
(2016) 11 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10511 of 2016

Ram Tawakya Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 PLJR 387

Hon'ble Judges : Hemant Gupta, ACJ. and Mr. Vikash Jain, J.

Bench : Division Bench

Advocate : Mr. Ajay Thakur, Mr. Abhishek, Mr. Ajeet Kumar, Advocates, for the Petitioner; Mr. Rajendra Kumar Giri, Advocate, for the Chancellor; Mr. P.K. Verma, Sr. Advocate and Mr. Rajnish Prasad Chaudhary, Advocate, for the University; Mr. Lalit Kishore, PAAG-1, f

Final Decision : Dismissed

Judgement

Hemant Gupta, ACJ. (Oral)—The present writ application has been filed in public interest challenging the appointment of Respondent No.7 as Pro Vice Chancellor of Veer Kunwar Singh University, Ara vide notification dated 30.01.2014.

2. The sole ground of the challenge is that the respondent No.7 was not possessing requisite experience of 10 years as Professor, therefore, he could not have been appointed as Pro Vice Chancellor in terms of Section 10 of Bihar State Universities Act, 1976.

3. Learned counsel for the petitioner has referred to an application form submitted by Respondent No.7, wherein he has given the following teaching experience:-

Sl. No.

Institution

Level

Period

1

University Dept. of Botany, T.M. Bhagalpur University, Bhagalpur-7

Lecturer

30.03.78 to 21.12.86

2

University Dept. of Botany, T.M. Bhagalpur University, Bhagalpur-7

Reader

22.12.86 to 29.03.94

3

Central Michigan University, U.S.A.

Visiting Research Professor

20.08.87 to 19.08.88

4

University Dept. of Botany, T.M. Bhagalpur University, Bhagalpur-7

Professor

30.03.94 to cont...

4. The petitioner has attached Annexure-5, an order of absorption of the said respondent against the post of lecturer with effect from 01.01.1981. The order at Annexure-6 is an order of promotion as Reader with effect from 01.01.1989. Still further, the petitioner has referred to order at bona fide dated 08.09.1997 whereby the said respondent is said to have been promoted with effect from 30.03.1994 under 16 years Time Bound Promotion Scheme. 30.03.1994 is the date given in the application form by the said respondent. The contention of the petitioner is that the said order stands nullified when Chancellor passed an order on 12.07.2010 (Annexure-8).

5. At this stage, learned counsel for the respondent points out that Annexure-8 has recalled the notifications granting Time Bound Promotion vide notification Nos. 68, 69, 70 and 71/2010 dated 26.06.2010 and notifications Nos. 74, 75, 76, 77, 78, 79 and 80/2010 dated 10.07.2010. Such notifications were restored by the Vice-chancellor on 08.03.2016 (Annexure-C to the counter affidavit filed on behalf of Respondent no. 2 & 3). Earlier there was ad-interim stay by the Vice-chancellor on 13.09.2010 (Annexure-E to the supplementary counter affidavit filed on behalf of the Chancellor).

6. The argument of the learned counsel for the petitioner is that the Respondent No.7 would be eligible for promotion as professor only after completion of 8 years of Readership in the year 1997. Thus, he was ineligible for appointment as professor in the year 2013. Still further, he has not been promoted substantially as professor whereas, the promotion under time bound promotion scheme stands cancelled at one point of time, but subsequently stands restored.

7. It is contended that even if he is assumed to have been promoted in the year 1997 i.e the date of eligibility for promotion, the respondent no. 7 has not completed 10 years as professor, which alone would make him eligible for appointment.

8. We find that the present writ application is gross abuse of process of law based upon misleading and incorrect facts. The promotion of respondent no.7 as professor, either from 30.03.1994 or from 22.12.1994, has not been disputed by any person who may be aggrieved against such promotion which was granted on 08.09.1997 or 14.02.2002 respectively.

9. The petitioner has sought to challenge the promotion granted to respondent no.7 under time bound promotion in a collateral proceedings. The petitioner as a third person has no right to dispute promotion granted to respondent no.7 when he is not competing with him. The promotion was granted years back either in the year 1997 or in the year 2002. The petitioner has sought to dispute the promotion in the present petition, after, the respondent No. 7 was appointed as Pro Vice-chancellor. Any challenge to the promotion could be made by the person aggrieved. The petitioner is not in line of promotion. Neither the petitioner nor any other person disputed the promotion of respondent no.7 for more than 10 years.

10. Therefore, in collateral proceedings in which appointment of respondent no.7 as Pro Vice-chancellor is the subject matter of challenge, the petitioner cannot be permitted to dispute the promotion of the said respondent.

11. Still further, reliance of the petitioner was on Annexure-8 whereby, the time bound promotion granted to certain members of the teaching faculty was withdrawn. The fact is that such order was stayed by the Vice-chancellor on 13.09.2010 and later withdrawn on 08.03.2016. Therefore, reliance of the petitioner at Annexure-8 is to mislead this Court.

12. The respondent no.7 has been discharging duties of the professor since 1994, may be 30.03.1994 or 22.12.1994, but has been appointed Pro Vice-chancellor in the year 2013 i.e. almost 19 years later. Thus, by no stretch of imagination, he cannot be said to be not possessed of requisite experience. The petitioner could not point out that there is any distinction in a promotion granted under the Time Bound Promotion Scheme or the regular promotion. The Act and the Advertisement do not exclude the experience of a professor promoted under the Time Bound Promotion Scheme. The argument, that the respondent No. 7 would have experience of 9 years from 1997 till his appointment in the year

2014 is simply calculation mistake. In fact, he would have experience of 16 years in the year 2013, even on the basis of the argument of the petitioner, when the applications were invited.

13. We find that the invocation of writ jurisdiction of this Court lacks bona fide and is based upon incorrect and misleading facts. Consequently, we dismiss the present writ application filed in public interest with cost of Rs. 50,000/-. Such costs be deposited with Patna High Court Legal Services Committee within one month.