while granting second time bound promotion under 16 years time bound promotion scheme the case of the petitioner was placed before and considered by the screening committee whereafter the same was approved/ granted finding no such flaw in the alteration of the date. The University cannot take any benefits of its own default. It is not the case of the respondents that the Commission did not grant approval for altering the date of grant of first time bound promotion under 10 years time bound promotion scheme from 1990 to 1988. The order, therefore, merits to be interfered with and quashed particularly when the petitioner has already superannuated from service and no order for recovery, in the facts and circumstances of the case, can be ordered when admittedly no fraud or misrepresentation was played by him.

5. Mr. Giri counsel for the University has taken a stand before this Court that it is true that the University directed for absorption of the temporary Lecturer in regular service like the petitioner vide order dated 21.03.1983 (Annexure-6) but such absorption was granted on the condition that the approval of absorption of the Teachers like the petitioners in regular service under Clause -4(C) of 24 months statutes would be effective from the date the post held by them are/ were sanctioned by the State Government. The five men committee constituted by the Government to consider various demands of the association of Teachers in its report also observed that Teachers absorbed against the proposed post in 1980 on orders of the Chancellor may be adjusted against the vacant post already available and new post should be created for their accommodation in case vacant post are not available. On the basis of the aforesaid, it has been contended inter alia that such absorption against the sanctioned post was not in respect of the Teachers who were absorbed in the service of the University vide Annexure-6 which was passed on 21st March, 1983. I am unable to appreciate the said stand of the University. Firstly, the aforesaid reason has not been spelt out in the order impugned. The order mainly sets out two reasons for withdrawing the promotion orders earlier granted in favour of the petitioners. The first one is that the petitioner having been considered under the time bound promotion policy could not have been considered under the merit scheme of the Government. Secondly, it states that while altering the date of grant of first time bound promotion under 10 years time bound promotion scheme from 1990 to 1988 the case of the petitioners was not placed before and considered by the screening committee. I have already noticed hereinabove that there is no denial that while granting the promotion under 16 years time bound promotion scheme the case of the petitioner was duly placed before and considered by the screening committee wherein no such defect was found inasmuch as the case of the petitioner was recommended for grant thereof. It is further to be noted here that in altering the date of the first time bound promotion from 1990 to 1988 the case of the petitioner was forwarded by the University to the Commission for concurrence and approval. It was at the instance of the University that the matter was considered by the Commission and approval was granted for such

modification in the date of the grant of time bound promotion. The facts noticed above, persuade me to hold that the said reason for passing the impugned order is wholly unsustainable in law. The second ground/reason for passing the impugned order, as noticed above, is contrary to the policy decision of the Government as discussed and clarified in the case of *Ran Bijay Narayan Sinha* (supra). It is settled beyond cavil that the respondents cannot be permitted to supplement the reasons by affidavit. Reliance in this regard be made to the case of *Dipak Barbaria and Anr. v. State of Gujarat and Ors.* [(2014)3 SCC 502], when the Apex Court relying on the celebrated judgment passed in the case of *Commr. of Police v. Gordhandas Bhanji* [AIR 1952 SC 16] held as under in para 64:-

"64. That apart, it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in *Commr. of Police v. Gordhandas Bhanji* in the following words: (AIR p. 18, para 9)

"9. ?public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

This proposition has been quoted with approval in para 8 by a Constitution Bench in *Mohinder Singh Gill v. Chief Election Commr.* wherein Krishna Iyer, J. has stated as follows: (SCC p. 417)

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, as order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

6. There is another aspect to be borne in mind. The orders were passed by the University while the petitioner was in service. Now the petitioner has retired from service. The impugned order directs recovery of the amount which is said to have been paid in excess to the petitioner on account of grant of such benefit(s) by the University. There is no allegation even going by the pleading made in the counter affidavit that any misrepresentation or fraud was committed by the petitioner. If that is not the case then the order directing recovery from the salary of the petitioner would be wholly uncalled for.

7. Taking into account the facts, noticed hereinabove, this Court is satisfied that the writ application merits to be allowed. It is, accordingly, allowed. The order

contained in Annexure-21 passed by the University is quashed and set aside.

8. There shall be no order as to cost(s).