

(2012) 07 JH CK 0129
In the Jharkhand High Court
Case No : Writ Petition (S) No. 16 of 2005

Shailja Singh

APPELLANT

Vs

Ranchi University, Ranchi and Dr. Tulsi Modi

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Citation : (2012) 4 JCR 289

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : M.S. Anwar, Afaq Ahmad and Shadab Bin Haque, for the Appellant; A.K. Mehta, Advocate, for the University, M/s S.L. Baranwal, V.K. Prasad and Shiv Kumar, Advocates, for the Respondent

Judgement

Alok Singh

1. Present petition was initially filed by Dr. Indra Pratap Singh seeking writ of Mandamus to promote the petitioner on the post of University Professor under the eight years merit-promotion scheme, as per the recommendation made by the University Service Commission dated 10.11.2001 (Annexure- 4 to the writ petition). During the pendency of the writ petition, original petitioner had expired and his wife was permitted to be substituted as petitioner vide order 30.03.2009 and respondent no. 3 was permitted to be impleaded as Respondent, on the ground that his promotion on the post of Professor is under challenge saying it was against the recommendation made by the University Service Commission.

2. Brief undisputed facts of the present case are as under:-

Original petitioner was appointed as Lecturer on 16.08.1977. Petitioner was promoted on the post of Reader with effect from 16.08.1987, under the statute for time bound promotion of Lecturer to the post of Reader dated 24.12.1986, on completion of 10 years service, on the recommendation of University Service Commission.

3. Undisputedly, Respondent No. 3 was appointed as Lecturer on 05.11.1979 and was promoted to the post of Reader with effect from 27.11.1987 under the statute regarding merit promotion.

4. Undisputedly, Bihar State University Service Commission, vide letter dated 10.11.2001 (Annexure- 4 to the writ petition), has made recommendation for the promotion of Readers to the post of University Professors under the merit-promotion scheme. In the recommendation letter dated 10.11.2001, petitioner's name is mentioned at serial no. 1, while name of the Respondent No. 3 is mentioned at serial no. 2. Petitioner was not granted promotion to the post of University Professor, ignoring the recommendation dated 10.11.2001 and Respondent No. 3 was given promotion to the post of University Professor vide order dated 13.05.2004 with effect from 27.11.1995.

5. Respondent-University as well as Respondent No. 3 have taken stand that since petitioner was promoted to the post of Reader under the time bound promotion scheme, while Respondent No. 3 was promoted to the post of Reader under the merit-promotion scheme, therefore, on the post of Professor, name of Respondent No. 3 was rightly recommended by the Commission under the merit-promotion scheme; University Service Commission had wrongly recommended name of the petitioner under merit-promotion scheme; Alternatively, since the petitioner was promoted as Reader under the time bound scheme, therefore, his name should be deemed to have been recommended under the time bound promotion scheme.

6. I have heard learned counsel for the parties and perused the record.

7. There is no dispute that Bihar University Service Commission vide letter dated 10.11.2001, has recommended the names of candidates including the petitioner and Respondent No. 3 to be promoted to the post of Professor under the merit-promotion scheme.

8. On being asked repeatedly, learned counsel appearing for the Respondent No. 3 and University could not point out any material to say that petitioner's name was considered and recommended by the University Service Commission under the time bound promotion scheme only. In the absence of any other material contrary to the recommendation dated 10.11.2001, it can safely be said that University Service Commission has made recommendation under the merit-promotion scheme. Not only this, letter dated 30.11.1999 (Annexure- 3 to the writ petition) would reveal that Principal of the Marwari College, Ranchi has recommended the name of the petitioner to be considered for the post of Professor under the merit-promotion scheme.

9. Now, the question arises is- As to whether University can ignore the recommendation made by the University Service Commission saying that petitioner was not eligible to be considered under the merit-promotion scheme, since he was not promoted to the post of Reader under the merit-promotion scheme and was promoted to the post of Reader only under the time bound

promotion scheme?

10. On being asked repeatedly, learned counsel appearing either for the Respondent No. 3 or appearing for the University could not point out any Rules, Regulations, circular or notification to the effect that recommendation made by the University Service Commission can be ignored by the University.

11. Learned counsel appearing for the respondents could not show any provision to say that only those Readers would be recommended for promotion to the post of Professors under the merit-promotion scheme, who were promoted to the post of Reader under the merit-promotion scheme. There seems to be no bar to the effect that a Reader promoted under the time bound promotion scheme, shall not be given promotion to the post of Professor under merit-promotion scheme, even if, he is otherwise qualified for the same.

12. Learned counsel appearing for the University has vehemently argued that recommendation dated 10.11.2001 made by the University Service Commission does not say that name figures at serial no. 1 shall be given priority. Therefore, it was well in the discretion of the University to grant promotion to either of the recommendees. University, at its wisdom, considering that Respondent No. 3 was earlier promoted as Reader under merit-promotion scheme, has given priority to the Respondent No. 3 by giving him promotion on the post of Professor under merit-promotion scheme.

13. Undisputedly, petitioner was promoted to the post of Reader with effect from 16.08.1987 while Respondent No. 3 was promoted to the post of Reader with effect from 27.11.1987, after the petitioner, therefore, petitioner was senior to the Respondent No. 3 on the post of Reader. Therefore, it seems that while considering the eligibility for promotion under the merit scheme, experience of working as Reader was also considered and, therefore, name of the petitioner was placed at serial no. 1 for the promotion to the post of Professor.

14. Recommendation dated 10.11.2001 nowhere suggests that University may exercise its discretion and can pick up a recommendee of its choice. Nor any such provision is shown to this Court. Since University Service Commission has recommended the name of the petitioner at serial no. 1, therefore, University was duty bound to grant promotion to the petitioner first, and grant of promotion to the Respondent No. 3 ignoring the candidature of the Respondent No. 1, whose name was above the name of Respondent No. 3., seems to be totally unjustified and result of the colourful exercise on the part of the University.

15. Now, next question arises as to what relief can be granted in the peculiar facts and circumstances of the case since the original petitioner has already expired.

16. In the considered opinion of this Court, since petitioner has reached the age of superannuation and has expired, therefore, no direction should be issued to promote the petitioner while setting aside the promotion of the Respondent No.

3. In the peculiar facts and circumstances of the case, I direct that let the original petitioner be granted notional promotion on the post of Professor as per the recommendation of the University Service Commission dated 10.11.2001 with effect from 16.08.1995. Let monetary benefits be released to the present petitioner in accordance with law without any undue delay preferably within three months. Since Respondent No. 3 is working on the post of Professor for long sufficient time, therefore, at this stage, quashing of his promotion seems to be totally unjustified. Therefore, no order to this effect is being passed, despite that promotion of Respondent No. 3 was totally illegal and result of the colourful exercise on the part of the University.

The writ petition stands disposed of accordingly.