

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1801 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 2736 of 2013

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1. Dr. Md. Islamuddin @ Islam Ishrat S/o Late Md. Nizamuddin R/o New Colony, Digha, P.S. Digha, District Patna, Presently Working as Associate Professor (Reader), in the Department of Urdu, B.S. College, Danapur, Patna (A Constituent College of Magadh University)

2. Dr. Ravindra Nath Rai @ Ravindra Nath Rai S/o Late Lialdhar Rai R/o Mithila Colony, Bataganj, P.S. Danapur, District - Patna, Presently Working on the Post of Associate Professor (Reader), Department of Hindi, B.S. College, Danapur, Patna (A Constituent Unit of Magadh University)

.... Petitioners - Appellants

Versus

1. The State of Bihar

2. The Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna

3. Secretary (Higher Education), Deptt. of Education, Govt. of Bihar

4. The Magadh University through its Vice - Chancellor

5. The Vice - Chancellor, Magadh University at Bodh Gaya, Gaya, Bihar

6. The Registrar, Magadh University at Bodh Gaya, Gaya, Bihar

7. The Selection Committee, through it's Chairman, Magadh University at Bodh Gaya

8. The Chairman, Selection Committee, Magadh University, at Bodh Gaya, P.S. Bodh Gaya, Gaya

9. The Principal, B.S. College, Danapur, Patna 12

.... Respondents - Respondents

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Appearance:

For the Appellant/s : Mr. Pramod Kumar Sinha,
Mr. Arvind Kumar Sharma and
Mr. Chetan Kumar, Advocates.

For the Respondent/s : ---

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 12-09-2017

Heard learned counsel for the appellants.

2. The writ petitioners-appellants, being aggrieved by the order dated 25.04.2014 (hereinafter referred to as the impugned judgment) passed by a learned Single Judge of this Court in CWJC



No. 2736/2013, have preferred the present Letters Patent Appeal.

3. The learned Single Judge took note of the reliefs prayed in the Writ Application for issuance of an appropriate writ commanding the respondents to consider and give the petitioners Time-Bound Pomotion on the post of University Professor in Urdu and Hindi subjects respectively under the Statutes for Time-Bound Promotion of Lecturer to the post of Reader and for Reader to the post of University Professor as approved by the Chancellor vide letter no. BSU-27/85-4032GS(I) dated 24.12.1986 as amended by BSU-26/85-4099/GS(I) dated 20.11.1987 and 28.11.1987. The petitioners claimed that under Statute 1(3) of the Statutes of the University they have become fully eligible for such promotion with consequential monetary benefits from the dates the said promotions are given to the petitioners.

4. In fact, when the Writ Application was taken up for consideration the learned counsel for the petitioners wanted only a simple direction to the respondents to dispose of their pending representation dated 25.01.2012, as contained in Annexure-18 to the Writ Application, but the learned Single Judge was not convinced with such a simple prayer made on behalf of the petitioners; therefore, the learned Single Judge has gone through the merits of the claim made by the petitioners in their pending representations.



5. Having considered the materials available on the record, the learned Single Judge found that the Time-Bound Promotion Scheme, sought to be pressed by the petitioners, was in existence in view of the Statute framed by the Chancellor dated 24.12.1986 and its amendments made on 20.11.1987 and 28.11.1987. Such Time-Bound Promotion Scheme was replaced subsequently in view of the Statute framed by the Chancellor on 23.09.1995 by which the concept of 'Promotion under Career Advancement Scheme' was introduced with effect from 23.09.1995. As a matter of fact, the learned Single Judge has further found that even the Statute dated 23.09.1995 was replaced by the Chancellor with another Statute, being Career Advancement Scheme, to be implemented with effect from 27.07.1998 in view of the decision of the State Government, contained in letter no. 1300 dated 20.07.2001 vide Chancellor's Statute dated 29.06.2005.

6. The entire relevant provisions of the Career Advancement Scheme, which provided a specific mode of promotion of Reader to the post of Professor, have been quoted extensively by the learned Single Judge in Para 3 of the impugned judgment.

7. A reading of the provisions providing specific mode of promotion of Reader to the post of Professor would show that the Career Advancement Scheme implemented in the matter of promotion from the post of Reader to the post of Professor has completely



superseded the concept of 'Time-Bound Promotion Scheme'. Since these petitioners had filed their representations for promotion from the post of Reader to the post of Professor under the Time-Bound Promotion Statute which had already lost its life, the learned Single Judge restrained himself from issuing any direction at this stage to the authorities of the respondent University for considering the case of promotion of the petitioners under the Time-Bound Promotion Scheme. The learned Single Judge found that the petitioners have become Readers either in the year 1992 under the Career Promotion Statute or in the year 1990 under the Time-Bound Promotion Statute, therefore, they would be required to complete at least 8 years of service as Reader in terms of Clause 5.1.0 of the Statute dated 29.06.2005. The period of 8 years has thus been completed either in the year 1998 (under Time-Bound Promotion Statute) or in the year 2000 (under Merit Promotion Statute). In Paragraph 6 of the impugned judgment, the learned Single Judge held as under:-

“6. In view of introduction of promotion from the post of Reader on the post of Professor only on the basis of Career Advancement Scheme made effective from 27.7.1998 in terms of the statutes dated 29.6.2005 read with the earlier statute dated 23.9.1995, little will be left for speculation that none of the two petitioners is qualified for promotion on the post of Professor under the time bound promotion statutes whose life has come to an end on 23.9.1995.”



8. So far as the submission of the petitioners that a direction should be issued considering the decision dated 17.05.2010 passed in CWJC No. 559/2010 (brought on record vide Annexure-19 to the Supplementary Affidavit filed on behalf of the petitioners) is concerned, although the learned Single Judge has not noticed the said judgment (Annexure-19 to the Supplementary Affidavit of the petitioners) but, in sum and substance, the learned Single Judge having considered the entire provisions of the Statutes framed by the Chancellor and the right of the petitioners to be considered under the already superseded Time-Bound Promotion Scheme, the learned Single Judge has decided the issues itself.

9. Learned counsel for the appellants has taken a plea before us in appeal that in view of the order dated 17.05.2010 passed by a learned Single Judge of this court in CWJC No. 559/2010 (Annexure-19 to the Supplementary Affidavit of the petitioners) the learned Single Judge while considering the present case, being a co-ordinate bench, was not justified in excluding the said judgment and, therefore, the learned Single Judge has committed an error of not considering the material, particularly the judicial pronouncement which was available on the record. Learned counsel submits that a perusal of Annexure-19 to the Supplementary Affidavit of the petitioners would show that similarly situated persons were given the



benefit of promotion under the Time-Bound Promotion Scheme because there was an opinion interpreting that vide 1995 Statute only the Statute for promotion of Lecturer to the post of Reader has been superseded and not the provisions of the Statute for Time-Bound Promotion from the post of Reader to the post of University Professor. According to the learned counsel, once a view has been taken in other cases that the Time-Bound Promotion Scheme has not been repealed and has only been superseded to some extent, the present petitioners – appellants are equally entitled for the same benefits.

10. We have considered the submissions advanced on behalf of the appellants. The anchor-sheet of the argument of the learned counsel for the appellants is Annexure-19 to the Supplementary Affidavit filed on behalf of the petitioners, which is an order dated 17.05.2010 passed in CWJC No. 559/2010 (Dr. Rajendra Pati Tripathi Vs. The State of Bihar & Ors.). We have perused the said judgment. A reading of the same would take us to a conclusion that the learned Single Judge while passing the order dated 17.05.2010 in the said Writ Application has not decided the case on its own merit. In the Counter Affidavit filed in the said case, a plea was taken on behalf of the University that since Time-Bound Promotion Scheme ended on 23.09.1995 and Merit Promotion Scheme ended on 20.07.2001 the case of promotion of the petitioner



to the post of University Professor cannot be considered under any of these two schemes. The petitioner's application for promotion will be considered under the Career Advancement Scheme as per the provisions under the Statute but, despite this stand, a plea was raised on behalf of the petitioner in that case that there was a legal opinion obtained by the University and, by virtue of that legal opinion, there had been some sort of clarification which was sent to the Chancellor vide letter dated 10.12.1998 and, based on that, some persons were given the benefit of promotion from the post of Reader to the post of Professor.

10.1 The learned Single Judge, who decided CWJC No. 559/2010 (Dr. Rajendra Pati Tripathi Vs. The State of Bihar & Ors.) vide order dated 17.05.2010, did not go into the merits of the stand taken on behalf of the University. The Statutes, which were superseded, and the Career Advancement Scheme, which had already come into existence, were also not examined by the learned Single Judge. Only relying upon the submissions made on behalf of the petitioner in the said case that he was also entitled for consideration in similar manner, as was done by the respondent authorities in the case of one Sri Rampadam Dev, the learned Single Judge issued a direction to the Chancellor of the University to consider the case of the petitioners and to allow him/them similar relief as was given in the



case of Rampadam Dev. We, therefore, immediately come to a conclusion that the order dated 17.05.2010 passed in CWJC No. 559/2010 is *per incuriam* because of non-consideration of the relevant provisions of the Statutes of the University then in existence. The said judgment in CWJC No. 559/2010 (Dr. Rajendra Pati Tripathi Vs. The State of Bihar & Ors.) vide order dated 17.05.2010 would, therefore, not be a binding precedent. We are constrained to hold that because in the present case we have found that the learned Single Judge has quoted the entire provisions from the Statute dated 29.06.2005, which provides specific mode of promotion of Reader to the post of Professor, the submission of the learned counsel that the Time-Bound Promotion Scheme was not repealed and was only superseded to some extent is a superfluous kind of argument to which we do not subscribe.

11. The word “supersession” in its legal parlance means “replacement”. It is an act of replacing one thing by another. The word “supersession” has its origin from the Latin word ‘*supersedere*’ and the Hon’ble Supreme Court, while considering the effect of supersession of a notification in the case of **Union of India Vs. Glaxo India Limited & Anr.**, reported in [(2011) 6 SCC 668], discussed in Paragraphs 38 and 39 the effect of “supersession” of a notification. Paragraph 38 of the said judgment is quoted hereunder for a ready



reference.

“38. The aforesaid notification is issued by the Central Government in supersession of the earlier notification issued by the Government of India, S.O. No. 373 (E) dated 12-5-1981. By this notification, the Government has fixed the maximum price at which indigenously manufactured bulk drugs shall be sold by the respondent Company and others. According to the Revenue, the notification is prospective and the notification issued earlier would hold the field till the impugned notification is issued. However, it is the stand of the respondent Company that the Notification dated 2-1-1989 is retrospective in its operation and relates back to the first notification issued by the Central Government dated 12-5-1981.”

“39. The impugned notification uses the expression “supersession” of the earlier notification. Therefore, the first question that requires to be considered and answered by us is, what is the meaning of the expression “supersession” and what is its effect. *Webster’s Third new International Dictionary* defines the word “supersession” to mean “the state of being superseded”, “removal” and “replacement”. P. Ramanatha Aiyar’s *Advanced Law Lexicon* defines “superseded” as “set aside” and “replaced by”. The view of this Court in some of the decisions is that the expression “supersession” has to be understood to amount “to repeal” and when notification is repealed, the provisions of Section 6 of the General Clauses Act would not apply to notifications.”



12. The judgment of the Hon’ble Supreme Court where the word “supersession” fell for consideration was rendered in a case where the effect of ‘supersession’, insofar as it relates to imposition of tax under the previous notification, was a question for consideration. In the present case, the petitioners, as has been held by the learned Single Judge and we also agree with the same, acquired eligibility of completing 8 years as Reader only either in the year 1998 or 2000 when admittedly Time-Bound Promotion Scheme had come to an end long back with effect from 23.09.1995. The Career Advancement Scheme had superseded the earlier Time-Bound Promotion Scheme. Thus, we would hold that the learned Single Judge has rightly decided the issue and settled the same for all times to come.

13. We find no merit in the appeal and the same is dismissed. There will be no order as to costs.

(Rajeev Ranjan Prasad, J)

I agree.
Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Dilip, AR

AFR/NAFR	A F R
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