

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.188 of 2014

=====

Dr. Rani Azad Wife Of Shri Rajendra Prasad Resident Of Saidpur Quarters No. C-1/1, P.O.- Rajendra Nagar, P.S.- Bahadurpur, District- Patna

.... Petitioner

Versus

1. The Patna University, Patna Through Its Registrar
2. The Vice Chancellor, Patna University, Patna
3. The Registrar, Patna University, Patna
4. Dr. Amrendra Mishra Son Of Not Known To The Petitioner Presently Posted And Working As Dean, Faculty Of Science, Patna University, Patna

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.

For the Respondent/s : Mr. Ashok Kumar Keshari, Adv.

Mr. Digvijay Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

CAV JUDGMENT

Date: 30-11-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

“I. Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the notification dated 13.11.2013, by which the respondent no.4 has been appointed as the Dean, Faculty of Science by the Patna University, Patna (hereinafter referred to as “the University”) in terms of the provisions contained under Section 27(5)(a) of the Patna University Act, 1976 ignoring the claims of the petitioner who is admittedly senior to respondent no.4 in the rank of University Professor.

II. Issuance of a direction, order or writ including writ in the nature of mandamus commanding the concerned respondent authorities to take steps towards considering the



case of the petitioner for appointing her against the post of Dean, Faculty of Science under the University in accordance with the provisions contained under the revised Statute regarding Appointment of Deans as the petitioner is admittedly senior to respondent no.4 in the rank of University Professor.”

3. The case of the petitioner is that she being the University Professor in the Department of Chemistry and also working as Head of the Department of Chemistry under Magadh Mahila College, Patna and also being senior to respondent no.4 was entitled for being appointed as Dean in the Faculty of Science but the Acting Vice Chancellor, namely, Dr. A.K.Sinha had somehow appointed respondent no.4 on the post of Dean, Faculty of Science, by the impugned notification dated 13.11.2013. The petitioner in this regard has also explained that her seniority over respondent no.4 is beyond the dispute, inasmuch as her date of promotion on the post of University Professor is earlier to the date of promotion of respondent no.4 and the post of Dean has to be filled up in accordance with the seniority on the post of University Professor.

4. In this regard she has explained that her date of appointment on the post of Lecturer in the Department of Chemistry is 3.10.1972 when her appointment was made in Dr. Shri Krishna Singh Mahila College, Motihari in the recommendation of the University



Service Commission. According to the petitioner, the date of appointment of respondent no.4 on the post of Lecturer is 2.2.1973 and thus, even as a Lecturer she was senior to respondent no.4. Her further case is that subsequently on the recommendation of Bihar Public Service Commission she was appointed on the post of Lecturer in the Department of Chemistry in Magadh Mahila College, Patna on 8.12.1975 and eventually she was promoted on the post of Reader in the Department of Chemistry with effect from 1.2.1985 as against respondent no.4 being promoted on the post of Reader also with effect from 1.2.1985 but then the date of appointment of the petitioner on the post of University Professor being 3.10.1988 as against the date of appointment of respondent no.4 on the post of University Professor of 2.2.1989 she was definitely senior to respondent no.4 and as such, it was she who was entitled for being appointed on the post of Dean, Faculty of Science but somehow the Acting Vice Chancellor Dr. A.K.Sinha had appointed respondent no.4 on the post of Dean, Faculty of Science.

5. In this case though notices were issued to respondent no.4 but he did not file the counter affidavit.

6. The counter affidavit, however, has been filed on behalf of Patna University in which it has been claimed that respondent no.4 was senior to the petitioner and for this the explanation of the

University reads as follows:

“6. That the petitioner joined the University service on 8.12.1975 as Lecturer in Chemistry. The respondent no.4 joined as Lecturer on 8.11.1973 The petitioner was promoted to the post of Reader on 1.2.1985 and on the post of Professor on 3.10.1988 whereas the respondent no.4 was promoted to the post of Reader on 1.2.1985 and on the post of Professor on 2.2.1989.

7. That the period of services rendered by the petitioner in the other university from 3.10.1972 to 7.12.1975 has been reckoned for the purpose of promotion to the post of Reader and Professor and accordingly the respondent no.4 has been given the benefit of the services rendered in other University from 2.2.1973 to 7.11.1973 for promotion to the post of University Professor.

8. That the Clause 3(7) of the Statute for General Conditions of Service of Employees of the Patna Bihar, Ranchi, Bhagalpur, Magadh, L.N.Mithila and K.S.D. Sanskrit University reads as follows:

“Notwithstanding anything to the contrary as contained in the Statute, it is hereby provided that if any employee serving in any university of this State is appointed in the service of another university or of Bihar Inter University Board, Patna on a temporary or substantive basis in the same or higher grade shall, in the event of his joining the post within the joining time allowed by the competent authority be allowed continuity of his service of the former university for the purpose of protection of his pay

and allowance drawn, leave and half pay leave earned in that University and the age of retirement and grant of retirement benefits as admissible to him in that University but not for determination of his seniority.”

9. That in pursuance of the above clause after counting the services of Patna University only, the date of effective promotion of the petitioner to the post of Professor is 8.11.1991 and the effective date of promotion of the Reader is 8.11.1989 and accordingly the respondent no.4 is senior to the petitioner.”

7. It is a matter of record that the petitioner has not filed any reply to the counter affidavit though its copy was served on the learned counsel for the petitioner on 6.2.2014.

8. This Court in order to decide the issue in hand firstly must take notice of the relevant provision of revised Statutes regarding appointment of Dean of Faculties in different Universities within the State of Bihar as framed by the Hon'ble Chancellor, relevant portion whereof reads as follows:

“1(a) For the purpose of appointment of Dean of Faculties, the Registrar shall maintain a register of those teachers (including Principals of Colleges) who are duly appointed as University Professors or in the rank of University Professor faculty-wise arranged in order of seniority and the appointment of Deans in the Faculty concerned shall be made accordingly by rotation.

2. For the purpose of Article (1)(a), (b), (c) above the

seniority shall be reckoned with effect from the date of appointment as or in the rank of University Professor, or as Reader or Principal, as the case may be:

Provided that:-

- (i) amongst two or more such teachers appointed in the same rank whose inter- seniority cannot be decided by relevant provisions of statutes, the order of rotation shall be according to the year of establishment of the department and/or the college as the case may be:
- (ii) If more than one such departments/ colleges were established in the same year the order of rotation shall be according to name of the departments/ colleges arranged in alphabetical order in Hindi (Devnagari Script).”

9. Thus, a bare perusal of the aforesaid Statutes would make it clear that it is the date of appointment on the post of University Professor which is a criteria for fixation of seniority. The University also in its counter affidavit has admitted that the date of promotion of the petitioner on the post of University Professor is 3.10.1988, whereas the date of promotion of respondent no.4 on the post of University Professor is 2.2.1989.

10. The University, however, has defended its decision in appointment of respondent no.4 on the post of Dean, Faculty of Science, on the ground that the period of services rendered by the petitioner in other University was 3.10.1972 to 7.12.1975, whereas the

period of service rendered by respondent no.4 in other University was 2.2.1973 to 7.11.1973 and as such, respondent no.4 by computing the services rendered in Patna University will be deemed to be senior to the petitioner.

11. This Court does not find anything in the Statutes, as quoted above, where the date of promotion in the University Professor can be varied on account of earlier working of the person concerned in other University.

12. Nonetheless since this case was heard alongwith C.W.J.C.No. 18733/2013 and all the appointments/ promotion made in the regime of Mr. A.K.Sinha, the then Acting Vice Chancellor, has been referred for inquiry by the Hon'ble Chancellor for taking appropriate decision, this Court would also direct that the present dispute of appointment on the post of Dean, Faculty of Science, be also examined by the Hon'ble Chancellor and an appropriate decision in terms of Section 10(4) of Patna University Act for deciding the claim of the petitioner for her appointment on the post of Dean, Faculty of Science, be taken but only after affording opportunity of hearing to respondent no.4.

13. While directing so, this Court is mindful of the fact that the tenure of appointment of two years of respondent no.4 has already come to an end on 12.11.2015 and therefore, even if now

respondent no.4 would not be required to be removed from the post of Dean, Faculty of Science, the case of the petitioner would still be required to be considered and if the Hon'ble Chancellor holds that the appointment of respondent no.4 on the post of Dean, Faculty of Science, vide notification of the University dated 13.11.2013 under the orders of the then Acting Vice Chancellor Mr. A.K.Sinha was bad, the claim of the petitioner for her appointment on the post of Dean, Faculty of Science shall not be extinguished. In other words, if the Hon'ble Chancellor finds that the rightful claim of the petitioner for appointment on the post of Dean, Faculty of Science, was denied to her on account of illegal appointment of respondent no.4, her case will be considered afresh for appointment on the post of Dean, Faculty of Science in accordance with law.

14. This Court hopes and believes that an appropriate decision in the case of the petitioner shall be taken at the earliest possible time by the Hon'ble Chancellor.

15. With the aforementioned observations and directions, this writ application is also disposed of.

16. Let a copy of this order be sent to Hon'ble Chancellor.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 30th November 2015
A.F.R./surendra/-

U			
---	--	--	--