

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14431 of 2012

1. Teachers Association S.N.S.R.K.S. College, Saharsa (A Constituent Unit of B.N.M.U., Madhepura) through its Secretary - Dr. Kamlesh Prasad Singh, Deptt. of Psychology.
2. Dr. Kamlesh Prasad Singh, S/o Late Rajendra Prasad Singh Amar, Sona Lal Makan, Gngajala, P.O.- Saharsa, Ward No. 17, Distt.- Saharsa (Bihar).
3. Ramesh Prasad Singh, S/o Late Jangbahadur Singh, Deptt. of Hindi, S.N.S.R.K.S. College, Saharsa (Bihar), R/o At + P.O.- Panchgachia, Distt.- Saharsa (Bihar).
4. Dr. Mirza Ehsan Haider Shaam, Lecture, S/o Late Mirza Abbas Haider Department of R-Economics, S.N.S.R.K.S. College, Saharsa (Bihar), R/o 13/124, Koshi Chowk, Saharsa (Bihar).
5. Dr. Syed Jahangir, Lecturer, S/o Late Syed Sharful Huda Deptt. of Urdu, S.N.S.R.K.S. College, Saharsa (Bihar), Village - Mubarakpur, P.O.- Sawmekh, Distt.- Begusarai (Bihar).
6. Dr. Shahid Hussain, Lecturer, S/o Late Mohd. Abdul Hadi, Deptt. of Economics, S.N.S.R.K.S. College, Saharsa (Bihar), Mohalla - Mirtola, Ward No. 07, Distt.- Saharsa (Bihar).
7. Sri Murari Prasad Singh, Lecturer, S/o Late Ramdeo Prasad Singh, Deptt. of Commerce, S.N.S.R.K.S. College, Saharsa (Bihar), Ward No. 12, Saharsa (Bihar).
8. Sri Onkar Prasad Singh, Lecturer, S/o Late Lal Bahadur Singh, Deptt. of L.S.W., S.N.S.R.K.S. College, Saharsa (Bihar), Krishna Nagar, Ward No. 22, Botraha, Saharsa (Bihar).
9. Mrs. Santa Singh, Lecturer, W/o Dr. P.K. Singh Deptt. of L.S.W., S.N.S.R.K.S. College, Saharsa (Bihar), Lakshmi Nath Nagar, Ward No. 06, Saharsa (Bihar).
10. Sri Nunumani Singh, Lecturer, S/o Late Khokha Prasad Singh, Deptt. of Maithili, S.N.S.R.K.S. College, Saharsa (Bihar), New Colony, Ward No. 8, Saharsa (Bihar).
11. Sri Manoj Kumar Jha, Lecturer, S/o Late Chandra Nath Jha Deptt. of Chemistry, S.N.S.R.K.S. College, Saharsa (Bihar), Kayosth Tola, Saharsa (Bihar).
12. Sri Suresh Chandra Jha, Lecture, S/o Late Ugra Mohan Jha, Deptt. of Pol. Science, S.N.S.R.K.S. College, Saharsa (Bihar), At + P.O.- Karnpur, Distt.- Saharsa (Bihar).

13. Sri Mahanand Kumar Soda, Lecturer, S/o Late Deena Nath Sada, Deptt. of Chemistry, S.N.S.R.K.S. College, Saharsa (Bihar), Lakshmi Nath Nagar, Ward No. 23, Saharsa (Bihar).
14. Sri Indra Narayan Kumar, Lecturer, S/o Late Kula Nand Kumar, Deptt. of Sanskrit, S.N.S.R.K.S. College, Saharsa (Bihar), Kayastha Tola, Ward No. 30, Saharsa (Bihar).
15. Dr. Ganesh Mishra, Lecturer, S/o Late Shashi Dhar Mishra, Deptt. of Maithili, S.N.S.R.K.S. College, Saharsa (Bihar), Ward No. 23, Batraha, Saharsa (Bihar).
16. Sri Kishore Kumar Jha, Lecturer, S/o Late Madnanand Jha, Deptt. of Sanskrit, S.N.S.R.K.S. College, Saharsa (Bihar), At + P.O.- Pilakhbar, Distt.- Madhubani (Bihar).
17. Md. Mokhtar Alam, Lecturer, S/o Late Gulam Ali Rabbani, Deptt. of Anthropology, S.N.S.R.K.S. College, Saharsa (Bihar), Bharti Nagar, Ward No. 26, Saharsa (Bihar).
18. Sri Binod Kumar Singh, Lecturer, S/o Late Prahlad Kumar Singh, Deptt. of English, S.N.S.R.K.S. College, Saharsa (Bihar), At + P.O.- Soha, Thana- Sonbarsa Raj, Distt.- Saharsa (Bihar).
19. Sri Binod Kumar Singh, Lecturer, S/o Late Madan Mohan Singh, Deptt. of Political Science, S.N.S.R.K.S. College, Saharsa (Bihar), Rathaur Niwas, New Colony, Ward No. 08, Saharsa (Bihar).
20. Sri Shiv Shankar Jha, Lecturer, S/o Sri Gulab Jha, Deptt. of Economics, M.L.T. College, Saharsa (Bihar), Ward No. 24, P.O. - Supaul, Distt.- Supaul (Bihar), Pin – 852131.
21. Dr. Md. Salman, Lecturer, S/o Md. Hassan Department of Persian, S.N.S.R.K.S. College, Saharsa (Bihar), Village - Kalwara (Malichpur), P.O. - Ratanpur, Distt.- Darbhanga (Bihar).
22. Sri Arun Kumar Jha, Lecturer, S/o Late Chandrakant Jha, Deptt. of Statistics, S.N.S.R.K.S. College, Saharsa (Bihar), At + P.O.- Khushkibagh, Distt. - Purnea.
23. Dr. Ram Bilash Prasad Singh, Lecturer, S/o Late Narsingh Prasad Singh, Deptt. of Economics, B.S.S. College, Supaul (Bihar), Batraha, Ward No. 25, Saharsa (Bihar).
24. Sri Arun Kumar Jha, Lecturer, S/o Late Ramakant Jha Deptt. of Physics, B.S.S. College, Supaul (Bihar), Batraha, Ward No. 23, Saharsa (Bihar).
25. Sri Binay Kumar Singh, Lecturer, S/o Late Arbind Prasad Singh, Deptt. of Physics, Purnea College, Purnea (Bihar), At + P.O. - Rupaspur, Via - Purnea H.O.,

Distt.- Purnea (Bihar).

26. Mrs. Preeti Singh, Lecturer, W/o Mr. Bipin Kumar Singh Deptt. of Home Science, Mahila College, Purnea (Bihar), European Colony, Near Indira Gandhi Stadium, Purnea.

27. Sri Ramesh Chandra Jha, Lecturer, S/o Late Shivendra Jha, Deptt. of English, R. Jha Mahila College, Saharsa (Bihar), Lakshmi Nath Nagar, Batraha, Ward No. 23, Saharsa (Bihar).

28. Sri Manoj Narayan Bhagat, Lecturer, S/o Dr. S.N. Bhagat, Deptt. of Zoology, R. Jha Mahila College, Saharsa (Bihar), Gangjala Chowk, Saharsa (Bihar).

..... Petitioners

Versus

1. The State of Bihar, through Principal Secretary, Human Resources Development Department (Higher Education), Govt. of Bihar, Patna.

2. Director, Higher Education Human Resources Development Department (Higher Education), Govt. of Bihar, Patna.

3. B.N. Mandal University, Laloo Nagar, Madhepura, through its Registrar.

4. Vice-Chancellor, B.N. Mandal University, Laloo Nagar, Madhepura.

..... Respondents

Appearance :

For the Petitioners	:	Mr. Binod Kumar Kanth, Sr. Advocate Mr. Rajesh Kumar, Advocate Mr. Mukul Sinha, Advocate
For the Respondents (State)	:	Mr. Subhash Pd. Singh, Advocate (G.A.7) Mr. Bajarangi Lal, Advocate (A.C. to G.A.7)
For the B.N. Mandal University :		Mr. Raju Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date: 18-03-2015

Section 4 (1) (14) of the Bihar State Universities Act, 1976 (hereinafter referred to as the ‘Act’) enables a University to enter into an agreement with other bodies and persons for promoting the purposes of the ‘Act’ and to assume the



management of any institution under them and to take over its assets and liabilities. Certain Colleges imparting education up-to graduation level managed and maintained by the governing bodies, nearly 215 in number, have been taken over in four (4) phases, under different Universities in the State of Bihar and have been made constituent units of the respective Universities invoking Section 4 (1) (14) of the 'Act'. The matter in hand relates to such Colleges which were taken over and made constituent units of the respective Universities in the State of Bihar in fourth (4th) phase between the years 1986 - 1987. These Colleges, nearly 36 (40) in number, are very popularly known as fourth (4th) phase constituent Colleges. Sarva Narain Singh Ram Kumar Singh Maha Vidyalaya (S.N.S.R.K.S.), Saharsa, is one of such Colleges which became a constituent unit of B.N. Mandal University, Madhepura. This writ application has been filed by the persons (Petitioner Nos. 2 to 28) working as Lecturers in different subjects in this said College. They claim that they have formed an Association viz. "Teacher's Association, S.N.S.R.K.S. College, Saharsa", which body is Petitioner No. 1 in the present writ application.

2. The class of persons who got absorbed as Lecturers upon taking over of affiliated Colleges in fourth (4th) phase in



exercise of power under Section 4 (1) (14) of the 'Act' has a long chequered history. The dispute with respect to their absorption remained pending for several years which travelled up-to the Supreme Court and came to be settled to a great extent with the acceptance of report of one-man Commission of Hon'ble Mr. Justice S.C. Agrawal (Retd.). Reference may be made in this regard to Supreme Court decision, reported in **“(2005) 9 Supreme Court Cases 129”**, in case of **“STATE OF BIHAR AND OTHERS *Versus* BIHAR RAJYA M.S.E.S.K.K. MAHASANGH AND OTHERS”**.

3. From the pleadings of the petitioners in the writ application read with those made in Interlocutory Application No. 6097 of 2014, it appears that it is the petitioners' claim that they have been continuously working as Lecturers from different dates between the years 1986 - 1988. They have a grievance that though they have been absorbed as Lecturers with effect from different dates between 30.10.1986 to 09.05.1988, they have not been granted even a single promotion either time bound or on merit.

4. Following is the relief which the petitioners have sought, as mentioned in Paragraph No. 1 of the writ application:-

“That is an application for an appropriate writ/order/direction to the

Respondents to consider and grant promotion to petitioners and similarly situated eligible lecturers to the next higher grade of Readers under the Time Bound promotion scheme under the Statute dt. 24.12.1986 by extending the cut of date for such promotion upto 20.07.2001, at par with candidates under the Merit Promotion Scheme.

The relief is being sought, inter-alia, on the ground that the such benefit of extension of cut off date has been granted in the case of eligible teachers/lecturers under the Merit Promotion Scheme by way of extension of cut of date upto 20.07.2001 and denial of the same in the case of petitioners and similarly situated Lecturers under the Time Bound Promotion Scheme shall be discriminatory and will also deprive them of equal opportunity, which is violative of Article 14 & 16 of the Constitution.”

Subsequently, the petitioners sought to amend the prayer made in the writ application by filing Interlocutory Application No. 6097 of 2014 to the following effect:-

“In the alternative petitioners pray for an appropriate direction to Respondents to take appropriate measures/decision in order to consider the cases of petitioners/other similarly situated persons and who are absorbed against sanctioned and recommended posts for consideration of their cases for further promotion after applying

the doctrine of reading down or doctrine of severability treating them to be a class by themselves.”

The amendment has been allowed by an order of this Court dated 05.09.2014.

5. It is the case of the petitioners, which is not in dispute, that initially there was no provision under the Bihar State Universities Act, 1976, providing for promotion to the Teachers working in various Colleges and Universities. For the first time, by a Statute dated 18.11.1980, provision for promotion of Lecturers as Readers was provided which was, subsequently, replaced by an another Statute dated 14.11.1981, providing for Time Bound Promotion. Through another Statute dated 22.02.1984, provision was made for merit promotion of Readers to University Professors. Subsequently, by another Statute dated 22.09.1986, provision was made for merit promotion of Lecturers to the rank of Reader. Thereafter, the Statute dated 24.12.1986 came into force which provided for promotion of Lecturers to the post of Readers on completion of ten (10) years of continuous service as Lecturers in one or more Universities, subject to certain conditions. It also provided for time bound promotion of Readers as University Professors on completion of

at least twenty five (25) years of continuous service as Teachers or sixteen (16) years of continuous service as Lecturer/Reader, if a person possessed the qualification of a University Professor, as prescribed by the University Grants Commission.

6. According to the petitioners, a Lecturer, despite having no Ph.D. Degree was eligible to be considered for promotion as Reader upon completion of ten (10) years of continuous service and further to the post of Professor after completion of twenty five (25) years of continuous service provided he fulfilled other qualifications of Reader/Professor, under the 1986 Statute. Apart from Time Bound Promotion, the 1986 Statutes also provided for merit promotion inasmuch as a Lecturer with Ph.D. degree was eligible to be considered for promotion as a Reader upon eight (8) years of continuous service and further for promotion to the post of University Professor after sixteen (16) years of continuous service provided he fulfilled the other criteria/qualification for becoming Reader/Professor. Then came a Notification dated 07.08.1989 revising pay-scale of all grades of Teacher as recommended by the University Grants Commission through which a provision for Career Advancement Scheme of Lecturers was introduced by way of senior scale to Lecturer. It also



provided for grant of promotion to the rank of Reader from the rank of Senior Scale Lecturer. Subsequently, the Time Bound Promotion Scheme, as contained in 1986 Statute, came to be superseded with issuance of another Statute vide Memo No. 2132 dated 23.09.1995 containing provisions for promotion under the Career Advancement Scheme. On the same day, vide Memo No. 2133, the Chancellor of the University of Bihar issued another Statute providing for merit promotion of Lecturers as Readers and merit promotion of Readers as Professors, who opted for merit promotion. This was also issued in supersession of earlier Statute dated 22.12.1986, which contained provisions for Merit Promotion Scheme. Both the Statutes dated 23.09.1995 issued vide Memo Nos. 2132 and 2133 were subsequently superseded by another Statute for Career Advancement Scheme dated 27.07.1998.

7. The grievance of the petitioners begins here. According to them, though the Statute notified vide Memo Nos. 2132 and 2133 dated 23.09.1995 had been issued in supersession of the earlier Statutes for promotion under Time Bound Promotion Scheme (Statute dated 24.12.1986) and Merit Promotion Scheme (Statute dated 22.12.1986), its implementation was finally effected from 27.07.1998. In the



meanwhile, i.e., between 23.09.1995 to 27.07.1998, no candidate was given promotion under the Time Bound Promotion Scheme. These petitioners, who were short of few months, could have been considered for promotion under the Time Bound Promotion Statute dated 24.12.1986, but could not be considered for promotion between 23.9.1995 and 27.07.1998.

8. It is the case of the petitioners that because of the introduction of Career Advancement Scheme, some of the Lecturers, who were otherwise eligible, were being denied consideration under Merit Promotion Scheme (22.12.1986) and Time Bound Scheme (24.12.1986). In order to over come the anomaly in their cases, the State Government vide Notification dated 26.06.2006 (Annexure-10) extended the validity of consideration for promotion of Teachers under the Merit Promotion Scheme from 27.7.1998 to 20.07.2001. According to the petitioners, no such benefit was extended to them and similarly situated Lecturers who were also being denied consideration because of the statute dated 23.09.1995. Placed thus, it is the case of the petitioners that they could not be nor they can be considered for promotion, either on the basis of merit or under Time Bound Promotion Scheme on the basis of the Statute dated 22.12.1986 or 24.12.1986 after introduction of



Career Advancement Scheme on 23.09.1995, with effect from which the 1986 Statute came to be superseded. It is further their case that they will not be entitled for the benefits of grant of career advancement/promotion under the Career Advancement Scheme, 1995/1997.

9. A supplementary affidavit has been filed on behalf of the petitioners stating therein that there are several Teachers appointed much after 1986 - 1987, when these petitioners were appointed, in other constituent Colleges who have been granted promotion as Associate Professor. Examples have been given in this regard in Paragraph No. 3 of the supplementary affidavit. It is their further case that there are so many Lecturers absorbed in fourth (4th) phase who are working as Lecturers in other Colleges, which became constituent units in second and third (2nd and 3rd) phase. Examples have been given in this regard in Paragraph No. 2 to the supplementary affidavit.

10. Counter affidavit has been filed on behalf of the respondent, the State of Bihar, denying the petitioners' claim. It has been stated that Time Bound Promotion Scheme dated 24.12.1986 for grant of promotion to the rank of Reader and Professor was though introduced but the University Grants Commission never approved such Scheme. It has been stated



that the Ministry of Human Resources Development, Government of India, in its Letter dated 15.02.1989 emphasized for making provisions of career advancement of Teachers as an alternative to merit promotion of the University Grants Commission. It has been further stated that on recommendation of the University Grant Commission, the Government of India decided to revise the pay-scale of Teachers of the Central Universities, subject to the Regulation to be framed by the University Grants Commission, which was communicated to the University Grants Commission vide Letter dated 22.07.1998. Accordingly, on 22.07.1998 itself, letters were issued to the Education Department of State and Union Territories regarding the revised pay-scale and the commitment of Government of India to provide eighty percent (80%) of additional expenditure involved in implementation of pay revision which was effective from 01.01.1996. Subsequently, the Government of India vide Letter dated 29.12.1998 communicated the minimum standard prescribed by the University Grants Commission, which contained composite scheme of revision of pay-scale, minimum qualification for appointment and other service conditions as mentioned, for maintenance of standard of higher education. It has accordingly been stated that it was in the backdrop of the



University Grants Commission package and the scheme of career advancement that the Chancellor framed Statute dated 23.9.1995, superseding the Time Bound Promotion Statute. It has been accordingly pleaded in the counter affidavit that the Time Bound Promotion Scheme came to an end in the light of Central Government's Directives in terms of University Grants Commission Regulation and Composite Scheme and, as such, Time Bound Promotion Scheme, no more can be applied in case of these petitioners for promotion and they can be considered for career advancement only, if they fulfil the criteria.

11. This writ application was taken up for hearing on 05.07.2013 when this Court had passed the following order:-

“Heard learned counsel for the parties.

Before this court would adjudicate the issues involved in this writ application, it would call upon the learned counsel for the State to file a supplementary counter affidavit as to how it proposes to deal with the service condition of those of the teaching personnel of thirty six constituent Colleges which were taken over in terms of Section 4(1)(14) of the Bihar State Universities Act, 1976 in the light of the Government decision dated 19.8.1986. Necessity for the State Counsel to dwell with this aspect of the matter that thirty six colleges were made constituent in the year 1986 after screening for absorption. It is also not in doubt that

screening for one reason or another was not completed till the judgment of Apex Court in the case of State of Bihar & Ors. vs. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors reported in (AIR 2005 SC 1605) – (2005) 9 SCC 129) whereafter the eligible teachers were absorbed by the University with effect from the date of their appointment.

Such delay in their absorption on the post of Lecturer consuming a period of more than two decades had caused their counter part to have stolen march over them inasmuch as when the petitioners were absorbed on the basis of their appointment with effect from 1986 some teacher who was appointed on the recommendation of the Commission either in the year 1986 or even thereafter initially as a lecturer has already been even become Reader or Professor under time bound promotion statutes whereas these Lecturers still remain as Lecturers. The stand of the Government that, on account of expiry of the time bound promotion statutes, they cannot be made applicable to the petitioners because they have lost their life and even the replacement career advance scheme statutes will not be applicable to them and at least would not give them the same benefit which they were entitled on the basis of their date of appointment/absorption on the post of Lecturer. Apparently the teaching personnel of thirty six Colleges are class by themselves and the State Government as well as the learned

Chancellor will have to consider their cases separately.

Let these aspect be, accordingly, considered by the State Government so as to formulate a Policy for promotion of these special class of lecturers of the thirty six constituent Colleges and a supplementary counter affidavit as with regard to the stand of the Government in this regard must be filed within a period of four weeks form today.

List this case again under the same heading at the top of the list under heading Admission-III on 06th August, 2013.”

In compliance of the said order dated 05.07.2013, a supplementary counter affidavit has been filed on behalf of the respondent, the State of Bihar, stating that the Career Advancement Scheme, at present, is the only scheme available for promotion to the Teachers qualifying under the said scheme and they are entitled to career advancement, pay up-gradation and promotion, including the Teachers of the Colleges made constituent in fourth (4th) phase. It has been asserted that the Teachers of the College shall have all the opportunity of career advancement under the Career Advancement Scheme and they are entitled to promotion at par with their counter parts in another College.

12. There is specific stand taken in Paragraph No. 19 of this supplementary counter affidavit filed on behalf of the State that it cannot adopt different yardstick for promotion of Teachers of Colleges made constituent in the fourth (4th) phase as the State, while adopting any policy in this regard has to be consistent and uniform. It has also been stated in Paragraph No. 21 of the counter affidavit as follows:-

“That it is respectfully submitted here that the career advancement scheme, superseding the time bound promotion scheme is also applicable to the teachers of the colleges made constituent in 4th phase and all eligible and qualified teacher may be considered for promotion as Reader or Profession under the career advancement scheme on the basis of their absorption on the post of lecturer provided they fulfill the qualification, eligibility. Under the career advancement scheme. It is made clear that lecturer on completion of four years with Ph.D. & 6 years without Ph.D. qualifies to move into senior scale and a lecturer in senior scale with five years is entitled to promoted as Reader if Ph.D. or equivalent published work. A Reader may be promoted after 8 years of service to the position of Professor and thus under the career advancement scheme which applicable with effect from 27.07.1998 a teacher of 4th phase constituent college may move to the position of lecturer senior scale, lecturer, senior

grade, Reader etc. under the career advancement scheme. In addition thereto they may qualify for consideration for directed appointment as Professor. Similarly, Merit Promotion Scheme was also available for consideration of their cases upto 2001 like there other counter part hence, petitioner can't complain that they have no promotional avenues."

13. Mr. Binod Kumar Kanth, learned Senior Counsel appearing on behalf of the petitioners, has submitted that practically, the petitioners and other similarly situated persons are neither having nor shall they have any opportunity of grant of promotion to higher grade under any of the Statutes/Schemes. Referring to the Career Advancement Scheme, Mr. Kanth, submits that the petitioners and similarly situated Lecturers cannot get advantage of the said scheme now as the scheme makes it compulsory to undergo two refresher courses/summer institutes, each approximately of four weeks of duration or engagement in other appropriate continuing educational programme of comparable quality, certified by the University Grants Commission (U.G.C.), after placement in the senior scale. He submits that till date, the petitioners have not been given any opportunity to undergo the refresher courses or to attend summer institutes. He further submits that statute with respect to Merit



Promotion Scheme was issued on 23.09.1995, for implementing the letter of Ministry of Human Resources Department dated 07.08.1989, which envisaged a composite scheme for career advancement. According to him, there was complete state of uncertainty between 22.07.1998 to 23.06.2005, since 23.09.1995 Statute was superseded by another Statute dated 27.07.1998, but it was notified on 23.06.2005.

14. He has submitted that by deeming fiction, the petitioners of this case will have to be treated and deemed to have been appointed on the dates with effect from which their services have been absorbed as Lecturers in Colleges, made constituent in fourth (4th) phase. Therefore, they would be entitled to the benefits of 1986 Statutes, even if their qualifying period were short of few months, by applying the principle of reading down. He has relied upon often cited decision of Supreme Court in case of **“D. S. NAKARA AND OTHERS *Versus* UNION OF INDIA” (A.I.R. 1983 Supreme Court 130)** to contend that cut-off date is immaterial for the purpose of consideration for promotion. Referring to the averments made in Interlocutory Application No. 6097 of 2014, filed by the petitioners, Mr. Kanth has submitted that the petitioners, in fact, wanted to apply for refresher courses for the purpose of grant of promotion under the Career Advancement



Scheme but their applications were not entertained on the ground that they had already had more than eight (8) years of their service to their credit as Lecturer. He has relied upon Supreme Court decision, in case of “**AJIT SINGH AND OTHERS (II) Versus STATE OF PUNJAB AND OTHERS**”, reported in “**(1999) 7 Supreme Court Cases 209**”, to submit that right to be considered for promotion is guaranteed under Article 16 of the Constitution of India, even in the absence of any statutory provision.

15. True it is that these petitioners and similarly situated persons working as Lecturers appointed in the Colleges by the governing bodies became constituent units in fourth (4th) phase form a class, separate from other Teachers appointed or absorbed in Colleges under various Universities in the State of Bihar. Their absorption itself as Lecturer was in dispute right from the very beginning till the Supreme Court decision, in case of “**STATE OF BIHAR AND OTHERS Versus BIHAR RAJYA M.S.E.S.K.K. MAHASANGH AND OTHERS**”, reported in “**(2005) 9 Supreme Court Cases 129**”. When the 1986 Statutes notified by the Chancellor, Universities of Bihar, were superseded in 1995, the status of these persons was not finalized. On the date, with effect from which 1986 Statutes came to be superseded, the petitioners could not be said to have acquired requisite



experience even if the dates, with effect from which they have been treated to be absorbed under the orders of Supreme Court upon acceptance of Justice S. C. Agrawal Commission's Report, are treated to be the dates of their initial appointment. The questions, which would arise then in the present case are; "Can the petitioners' claim by way of right, issuance of a writ in the nature of writ of Mandamus asking the respondents to apply 1986 statutes to these petitioners? Do the petitioners have a constitutional right to be treated at par with those who have been given promotion under 1986 Statutes; and whether there exists any circumstance to read down provisions of Statutes in favour of these petitioners for the grant of Time Bound/Merit Promotion under either of the two (2) 1986 Statutes?"

16. The submission made on behalf of the petitioners by Mr. Kanth, learned Senior Counsel, is that 1986 Statutes should be read down in such a manner that these petitioners and similarly situated persons stand covered by those Statutes, dealing with grant of Time Bound/Merit Promotion Scheme. I am of the view that the principle of reading down is applied if on plain reading of legislation, the vice of unconstitutionality of such provision is attracted and then the Courts explore whether there has been an unintended legislative omission. Further, if

such intendment can be reasonably implied without undertaking what, unmistakably, be a legislative exercise, the Act or a Statute may be read down to save it from unconstitutionality. Reference may be made in this regard to Supreme Court judgment in case of **“DELHI TRANSPORT CORPORATION Versus D.T.C. MAZDOOR CONGRESS AND OTHERS”**, reported in **“1991 Supp. (1) Supreme Court Cases 600”**. Paragraph No. 255 of the said judgment reads thus:-

“255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible – one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its



intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

17. Reference may be made in this regard to the law laid down by the Supreme Court in case of **"SUBRAMANIAN SWAMY AND OTHERS Versus RAJU THROUGH MEMBER, JUVENILE JUSTICE BOARD AND ANOTHER"**, reported in **"(2014) 8 Supreme Court Cases 390"**, where the Supreme Court recognized the fundamental principle of reading down as noted above, a well established and well accepted principle of interpretation. In case of **"GOVIND AND OTHERS Versus STATE OF M.P."**, reported in **"1994 Supp (1) Supreme Court Cases 536"**, the Supreme Court observed that if there were two interpretations possible of a statutory provision, one void and unconstitutional and the other

narrower but within constitutional bounds, this Court would read down the over following expressions to make them valid.

18. In my opinion, these are the fundamental requirements, as noted above, which must exist before the Court, for applying “reading down” doctrine. In the present case, the constitutionality of the aforesaid two Statutes dealing with grant of Time Bound/Merit Promotion Schemes is not in question. The said Statutes, in my opinion, need not be and cannot be read down in the facts and circumstances of the present case for the purpose as canvassed on behalf of the petitioner. Further, in my opinion, reading down the 1986 Statutes in a manner so that the petitioners and similarly situated persons stand covered by such Statutes would, in fact, amount to judicial legislation inasmuch as this will amount to a declaration that a particular legislation would apply to certain class of persons to whom such statutory provisions would not have been otherwise applicable. This, in my opinion, is impermissible for the Courts exercising power of Judicial review under Article 226 of the Constitution of India.

19. Mr. Kanth, learned Senior Counsel appearing on behalf of the petitioners, has submitted that respondents should be directed to come out with a scheme dealing with the Lecturers of fourth (4th) phase constituent Colleges so that they are given



some opportunity of advancement in their career by way of promotion. He has submitted that even the Career Advancement Scheme which, is in vogue and on the basis of which the Lecturers working in other Colleges are being granted benefit of career advancement/promotion cannot be availed by these petitioners and similarly situated persons because of long passage of time and because they have been denied the opportunity to undergo refresher courses and to attend the institutes as required under the Career Advancement Scheme. It has, accordingly, been submitted that the petitioners have been deprived of their fundamental right to be considered for promotion during their whole service career. On the other hand, it is the specific plea taken on behalf of the State-respondents that Career Advancement Scheme is applicable to all the Lectures or Teachers working in Colleges under the University as well as in the Post Graduate Departments of the University, including these petitioners and similarly situated persons.

20. On the basis of pleadings made in the writ application as well as in the counter affidavit, I find it difficult to arrive at a definite conclusion as to whether refusal by the authorities to allow the Lecturers to undergo refresher training as required under the Career Advancement Scheme was a stray



case, reference of which has been made in the writ application or this class of Lecturers as a whole could not avail the benefit of the said Career Advancement Scheme, despite their best possible efforts. In the latter case, certainly it would give rise to a situation where the petitioners and other similarly situated persons can be said to have been denied any opportunity of career advancement and in such circumstance, a policy decision will be required to be taken at the level of the State Government and the Chancellor, Universities of Bihar.

21. I, therefore, consider it appropriate, under the facts and circumstances of the case to direct the State Government, through Principal Secretary, Human Resources Department (Higher Education), Government of Bihar, to examine as to whether the Lecturers of fourth (4th) phase constituent Colleges could be considered for career advancement under the Career Advancement Scheme dated 22.07.1998 or because of any provision under the Career Advancement Scheme, the petitioners and other similarly situated persons stood totally excluded from consideration of the provisions under the said scheme. If State Government, comes to a conclusion that the petitioners were eligible to be considered under the Career Advancement Scheme and they themselves failed to avail the opportunity of such career

advancement, the State, Government of Bihar, will pass an order, accordingly, with reasons within a period of three (3) months from the date of receipt/production of a copy of this judgment. If it is found that the petitioners and similarly situated persons are not covered or stand excluded from the purview of the Scheme because of certain circumstance, beyond their control, the State Government shall consider evolving a scheme confined to Lecturers of fourth (4th) phase so that they may have some opportunity of career advancement or promotion in their service career, in consultation with other statutory functionaries including the Chancellor of the Universities.

22. This application is disposed of, accordingly.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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