

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.708 of 2013

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1. Dr. Reyazuddin son of Late F. Rahman, Resident of F2, G.P.C. Apartment, J.C. Road, P.S. - Pirbahore, District - Patna
 2. Dr. Ashok Kumar Singh son of Late Ambika Prasad Singh, Resident of 201, Shiv Ram Enclave, East Lohanipur, Kadamkuan, P.S. - Kadamkuan, District - Patna
 3. Dr. Deoki Nandan Sharma son of Late Murlidhar Sharma, Resident of 403, Aishwarya Rohini, Road No. 4, Rajendra Nagar, District - Patna
 4. Dr. Devendra Nath Thakur son of Late Dr. Vishudeo Thakur, Resident of 37/I A, Shivpuri, Behind A.N. College, Boring Road, P.S. - Shastri Nagar, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna
2. Patna University, Patna through its Registrar
3. Vice Chancellor, Patna University, Patna
4. Registrar, Patna University, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ABHINAV SRIVASTAVA
For the Respondent State: Mr. Sudhir Kumar, AC to AAG 2
For Patna University : Mr. Vindhya Keshri Kumar, Sr. Advocate
Mr. B J Jha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 18-09-2015

Four petitioners have joined the writ application for issuance of a writ of mandamus to consider their cases for grant of promotion in terms of the provisions under Clause 11 to the Appendix-1, appended with the letter dated 7/8/1989, issued by the Department of Human Resource Development, Government of Bihar as it then was.

2. The short facts are that petitioner Nos. 1 to 3 were

appointed as Lecturer in Commerce on the basis of the recommendation of the Bihar State University (Constituent Colleges) Service Commission. The notification appointing the petitioners is dated 9/3/1987 and is annexed as Ananexure-1.

3. Similarly, petitioner No.4 was appointed on the post of a Lecturer in Chemistry in similar fashion by notification dated 7/5/1987, contained in Annexure-2 to the writ application.

4. It is the case of the petitioners that they have been in service of the University, which is Patna University, and performing their duties without any let or hindrance. Some time on 22.7.1988 on a letter issued by the Government of India, Department of Education, pay-scale of teachers of Universities and Colleges was recommended. This was done in order to encourage research in continuation of post graduate studies. This was also supposed to encourage maintenance of standards in higher education. The details of the communication have been annexed as Anneuxre-3 to the writ application. The Government of Bihar also issued notification bearing letter No. 1044 dated 7/8/1989. Annexure-4 is the notification dated 7/8/1989.

5. Yet another notification was issued on 22.5.1990, contained in Anneuxre-5 to the writ application. This was supposed to be a follow-up to the notification, contained in Anneuxre-4. Grant of increments on acquiring Ph.D. degree, as such, is not the issue in the

writ application. Therefore, this Court has nothing to say on that aspect.

6. Petitioners No.2 and 3 were granted promotion to the rank of a Reader on 11.9.1999. This promotion order was based on statute regarding Merit Promotion Scheme to which a person becomes eligible upon completion of 8 years of service. They have raised a grievance that they should also get benefit of 3 years of service since they possessed Ph.D. degree on the date of initial appointment as per provision contained in Annexure-4.

7. They are aggrieved because the promotion on the post of a Reader on 23.3.1995 and 31.3.1995 respectively does not suffice because those dates were required to be shifted back by 3 years as they have Ph.D. degrees. Similar is the plea of petitioners No. 1 and 4.

8. While Merit Promotion Scheme was subsisting, yet another scheme known as Career Advancement Scheme for teachers came into play. The Merit Promotion Scheme ceased to be effective or operative, with effect from 27.7.1998. However, it was extended till 20th July, 2001 by virtue of a notification contained in Anneuxre-9 dated 26.6.2006.

9. The petitioners having been knocking at the doors of the respondent authorities to give them the benefit which was available to



them under the Merit Promotion Scheme. Since nothing came out of the same, they have chosen to approach the High Court. If the petitioners are given the benefit of that scheme and the three years, they will also get an opportunity for promotion on the post of Professor.

10. Counsel representing the State as well as the University in unison take a preliminary objection that such a relief cannot be granted now after more than twenty years especially when these petitioners never made any grievance when they were granted benefit of promotion on the post of Reader under the Merit Promotion Scheme. These promotions relate to the year 1992 or thereabout and the whole effort of these petitioners is to gain seniority over some persons as well as advantage of promotion on the post of Professor much before their time as well as to upset the seniority position which has been in existence for more than two decades.

11. There is a deliberate mischief being played by the petitioners to derive benefit of two different schemes and of a scheme which is no longer in existence. The Merit Promotion Scheme came to an end in the year 2001 itself. No person in the State of Bihar has derived the benefit of any kind of promotion after 2001 as is the stand of the counsel for the University as well as the State. There is no question of grant of any benefit under the Merit

Promotion Scheme, which is dead and gone. Whatever benefit the petitioners can derive now at this juncture can only be under the subsisting scheme, which is Career Advancement Scheme.

12. The University further in the counter affidavit has taken a stand that the petitioners had been granted promotion under the Merit Promotion Scheme from the post of Lecturer to the post of Reader directly. The occasion for granting benefit of a couple of years of service does not arise on a plain and simple reading of clause 12 of Appendix 1, which is Annexure-A to the counter affidavit. The benefit of the corresponding years of service in matter of promotion has to be extended to such lecturer who came to be considered for promotion on the post of senior lecturer scale under the Career Advancement Scheme and not for such kind of people who were directly promoted to the post of Reader from the post of Lecturer under the Merit Promotion Scheme. In fact, counsel also explained to the Court that indulgence to these petitioners will cause injustice to others for the reason that they cannot mix the two provisions of the statute and the scheme and derive benefit by reading down the time frame and the number of years before a person can become eligible under one scheme or the other.

13. During the pendency of the writ application the University considered the representation of the petitioners and has

rejected their claim vide the impugned order dated 5.9.2013. This order of rejection is also under challenge for which I.A. No. 4340 of 2014 has been filed and the order dated 5.9.2013 is annexed as Annexure-11 whose quashing is now sought for.

14. Besides the submissions made at the bar, noticed above, the order of rejection, contained in Annexure-11, is unambiguous. It explains the position subsisting on such claims. The authorities have rightly come to a conclusion that the benefit which these petitioners are looking for under the time-bound scheme, which is a dead scheme because the same has not been operational and has been treated to be such by one and all after 2001 cannot be deemed to be alive by any interpretation especially after the Career Advancement Scheme has been notified and which replaced the provision of Merit Promotion Scheme.

15. The jugglery of the counsel for the petitioners that Annexure-C dated 29.6.2005 does not relate to promotion for the post of Professor and is limited to the issue of promotion to the rank of Lecturer senior scale or Reader is a misplaced kind of assertion because the scheme has to be understood in spirit and object under which they came to be notified.

16. The Court, therefore, comes to a considered opinion that the whole object of the petitioners to move the present writ

application lacks bonafide. They have no legal right for any kind of direction in their favour to grant them benefit or promotion from any back date. More so such position is obviously not required to be unsettled after more than two decades. The rationale and reasoning provided in Annexure 11 are based on cogent and valid grounds, which do not warrant interference.

17. Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

R.K.Pathak/-

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