

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14267 of 2016

=====

Prof. Deva Narayan Jha Son of Late Hardish Jha, resident of Laxmi Sagar,
Chhapki, Padri, P.S- Sadar Darbhanga, District- Darbhanga.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. Chancellor of Universities of Bihar, Raj Bhawan, Patna through the Principal Secretary
3. K.S.D. Sanskrit University, Darbhanga through its Registrar.
4. Acting Vice Chancellor, K.S.D. Sanskrit University, Darbhanga.
5. Registrar, K.S.D. Sanskrit University, Darbhanga.

.... Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv.
For the Chancellor	:	Mr. Rajendra Kumar Giri, Adv.
For K.S.D.University	:	Mr. Kamal Nayan Chaubey, Sr.Adv. Mr. Arbind Nath Pandey, Adv.
For the State	:	Mr. Rajesh Kumar Sinha, AC to GP23

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-01-2017

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner, Mr. Rajesh Kumar Sinha, AC to GP-23, for the State, Mr. Rajendra Kumar Giri, learned counsel for the Chancellor and Mr. K.N.Chaubey, learned Senior counsel, who appears alongwith Mr. Arbind Nath Pandey, for the University.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 10.8.2016 of the Chancellor of the Universities, impugned at Annexure 20, whereby in exercise of power vested under section 11(1) of the Bihar



State Universities Act, 1976 (hereinafter referred to as 'the Act') the petitioner has been directed to submit his resignation from the post of Vice Chancellor, failing which the petitioner shall be deemed to have resigned under section 11(3) of 'the Act'. The petitioner is also aggrieved by the notification issued pursuant thereto dated 11.8.2016, impugned at Annexure 22 to the writ petition, issued under the orders of the Chancellor. Certain other grievances have been raised as regarding withdrawal of facilities attached with the post of Vice Chancellor but which are consequential to the impugned orders.

The entire argument advanced by Mr. Srivastava, learned counsel appearing for the petitioner, as contested by Mr. Giri, learned counsel appearing for the Chancellor as well as Mr. Chaubey, learned Senior Counsel appearing for the University, revolves around the issue, whether the petitioner possesses the mandatory ten years teaching experience on the post of Professor provided under section 10 of 'the Act', as it stands amended with effect from 10.8.2013 for holding the post of Vice Chancellor.

It is the contention of Mr. Srivastava in reference to the order of promotion granted to the petitioner under the Time Bound Promotion Scheme framed by the University under the Statutes that since by the order dated 10.9.2001 present at Annexure 8, the petitioner was granted time bound promotion under the Statutes with



effect from 1.1.1992, in view of law laid down by a Division Bench of this Court in the case of **Ram Tawakya Singh v. the State of Bihar & ors.**, reported in 2016(3) PLJR 580, the petitioner would have completed ten years of experience as on 10.9.2011 and thus, the petitioner had gained mandatory teaching experience on the post of Professor for being considered against the post of Vice Chancellor.

This argument is being contested by the learned counsel for the Chancellor as well as the University relying on the very same Division Bench judgment of this Court in the case of Ram Tawakya Singh (supra) to submit that since as per the own admission of the petitioner he has not actually discharged the functions of a Professor until his regular appointment against the post on 2.3.2009, he does not possess the necessary mandatory ten years teaching experience calculated with effect from 2.3.2009. Learned counsel for the Chancellor and the University have relied upon the admission of the petitioner made in paragraphs 23 and 24 of the reply filed by the petitioner before the Chancellor in the present proceedings. Another objection taken by Mr. Chaubey is, in reference to the provisions underlying section 9(7)(iii) of 'the Act' to submit that since a review is admittedly pending before the Chancellor filed by the petitioner, he cannot be permitted to pursue two parallel remedies.

I have heard learned counsel for the parties and have perused



the records.

The only issue which requires consideration by this Court is whether in the undisputed circumstances where the petitioner was granted time bound promotion vide notification dated 10.9.2001 on the post of Professor with effect from 1.12.1992, he possessed the mandatory ten years teaching experience on the date when he was considered for appointment against the post of Vice Chancellor in the year 2014 and whether his appointment as such vide notification dated 30.1.2014 present at Annexure 16 to the writ petition has any infirmity and would require any interference by the Chancellor?

Although the exercise by the Chancellor under section 11(1) of the Act has been questioned by Mr. Srivastava on the issue of jurisdiction and the parameter explained in the provisions to submit that the reasons for the impugned order is not one of the requisites for exercise of such power, but, in my opinion, considering the review jurisdiction vested in the Chancellor under section 9(7)(iii) of 'the Act', the Chancellor is well equipped with such jurisdiction. There is, thus, no infirmity in the exercise of jurisdiction by the Chancellor rather the only issue is whether at all the appointment of the petitioner as the Vice Chancellor of Kameshwar Singh Darbhanga Sanskrit University, Darbhanga vide notification dated 30.01.2014 placed at Annexure 16 suffered from any infirmity requiring interference?



For the purpose I would be referring to certain dates which would be very relevant for the issue.

1.10.1974- The petitioner was appointed as a Lecturer in Uttarkashi, in the then State of Uttar Pradesh, presently in the State of Uttrakhand.

15.2.1982- An advertisement was issued by the respondent- University for appointment of Lecturer. The petitioner applied and was appointed against the post of Lecturer vide notification present at Annexure 2.

1.12.1986- The petitioner was promoted on the post of Reader vide notification dated 31.3.1990 with effect from 1.12.1986.

26.2.1998- Since the date of promotion was shifted to 19.3.1992 that the petitioner came before this Court in C.W.J.C.No. 7844/1997 and the writ petition was allowed with a direction that the petitioner would continue to receive salary on the post of Reader from 1.12.1986 and it is following the judgment enclosed at Annexure 4 that a notification was issued confirming the petitioner on the post of Reader with effect from 1.12.1986 under the signature of the Registrar bearing notification dated 27.8.1998 at Annexure 5.

25.8.2009- The promotion of the petitioner on the post of Reader was confirmed on recommendation by the Bihar State University (Constituent Colleges) Service Commission (hereinafter



referred to as 'the University Service Commission'). (Annexure 6)

11.6.2001- The name of the petitioner alongwith Dr. Meena Kumari was recommended for promotion under the Time Bound Promotion Statutes of the University with effect from 1.12.1992. (Annexure 7)

10.9.2001- Vide notification dated 10.9.2001 the petitioner alongwith Dr. Meena Kumari were promoted to the post of Professor under the Time Bound Promotion Statutes. The petitioner was promoted with effect from 1.12.1992. (Annexure 8)

20.1.2009- An issue was raised before the Chancellor as regarding inter se seniority in between the petitioner and Dr. Meena Kumari and which was resolved under the order of the Chancellor upholding the seniority of the petitioner. (Annexure 9)

2.3.2009- The post of Professor was advertised by the University on regular basis and against which the petitioner applied and was appointed vide notification dated 2.3.2009 at Annexure 10.

10.3.2011- Following orders passed by this Court in a batch of writ petitions that the time bound promotion of the petitioner and others were reconsidered by a Committee constituted in this regard and their time bound promotion earlier granted was confirmed. (Annexure 12)

30.5.2013- The petitioner having already been granted time



bound promotion on the post of Professor followed by his regular appointment against the post on 2.3.2009, he was granted pay protection on the post and he was also granted continuity in service w.e.f. 1.12.1992 vide orders at Annexures 13, 14 and 15.

30.1.2014- The petitioner was appointed as Vice Chancellor of the respondent- University under the orders of the Chancellor placed at Annexure 16.

10.8.2016- The impugned order is passed placed at Annexure 20 followed by notification dated 11.8.2016 at Annexure 22.

Before I proceed further in the matter I would also deem it necessary to put on record the amended provisions of Section 10 of 'the Act' which was amended on 10.8.2013 which reads as follows:-

"10. The Vice-Chancellor.- (1)(i) Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellor. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

(ii) The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public notification or



nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Chancellor.

(iii) Following shall be the constitution of the Search Committee-

(a) A member nominated by the Chancellor, who shall be an eminent Scholar/ Academician of national repute or a recipient of Padma Award in the field of education and shall be the Chairman.

(b) The Director or Head of an institute or organization of national repute, such as, Indian Institute of Technology, Indian Institute of Science, Indian Space Research Organization, National Law University or National Research Laboratory or Vice-Chancellor of a statutory University nominated by the Chancellor as Member.

(c) A member nominated by the State Government who shall be an eminent Academician and have full knowledge of the academic structure and problems of higher education of the State."

The amended provisions of Section 10 of 'the Act' requires



an incumbent for the post of Vice Chancellor, to be a person of the highest level of competence, integrity, morals and institutional commitment, having a minimum of ten years teaching experience as a Professor. There is no dispute on the competence, integrity, moral and institutional commitment of the petitioner on his role as a Professor rather the only dispute raised is whether he has ten years mandatory teaching experience as a Professor.

A counter affidavit though has been filed on behalf of the Chancellor but the University has not chosen to file any counter affidavit and has chosen to rely upon the statements and submissions made in the counter affidavit filed on behalf of the Chancellor. As I have already observed earlier there is no dispute on facts and the promotion of the petitioner on the post of Professor under Time Bound Promotion Scheme of the University vide notification dated 10.9.2001 is not in dispute. What transpires from the argument advanced by the learned counsel appearing on behalf of the Chancellor and the University is that they have confused themselves in between promotion under the Time Bound Promotion Scheme on 10.9.2001, as against the regular appointment of the petitioner on the post of Professor which has admittedly been granted on 2.3.2009. To canvass their arguments, learned counsel for the Chancellor and the University, have heavily relied upon the admission of the petitioner



made in paragraphs 23 and 24 of his reply filed before the Chancellor. I would wonder as to how this would make any difference in the legal position. All that the petitioner has stated is that he was granted time bound promotion earlier which simply upgrades the post of an incumbent which he is already holding, while the appointment on the post of Professor was made on 2.3.2009 as against a regular post. This statement of the petitioner has been made the basis for the arguments advanced by the learned counsel for the respondents to support the impugned order.

In my opinion, there is nothing in the statutory provisions underlying the amended section 10 of 'the Act' which distinguishes in between a Professor holding the post on the basis of time bound promotion from a Professor holding the post by virtue of an appointment. In fact even when the statutory requirements makes no such classification, learned counsel appearing for the Chancellor and the University have tried to interpret the statutory provisions as per their suitability.

Section 10 of 'the Act' simply requires the incumbent to have ten years teaching experience as a Professor in University system or in an equivalent position in a reputed research and/or academic administrative organization. The provisions thus takes into consideration all Professors whether posted in the University or



elsewhere in a similar capacity but discharging the duties attached to the post of a Professor. Although Mr. Chaubey, learned Senior counsel appearing for the University, has adventurously argued that the petitioner except for enjoying facilities has not discharged the function of a Professor nor held classes in such capacity but the submission advanced by Mr. Chaubey is neither supported by any factual details nor the University has even bothered to file an affidavit. It is an absurdity that the petitioner having been promoted as a Professor under the Time Bound Promotion Scheme of the University as back as on 10.9.2001, for all the 13 years until the petitioner was appointed as a Vice Chancellor on 30.1.2014, the University permitted the petitioner to enjoy the benefits of the post of Professor without discharging his duty as such. The argument is strange and is not backed by supportive details. There is nothing on record to show whether there are classes year-marked for a Lecturer, Reader and a Professor. In fact the provisions underlying Section 10 of 'the Act' also does not discuss as such. All that it requires is that the incumbent should have 10 years teaching experience as a Professor and it is nobody's case that the petitioner did not hold any classes as a Professor.

The argument advanced by Mr. Chaubey and Mr. Giri is neither supported by the Statutes nor there is any material on record to support the charge. In fact the fault lies with the petitioner for he was



too bonafide in his explanation before the Chancellor. While trying to explain his promotion under the Time Bound Promotion Scheme and his regular appointment as a Professor, he has provided a food for thought for the respondents to cancel the appointment, even though the opinion expressed by the Chancellor is not backed by the statutory provisions. Despite repetition I would like to reiterate that the statutory provisions underlying under section 10 of the Act nowhere distinguishes between a teaching experience gained by a Professor holding the post on the basis of time bound promotion or by a Professor appointed against a regular post. It is the experience gathered by the incumbent while holding the post in either capacity. It is again surprising that even though the learned counsel for the Chancellor and the University have relied upon the judgment of the Division Bench in the case of **Ram Tawakya Singh (supra)** which is again a case arising from a promotion under the Time Bound Promotion Scheme but the legal proposition settled by the Division Bench has been ignored and for the purpose I would like to reproduce the relevant paragraphs of the Division Bench opinion which would demonstrate the fallacies in the argument advanced by the learned counsel appearing for the University and the Chancellor:

"39. Since the minimum experience of ten years as a Professor, becomes the qualifying marks or the minimum eligibility condition to adjudge the fulfillment



and requirement of being a distinguished academician, it follows that such experience of 10 (ten) years has to be, therefore, actual working experience and not deemed working experience, which one may get on account of the personal promotion earned under the Time Bound Promotion Scheme or Merit Promotion Scheme or Career Advancement Scheme as prevalent in the Universities of Bihar under the different Statutes framed by the Chancellor.

42. In the case at hand, respondent no.4 was appointed to the post of Lecturer, on substantive basis, in Magadh University, on 20.4.1983. His promotion to the post of Reader was made, on 6.4.2000, with effect from 30.3.1991, by giving him the benefit of personal promotion on completion of eight years of service. His subsequent promotion, again, from the post of Reader to the post of Professor was notified, on 3.7.2009, with effect from 21.4.1999; yet again, giving him the benefit of personal; promotion under the Statutes envisaging such promotion on completion of 16 years of service including eight years as a Reader. As a matter of fact, in view of the notification of promotion, dated 6.4.2000, the eight years period of experience of respondent no.4 as a Reader, was completed by him only on 6.4.2006 and, therefore, even if he was given notional promotion to the post of Reader, with effect from 30.3.1991, by making it retrospective, it did not mean, nor can it mean, that respondent no.4 was earning experience on the post of Professor with effect from 21.4.1999, i.e.,



the date from which he was promoted vide Notification, dated 3.7.1999.

43. Such, a decision of personal promotion of respondent no.4 to the post of Professor, in terms of the Statutes, on completion of 16 years experience as a Lecturer and Reader, with retrospective effect, may qualify him to claim salary, etc.; but his experience of working, on the post of Professor, could commence only with effect from 3.7.2009, when his promotion was notified.

44. As a matter of fact, it would be wholly illogical to allow respondent no.4 to compute his experience on the post of Professor with effect from 21.4.1999 inasmuch as he was working on 21.4.1999, only as a Lecturer and, in fact, his promotion to the post of Reader itself was notified on 6.4.2000. Thus, the petitioner's experience, on the post of Lecturer, is from 20.4.1983 to 5.4.2000 and his experience, on the post of Reader, is from 6.4.2000 to 2.7.2009 leaving his actual period of experience as a Professor only from 3.7.2009.

47. Situated thus, it becomes abundantly clear that when the promotion of respondent no.4 to the post of Professor was notified only on 3.7.2009, his experience that would qualify him for appointment to the post of Vice Chancellor would be only of little more than four years, as on the date of advertisement, in the month of September, 2013, and not ten years as is the mandatory requirement of Section 10 of the Bihar State Universities Act, 1976." (Emphasis supplied by me)



The extract of the Division Bench judgment reproduced hereinabove confirms the legal position that even if an incumbent may be granted time bound promotion from the retrospective date by a particular notification and even if he may be entitled to the benefits attached to the post retrospectively from the date the promotion is so granted but in so far as teaching experience is concerned, it would commence from the date of notification. In the present case, the petitioner was granted time bound promotion on the post of Professor with effect from 1.12.1992 vide notification dated 10.9.2001, as contained in Annexure 8. Following the legal position settled by the Division Bench in the case of **Ram Tawakya Singh (supra)**, although the petitioner would be entitled to other benefits attached to the post of Professor with effect from 1.12.1992 but in so far as teaching experience is concerned, it would have to be calculated with effect from the date of notification i.e. 10.9.2001. It is undisputed that the petitioner has gained 10 years teaching experience when calculated with effect from 10.9.2001 for being considered against the post of Vice Chancellor in terms of the amended provisions of Section 10 of 'the Act'. The decision of the Chancellor to recall the appointment on grounds that the petitioner did not have 10 years teaching experience from the date he was granted regular appointment on the post i.e. 2.3.2009, is on account of misappreciation of the



statutory requirements for the regular appointment of the petitioner against the post of Professor on 2.3.2009, was only a confirmation of the position which was existing since 10.9.2001.

In view of the discussions aforementioned and the issue settled by the Division Bench in the case of **Ram Tawakya Singh (supra)**, it is only a completion of formality for me to hold that the order passed by the Chancellor impugned at Annexure 20 together with follow-up notification impugned at Annexure 22 are illegal and contrary to the statutory provisions and are accordingly quashed and set aside.

The writ petition is allowed. The petitioner stands restored to the post of Vice Chancellor together with all consequential benefits.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.01.2017
Transmission Date	NA

