

(2010) 09 PAT CK 0125

In the Patna High Court

Case No : CWJC No's. 2015 and 2260 of 2007

Reeta Sinha and Dr. Shailendra Narayan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Bihar State Universities Act, 1976 — Section 4(14)

Citation : (2011) 1 PLJR 180

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Judgement

Mihir Kr. Jha, J.—Heard learned Counsel for the Petitioners and the learned Counsel for the Respondent Tilka Manjhi Bhagalpur University (hereinafter referred to as "the University") as also the State of Bihar.

2. In both the writ applications the two Petitioners, the lecturers working in T.N.B. Law College, Bhagalpur, have sought a direction for grant of promotion on the post of Reader either under the merit promotion scheme or under time bound promotion scheme and to that extent the common prayer in the two writ applications reads as follows:

(a) For issuance of a writ of mandamus directing the Respondents to pass an order of promotion of the Petitioner from Lecturer to the post of Reader being the merit based and time bound promotion to which the Petitioner is entitled since June 1993 and June 1995 in view of the notification No. 31 of 2005 dated 17.2.2005 issued by the Respondent University in light- of the judgment dated 12.10.2004 passed by the Hon'ble Supreme Court in Civil Appeal No. 6098 of 1997.

(b) For issuance of a writ of mandamus directing the Respondents to release the entire arrears of salary and other emoluments that fell due pursuant to promotion of the Petitioner to the post of reader in the Respondent University since the year 1993 and 1995.

3. Mr. Gautam Kejriwal, learned Counsel for the Petitioners, at the outset would submit that T.N.B. Law College (hereinafter referred to as "the College") is one of the 36 Constituent College which were taken over in the 4th phase in the year 1986 and finality with regard to the absorption of the services of the teaching/non-teaching employees in these 36 colleges had arrived only after submission of Justice S.C. Agrawal Committee report in the year 2003 and its acceptance in the judgment of the Apex Court in Civil Appeal No. 6098/1997 disposed of on 12.10.2004. He has also submitted that thereafter the University has in fact granted time bound promotion to the similarly situated Lecturers of the College of the Petitioners by a notification dated 21.5.2009 but the cases of the Petitioners have not been considered as yet. In this regard he has also highlighted the aspect that both the Petitioners were qualified and eligible to get promotion on the post of Reader either under the merit promotion scheme or under the time bound promotion scheme but despite their applications filed for this purpose no decision has been taken by the University till date. He would, accordingly, submit that a direction should be given to the University to also notify the promotion of the Petitioners on the post of Reader alike their counterparts who were given such promotion with retrospective effect by the notification dated 21.5.2009.

4. In this case no counter affidavit, despite lapse of more than three and half years time, has been filed but Mr. Ashok Kumar Keshri, learned Counsel for the University, on the basis of the averments made in the writ application and the supplementary affidavit has made his submissions to the following effect:

(i) The Petitioners have stated in paragraph 16 that their promotion under the merit promotion scheme became due in June, 1993 and time bound promotion in June, 1995 but they have moved this Court after delay of nearly 12 years by filing the present writ applications on 14.2.2007 and 20.2.2007 respectively.

(ii) The University was in a helpless situation and could not have considered the cases of merit/time bound promotion of any of teaching employees of the College, being one of 36 constituent colleges till the year 2008 because of pendency of the matter before Justice S.C. Agrawal Commission and the order of the Apex Court as also the resultant litigations flowing out of the judgment of the Apex Court dated 12.10.2004 in Civil Appeal No. 6098/ 1997.

(iii) The Petitioners are not entitled for a writ of mandamus for their promotion on the post of Reader as they had filed no representation to the competent authority of the University and, therefore, having failed to make a demand in respect of their legal right would be disentitled for the relief sought for in this writ application and to that extent he also relies on an order of this Court dated 2.2.2009 in C.W.J.C. No. 1591/ 2009.

5. In the opinion of this Court the first two submissions of the learned Counsel for the University are self contradictory and thus fit to be altogether rejected. If the delay of the University on account of pendency of the matter before Justice

S.C. Agrawal Commission and/or before the Apex Court was a factor on which the University had found itself unable to decide the time bound promotion of the Petitioners and other teachers of the College, being one of the 36 Constituent Colleges taken over in the year 1986 it has no face to now accuse the Petitioners of delay in moving this Court for a writ of mandamus for consideration of their promotion on the post of Reader. As a matter of fact after the Colleges were taken over in the year 1986 pursuant to the decision of the State Government dated 16.8.1986 it took almost 20 years for the State Government and the University to finalize the status of these teachers and eventually it was only after submission of Justice S.C. Agrawal Committee report that those teachers who were found fit to be absorbed were directed to be taken in the University service in terms of Section 4(14) of the Bihar State Universities Act in the light of the direction given by the Apex Court in its order dated 12.10.2004 in Civil Appeal No. 6098/1997. Thus the plea of delay raised by the learned Counsel for the Petitioner (sic-Respondents ?) cannot be accepted for dismissing this writ application.

6. Additionally this Court must hold that the Petitioners, therefore, are absolutely correct in stating that they had continuously made demand for grant of their promotion and if the University without filing the counter affidavit would like to take a plea of denying such filing of the representation it has to only thank its own stars. The law of pleading will not be changed only because the University will not file its counter affidavit despite the fact that these writ applications came to be filed on 14.2.2007 and 20.2.2007 respectively i.e. more than 31/2 years earlier.

7. This Court also must note the submission of Mr. Keshri that since these writ applications are listed for the first time today the matter should have been adjourned by this Court for filing of the counter affidavit. In this respect it has to be noted that no such prayer was made for adjournment of the case and in fact Mr. Keshari had proceeded to make his submissions on the basis of averments made in the writ application and the supplementary affidavit. There is also nothing in Patna High Court Rules which requires this Court to adjourn the cases automatically even when it is taken up after more than three and half years of its filing. If the Respondents do not choose to file a counter affidavit even when two copies of the writ applications are being served on them at the time of filing of the writ applications, this Court cannot wait endlessly for filing of the counter affidavit as and when the Respondent University would be pleased to file its such counter affidavit.

8. Coming to the issue of Petitioners not filing representation this Court must hold that in absence of counter affidavit the oral submission of Mr. Keshri cannot be accepted, inasmuch as there is clear averment of the Petitioners that they had filed their applications for promotion to the Respondent University but the University had sat tight over the matter. In absence of any denial of the said submission by any counter affidavit this Court must accept that these

applications were nothing else but the representations seeking promotion of the Petitioners and they were never disposed of.

9. In that view of the matter this Court would not be in a position to accept the submission of Mr. Keshri with regard to applicability of the order passed by this Court in the case of Dr. Sudhanshu Kumar Pandey (*supra*), inasmuch as there a finding was recorded that the Petitioners did not approach the concerned authority for redressal of their grievance relating to their promotion before filing their writ petition. Here in the present case the concerned authority is none else but the University which has to notify the time bound promotion/merit promotion and the Petitioners in paragraph 16 of the writ applications have clearly asserted to have moved to the concerned authority of the University by filing the application. In that view of the matter, the order of this Court dated 2.2.2009 in C.W.J.C. No. 1591/2009 cannot stand in the way of the Petitioners in getting the relief as prayed for in this writ application.

10. The submission of Mr. Keshri that since the Petitioners have not filed a representation earlier or did not move the authority, therefore, their cases were not considered and the order of time bound promotion was issued only in respect of such persons who had moved this Court is to be again noted by this Court with a sense of frustration. Has the University made policy of litigating each and every employee? Does the University want that for everything due its employee should approach this Court and/or should litigate the matter in this Court. The University is a part of the State and therefore being a model employer it has duty to consider the applicability of time bound promotion or any other beneficial provision as per Statutes without even stating a claim by the employee concerned.

11. A decision for time bound promotion or merit promotion has to be taken by the University and the same does not require the eligible incumbent to press for such promotion. On the other hand, it is the duty of the University to consider such cases of eligible teachers for their promotion as and when it becomes due to them. There is no requirement under law or otherwise nor there is any settled practice that a promotion can be given only when a person entitled for such promotion would approach a Court of law. The employer has to give promotion on its own and even without even approaching Courts for this purpose. In that view of the matter, this Court would not be in a position to accept the submission that the Petitioners' case of promotion could not have notified as they had not moved this Court earlier.

12. Considering all these aspects this Court would direct the Respondent University and its Vice Chancellor to consider the cases of time bound promotion/merit promotion of the Petitioners within a period of three months from the date of receipt/production of a copy of this order and pass an appropriate order in accordance with law.

13. With the aforementioned observation and directions, both the writ

applications are disposed of.