

(2010) 04 PAT CK 0091
In the Patna High Court

Suresh Prasad Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Citation : (2010) 04 PAT CK 0091

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Judgement

J.N. Singh, J.—Heard learned senior counsel for the petitioner and learned Counsel for the State.

2. Since both the writ applications arise out of same cause of action and for the same reliefs by one petitioner, they have been heard together and are being disposed of by this common order.

3. Petitioner has filed both the writ applications for a direction to the respondents to treat him as a Demonstrator working in the college with effect from 15.9.1975, to give him concurrence of service, and to give concurrence to his promotion as Lecturer counting his services as Demonstrator from the said date with all consequential benefits, and to give other consequential benefits of promotion to the post of Reader also as per Statute.

4. The facts of the case are that the petitioner was appointed in K.P. College, Murliganj in the district of Madhepura when the College was an affiliated College. It is claimed that he was appointed by the Managing Committee after due advertisement and interview. Subsequently by the order of the Secretary of the College, vide Annexure-1 dated 28.12.1977, his services were regularized with effect from 15.9.1975 on the post of Lab Assistant in the Department of Physics in the College and thereafter by Governing Body also, vide Annexure-2 dated 7.3.1978. It is contended that prior to 15.9.1975 he had passed B.Sc. examination and thus had acquired the qualification for the post of Demonstrator also. It is submitted that the question of up-gradation of the post of Lab

Assistant was placed before the Government, and Government, vide Annexure-3 dated 11.8.1988, requested all the Universities to submit proposal for up-gradation of post of Lab Assistant to the post of Demonstrator and absorption of the incumbents working on the post from prior to 18.9.1975 and having the requisite qualification. In 1992 L.N. Mithila University was bifurcated and one new University, namely, B.N. Mandal University was created by law. The present College was transferred and placed under the jurisdiction of B.N. Mandal University. It appears that in view of the said policy decision of the Government the Vice-Chancellor of the B.N. Mandal University issued a notification vide Annexure-5 dated 23.7.1992, by which, in anticipation of approval of the Government, the post of Lab Assistant held by the petitioner in the College was upgraded as post of Demonstrator with effect from 15.9.1975 itself. Accordingly petitioner was granted benefit of fixation of his pay scale treating him as Demonstrator, vide Annexure-6. Thereafter, petitioner was also given time bound promotion to the post of Lecturer, vide Annexure-8 dated 2.10.1992, with effect from 15.9.1987, counting his 12 years of services from 15.9.1975 itself in terms of the "Statute for promotion of Demonstrators to the post of Lecturers". However, this decision of the University was subject to concurrence by the Bihar State University (Constituent Colleges) Service Commission (for short "the Commission") and the State Government. Subsequently case of the petitioner was sent to the Commission and the State Government for concurrence. While petitioner's case remained pending for concurrence, he was granted UGC pay scale of the post of Lecturer by an order as contained in Annexure-9. However, subsequently the Registrar, by Annexure-11 made some query from the Principal in respect of payment of salary of the petitioner in Lecturer's scale, and pending enquiry, directed him to be paid salary of Lab Assistant. Petitioner challenged this order before this Court through CWJC No. 7539 of 1994. University appeared in the case and filed a counter affidavit, a copy whereof is annexed as Annexure-12 in the present case.

5. Learned counsel for the petitioner points out that in paragraph 17 of the counter affidavit filed in the said case the University had categorically accepted that he had been working as Lab Assistant in the College from 15.9.1975 and subsequently the University had "approved his service by adding his previous service rendered with effect from 15.9.1975 vide an order contained in letter No. 2929-2931 dated 3.7.1992." In view of such admission on the part of the University in the said counter affidavit, the petitioner did not press his application and, therefore, the writ application was dismissed as not pressed. Petitioner thereafter filed a representation before the Chancellor and, vide letter dated 8.1.1996, as contained in Annexure-14, the University was directed to consider the case of the petitioner with reference to Clause-6 of the Statute for allowing him to draw the Lecturer's scale of pay from the date of promotion subject to the concurrence of the Commission. Accordingly, vide Annexure-20 and 21, petitioner's salary as Lecturer was restored. However, it is contended that the salary of the petitioner in Lecturer's scale was again stopped with effect from

February, 2000.

6. It appears that some dispute in this respect had travelled upto Hon"ble Supreme Court in SLP No. 7021/99 and 7022/99 and Civil Appeal No. 4215-16/2002 in which orders had been passed on 22.07.2002. In the circumstance, in view of the said orders passed by the Hon"ble Supreme Court, State Government notified its decision through letter No. 1115 dated 14.6.2006 (annexed as Annexure-22 with the supplementary affidavit of the petitioner) to re-designate the post of Lab Assistants as that of Demonstrators. Consequent to the said notification of the State Government, the University also issued a notification dated 19.2.2007, vide Annexure-23, by which a large number of Lab Assistants, including the petitioner, were re-designated as Demonstrators. This notification of the University mentions the dates from which the post of respective incumbents were treated to be re-designated, wherein the date mentioned against the petitioner is 15.9.1975. This decision of the University was approved by the Senate also in its meeting dated 10.08.2007, vide Annexure-24. His pay scale was accordingly revised by the University vide Annexure-25 dated 18.8.2007. Thereafter petitioner filed a representation vide Annexure-28 for payment of arrears of his salary. However, vide Annexure-33 dated 13.12.2008, a provisional pay fixation chart was issued by the University in the light of Government letter dated 9.6.2008 in which the petitioner's initial appointment as Demonstrator and the date for his entitlement for the pay of the post was shown as 15.3.1980.

7. Learned senior counsel for the petitioner submits that the policy decision of the State Government notified through letter No. 1115 dated 14.6.2006 was final, pursuant to which the post of petitioner and others were re-designated by the University as Demonstrator by its notification dated 19.2.2007 vide Annexure-23. Hence the same did not need any further approval by the State Government. He submits that this already stands clarified in an order of the Chancellor dated 5.5.2008, annexed as Annexure-31, passed in the case of one Kajal Ghosh and Anr., wherein it has been held that "from the issuance of the State Government's letter No. 1115 dated 14.6.2006 no further concurrence for any teacher is necessary from the State Government and the University itself is competent to take decision in the matter." He pointed out that after holding as such, the Chancellor directed the University to confirm the re-designation of the petitioners as Demonstrators from the dates of their initial appointment and restore their promotion to the post of Lecturer and Reader as well, with all consequential benefits. He submits that, instead of granting the same benefits to the petitioner, the respondent University has illegally shifted the date of his re-designation as Demonstrator to 15.3.1980 by said Annexure-33 dated 13.12.2008. However, he accepts that the time bound promotion granted to the petitioner to the post of Lecturer by Annexure-8 was subject to concurrence by the Commission. He submits that the Commission has now been abolished and the powers of the Commission have been vested in the Screening Committee of the University itself. Therefore, the matter should be examined by the Screening

Committee for a final decision in respect of concurrence to the promotion of the petitioner to the post of Lecturer under the Statute and for grant of consequential benefits. He submits that as per the documents annexed with the writ application, referred to earlier, the services of the petitioner stood finally approved by the University with effect from 15.9.1975. Since the post itself stood up-graded and re-designated as Demonstrator, the petitioner has to be treated as Demonstrator from that very date. This position was accepted by the University and, therefore, it granted promotion to him as Lecturer on completion of 12 years of service as Demonstrator by Annexure-8. Hence, the said decision of the University has only to be placed before the Screening Committee for its final decision and concurrence.

8. The University has filed counter affidavit in the case. Learned Counsel for the University does not dispute that in terms of the Government decision, as contained in Annexure-22, all the post of Lab Assistants stood upgraded and re-designated as Demonstrators. He also does not dispute that in terms of the said Statute for time bound promotion all the Demonstrators who were eligible, qualified and had completed the requisite years of service were to be promoted as Lecturer. However, he submits that the post on which the petitioner was working as Lab Assistant was sanctioned only on 31st March, 1980 by the Government vide Annexure-C with the counter affidavit filed by the University on 19.4.2010. He submits that by this letter of the Government, the post of Lab Assistant itself was sanctioned. As such petitioner cannot get benefit of his service of any period prior to the said date even if he is treated as Demonstrator from that date. He also submits that for promotion as Lecturer under Statute, the qualification and eligibility of an incumbent had also to be examined and only if he was found eligible, qualified and having completed requisite years of service as Demonstrator he could be promoted as Lecturer and not otherwise. However, he does not dispute that the University had notified the promotion of the petitioner as Lecturer with effect from 15.9.1987 (Annexure-8) which required to be placed before the Commission for concurrence. Since the Commission is not in existence, he agrees that the matter should be placed before the Screening Committee for its final decision. He submits that after his promotion, the petitioner has given an undertaking vide Annexure-F and F/I that in case the promotion is not found proper by the Commission he will refund excess amount paid to him as salary. He also referred to one document, annexed as Annexure-H, which is an order of the Principal Secretary of the Human Resources Development Department dated 31.11.2009 in which all the Universities have been directed that in the process of the rationalization of the teaching posts in the University, the Lab In-charge/Assistant/Technician who were re-designated as Demonstrators are not be treated as teachers.

9. A counter affidavit has been filed today on behalf of the state authorities also. In this counter affidavit a stand is taken that the petitioner was appointed as Lab Assistant by the Managing Committee on 28.12.1977; the post of Lab Assistant was sanctioned only 31.3.1980 and vide letter dated 18.12.2008 issued by the

Joint Secretary of the Department, the post of Demonstrator was not to be treated as teaching post. However, it has been fairly disclosed in this counter affidavit that a Bench of this Court has stayed the operation of the said letter dated 18.12.2008 vide its order passed on 11.1.2010 in CWJC No. 13468/09, and other analogous cases. It is stated in the affidavit that the State has filed a petition in the case for vacating the stay order which is still pending.

10. As per the facts noticed above, this is clear that the post of Lab Assistants stand re-designated as Demonstrators by the State Government vide Annexure-22. A bare reading of Annexure-22 shows that the posts of Lab Assistants duly sanctioned till the issue of the said letter were re-designated as Demonstrators. This letter also shows that all the incumbents who were working on the post of Lab Assistants till then, and were having requisite qualification, were to be treated as Demonstrator from their very initial dates of appointment. The wordings of the said letter makes it clear that it has retrospective operation and duly sanctioned post stands re-designated as post of Demonstrator from day one. If the incumbents who were appointed as Lab Assistant on the said sanctioned posts were having requisite qualification as on the initial date of appointment they were to be treated as Demonstrator. This letter of the Government also shows that this decision has been taken in terms of the orders of the Apex Court in SLP Nos. 7021/99, 7022/99 and Civil Appeal No. 4215-16/02. Thus it is clear that this was a conscious policy decision taken by the State Government to re-designate the posts of Lab Assistants etc. as Demonstrators from day one in terms of the judgment and order" of the Apex Court.

11. Learned senior counsel for the petitioner submits that petitioner was appointed on 15.9.1975 as Lab Assistant. His services were approved by the Managing Committee with effect from 15.9.1975 as evident from Annexure-A to the counter affidavit of the University also. It is also contented that before that he had acquired the qualification of Graduation and, therefore, he had requisite qualification for being appointed as Demonstrator. Therefore, if he was holding the sanctioned post on that date, under this decision of the Government, there cannot be any escape from the conclusion that he was to be treated as Demonstrator from that day itself.

12. However, the respondents have raised a dispute that the post was not sanctioned on that date and the same was sanctioned only on 31.3.1980 vide Annexure-C to the counter affidavit of the University. The respondents have also raised the dispute that the petitioner's promotion has to be considered only if he had requisite qualification and eligibility for promotion. One controversy which the respondents have tried to raise is that, as per the letter dated 18.12.2008, and another letter dated 30.11.2009 issued by the present Principal Secretary, specifically provides that the Lab In-charge/Assistant/Technician are not to be treated as teachers.

13. The question whether they have to be treated as teachers or not is not a

very relevant in the present case. The fact remains that there is a Statute framed by the Chancellor which provides for time bound promotion of a Demonstrator to the post. of Lecturer and thereafter to the post of Reader. That Statute has a force of law. Therefore, any executive instruction which may have effect of nullifying the effect the Statute has to be treated as bad in law and fit to be ignored. The Chancellor has rightly held in his order in the case of Dr. Kajal Ghosh that once the policy decision has been notified by the Government by letter No. 1115 dated 14.6.2006 the re-designated Demonstrators did not require further concurrence and their cases had to be considered for promotion to the post of Lecturer and further to the post of Reader. However, as per the Statute, the matter has only to be placed before the Commission which is now replaced by the Screening Committee of the University which has to strictly examine the case of the petitioner in terms of the Statute and not otherwise. It is an admitted fact that the case of the petitioner was not placed before the Commission at the time of its existence and has not been considered by the Screening Committee till now, which is also admitted by learned senior counsel for the petitioner.

14. Therefore, this Court directs the Vice-Chancellor of the B.N. Mandal University to convene a meeting of the Screening Committee of the University, constituted for the purpose, and place the matter of petitioner before it for concurrence of promotion of the petitioner to the post of Lecturer granted by the University by Annexure-8 preferably within a period of four months from today. Once the meeting of the Screening Committee is convened and the date is fixed, all the records in respect of the petitioner, including his promotion to the post of Lecturer, taking into account his service as Demonstrator with effect from 15.9.1975, shall be placed before the Screening Committee which shall consider the case of the petitioner on the basis of the records and materials available and take a final decision in the matter. If the Committee approves the promotion of the petitioner to the post of Lecturer, he will be entitled to all the consequential benefits including arrears of salary etc. and any further benefit also, as may be admissible to him in terms of the said Statute. In case of such approval the consequential benefits shall be granted to the petitioner within a period of two months thereafter.

15. Both the writ applications are disposed of with the aforesaid observations and directions.