

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7547 of 2017

- =====
1. Dr. Sapana Verma, D/o Shri Anand Kumar Verma, working as Associate Professor in Ancient Indian & Asian Studies Rajendra Memorial Women's College, Nawada.
 2. Dr. (Mrs.) Geeta Sinha, D/o Late Bishwambhar Nath, working as Associate Professor on Psychology Rajendra Memorial Women's College, Nawada.
 3. Dr. Naresh Kumar Sinha, working as Associate Professor in Economics Rajendra Memorial Women's College, Nawada.
 4. Dr. Ran Vijoy Sharma, working as Associate Professor in History Gaya College, Gaya.
 5. Dr. (Smt.) Sharda Sinha (Retired) as Associate Professor in Ancient Indian & Asian Studies Rajendra Memorial Women's College, Nawada.
 6. Dr. Hashmat Parween, S/o S. Anwarul Haque, Moh- Madhavan Bara, Par-Nawada Pin Code- 805110, Retired as Associate Professor in Urdu Rajendra Memorial Women's College, Nawada.
 7. Md. Ilyasuddin, S/o Abdul Wahid, Mohalla- Kamalpur near Masjid P.O. & Distt- Nawada (Bihar) Pin Code- 805110 Retired as Associate Professor in Urdu Rajendra Memorial Women's College, Nawada.

.... Petitioner/s

Versus

1. The Magadh University, Bodh Gaya through the Registrar of the University.
2. The Vice Chancellor, Magadh University, Bodh Gaya.
3. The Registrar, M.U., Bodh Gaya.
4. The State of Bihar through the Principal Secretary, HRD Deptt., Govt. of Bihar, Patna.
5. The Chancellor of the Universities of Bihar, Raj Bhawan, Patna.

.... Respondent/s

With

=====

Civil Writ Jurisdiction Case No. 7003 of 2017

=====

1. Dr. Shyam Sunder Prasad Associate Professor Department of Physics, TPS College, Patna.
2. Dr. Shyam Das Prasad Associate Professor Department of Botany TPS College Patna.
3. Dr. Nawal Kishore Singh Associate Professor Department of Geography TPS College Patna.
4. Dr. Nand Kumar Singh Associate Professor Department of History TPS College Patna.
5. Dr. Raghubansh Mani Associate Professor Department of Psychology TPS College Patna.
6. Dr. Umesh Chandra Singh Associate Professor Department of Zoology TPS College Patna.
7. Dr. Dharendra Kumar Singh Associate Professor Department of Zoology TPS College Patna.
8. Dr. Vinod Kumar Rai Associate Professor Department of Mathematics TPS College Patna.
9. Dr. Satya Prakash Sinha Associate Professor Department of English TPS



College Patna.

10. Dr. Mahesh Kumar Associate Professor Department of Chemistry TPS College Patna.

.... Petitioner/s

Versus

1. The Magadh University, Bodh Gaya, Bodh Gaya, through the Registrar of the University.
2. The Vice-Chancellor, Magadh University, Bodh Gaya.
3. The Registrar, M.U. Bodh Gaya.
4. The State of Bihar, through the Principal Secretary, HRD Deptt., Govt of Bihar, Patna.
5. The Chancellor of Universities of Bihar, Raj Bhawan, Patna.

.... Respondent/s

=====

Appearance :

(In CWJC No.7547 of 2017)

For the Petitioner/s : Mr. Raghav Prasad No.-1, Advocate

For the Respondent/s : Mr. A.R. Pandey- AAG15

(In CWJC No.7003 of 2017)

For the Petitioner/s : Mr. Raghav Prasad No.-1, Advocate

For the Respondent/s : Mr. AG

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 15-05-2018

On 11.04.2018 in C.W.J.C. No. 7547 of 2017, order was passed that this case be listed along with C.W.J.C. No. 7962 of 2016. On 23.04.2018 in C.W.J.C. No. 7547 of 2017, this Court passed order for listing the case on 25.04.2018 along with C.W.J.C. No. 7003 of 2017.

2. In the meanwhile, C.W.J.C. No. 7962 of 2016 was heard and judgment was reserved on 18.04.2018 and as such C.W.J.C. No. 7547 of 2017 and C.W.J.C. No. 7003 of 2017 could not be heard along with C.W.J.C. No. 7962 of 2016. In the aforesaid circumstance, Mr. Raghav Prasad, learned counsel appearing in



C.W.J.C. No. 7547 of 2017 and C.W.J.C. No. 7003 of 2017 submitted that he may be granted opportunity to file written notes of argument, so that the two cases may also be disposed of along with C.W.J.C. No. 7962 of 2016.

3. Mr. Raghav Prasad, learned counsel has filed written notes of argument in support of the case of petitioners in C.W.J.C. No. 7547 of 2017 and C.W.J.C. No. 7003 of 2017. In the written notes of argument, Mr. Raghav Prasad has inter alia challenged the legality and validity of the order contained in Memo No. 1705 dated 01.09.2014, which was also challenged in C.W.J.C. No. 7962 of 2016.

4. Mr. Raghav Prasad has challenged the notification inter alia on the following grounds:

(i) The notification does not refer to the Chancellor notification dated 16.03.2013, which was passed in the light of decision of this Court in C.W.J.C. No. 559 of 2010 (Annexure-13).

(ii) The order of the Chancellor is on reference by the Hon'ble Court as part of Time Bound Promotion Scheme cannot be set aside by the Human Resources Development Department.

(iii) The State Government, if aggrieved by the order



of the Hon'ble Chancellor could have challenged the same in the High Court and should not have compelled the teachers to come to the Court for the illegal acts of the State.

(iv) The decision of the Chancellor is perfectly valid and the Hon'ble High Court should not interfere in exercise of power of judicial review in view of the judgment reported in the case of The State Financial Corporation and Others Vs. M/s Jagdamba Oil Mill and another, reported in AIR 2002 SC 834.

(a) In the written notes of argument Mr. Raghav Prasad also highlighted that the Hon'ble Chancellor's order is neither perverse nor illegal.

(b) The same is in furtherance of the State Policy of granting at least two promotions in service period or at least two scale promotions in view of the judgment in the case of State of Tripura & Ors. Vs. K.K. Roy, reported in 2004 (2) PLJR SC 8.

(c) The Statute for second promotion from reader to the rank of Professor came into existence only in 2008 and prior to 2008 the rule of promotion cannot be treated as vacuum.

5. Alternatively, Mr. Prasad has made the following submissions:



(i) Section 35 of the Act does not confer power to the State to issue direction to the University not to make promotion or appointment, as Section 35 of the Bihar State Universities Act only applies in the case of extra financial liabilities on the State without prior consent.

(ii) The Government has no veto power in the matter of statutory provision.

6. On deeper scrutiny of the written notes of argument, the Court finds that the submissions in support of the writ applications and the claim that the petitioners are entitled to grant of Time Bound Promotion, even after coming into force Career Advancement Scheme vide Statute framed by the Hon'ble Chancellor and made effective from 23.09.1995 is misconceived.

Firstly: Annexure-14 is not a notification. It was a decision in relation to promotion of Dr. S. K. Jabeen. Annexure-14 proceeds that the Career Advancement Scheme Statute with effect from 23.09.1995 does not provide for scheme for promotion from Reader to Professor and as such there must be way out to find from legal lacuna and to redress the qualified teachers to their deprivation of promotion as University Professors. The Hon'ble Chancellor has approved the action of the University. Reading in between the line of



Annexure-14, the Court does not find that the said decision partake the character of notification or statute. The said decision cannot be life to repeal Statute of time bound promotion. Referring to Annexure-13, the Court on scrutiny finds that in the aforesaid case considering the promotion granted to one Shri Ram Padamdeo on the post of University Professor under Time Bound Promotion Scheme, legal opinion was obtained by the University and on the basis of the said opinion, a clarification was sent to the Chancellor on 10.12.1998 accepting the interpretation that vide 1995 Statute, the Statute for promotion of Lecturer to the post of Reader has been superseded and not the time bound promotion to the post of Readers to the post of University Professors. The Writ Court disposed of the writ application directing the petitioner to represent the Chancellor of the University to consider the case of the petitioner.

7. Annexure-13 is also not adjudication on the point whether time bound promotion scheme continued even after 23.09.1995 when the Career Advancement Scheme came in existence and specifically superseded the time bound promotion statute dated 24.12.1986.

8. Referring to the submission of the petitioners that the Court has limited power of judicial review. The Court does not



find any merit in such submission. Under Article 226 of the Constitution, the power is plenary and there is no limitation in the matter of exercise of jurisdiction of constitutional court. The restriction in exercise of jurisdiction is self-imposed. It is relevant to quote the observations of Justice Subba Rao in the case of Dwarka Nath vs. Income-Tax Officer, Special, reported in 1965 (3) SCR 536 where his Lordships speaking for the Court has explained the scope of article 226 of the Constitution in the following words:

“This article is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. The constitution designedly used a wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country.



Any attempt to equate the scope of the power of the High Court under article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in *T. C. Basappa v. Nagappa*, and *Irani v. State of Madras*

9. The same view was reiterated by the Apex Court in the case of *Anandi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jaya vs. V.R. Rudani & Ors*, reported in AIR 1989 SC 1607.

10. Adverting to the submission of Mr. Prasad that the order of the Hon'ble Chancellor is neither perverse nor illegal. The Court is of the view that Annexure-14 is the decision of the Hon'ble Chancellor in a particular case and does not partake the character of Statute, which is uniform in the matter of construction of Career Advancement Scheme. The Court is of the considered view



that when Career Advancement Scheme was introduced, a new promotion scheme was introduced in the University. This Career Advancement Scheme was drawn on the line of U.G.C. and the submission that the Career Advancement Scheme has only withdrawn time bound promotion from Lecturer to Reader and it has retain the time bound promotion from Reader to Professor is unsustainable. This argument is fallacious as the Statute of Career Advancement Scheme dated 23.09.1995 was issued in supersession of Time Bound Promotion Statute of Lecturer to Reader and Reader to Professor. Para 8 of the Statute dated 23.09.1995 is quoted herein below for ready reference:

“8. The Statute for placement of Lecturers in the senior pay scale and also the Statute for promotion of Lecturers in the senior pay scale to the post of Reader and placement of Lecturers in the senior pay scale to the post of Lecturers in the Section Grade shall come into force in supersession of the Statutes approved by the Chancellor on 24.12.1986 (BSU-27/85-4032-GS(1) and amended on 20.11.1987 (BSU-27/85-4032-GS(1) and 28.11.1987 (BSU-27/85-4032-GS(1)).”

11. The Court is of the considered view that the



statute has to be read in a manner to promote the objective of the statute and effort should be made to avoid the meaning or scheme, which may render the statute unconstitutional.

12. In the totality of the facts situation, the Court is of the considered view that a restricted meaning of the Career Advancement Scheme, statute confining it to the lecturer to reader to offend Articles 14 and 16 of the Constitution of India considering the backdrop of framing of Career Advancement Scheme statute and para 8 of the Statute dated 23.09.1995 is impermissible, the Court is of the view that the statute has to be read to include a new system of promotion based on merit consideration and with Career Advancement Scheme Statute dated 23.09.1995 the time bound promotion Statute stands repealed. It is to be noted here that the Career Advancement Scheme was introduced on the basis of recommendation of the expert committee and based on the recommendation of the expert committee, the U.G.C. adopted Career Advancement Scheme and following the same the Hon'ble Chancellor has framed the statute and made effective from 23.09.1995. Any other construction of the Statute and restricted meaning of Statute dated 23.09.1995 will led to absurd result and as such the Court has no hesitation in holding that applying the rules of purposive interpretation the Career Advancement Scheme Statute



dated 23.09.1995 has to be read as new era of promotion based on merit and closure of the old scheme of time bound promotion, which has no sanction or approval of the U.G.C., there is no scope of interpretation to retain the repealed time bound promotion Statute in the name of vacuum.

13. Adverting to the submission of Mr. Prasad that the policy of two promotions in the career as per the judgment of the Apex Court in the case of State of Tripura & Ors (supra) is concerned, the Court is of the view that on careful scrutiny of the Career Advancement Scheme, it is evident that the Career Advancement Scheme provide for financial upgradation on completion of certain period of time as teacher. Avenues of two promotion is available to a teacher and it cannot be read that without consideration of merit teachers should be granted promotion only on the length of service.

14. Adverting to the issue raised as to the power of the State under Section 35 of the Act, every promotion involves financial implication. The submission of the petitioners is only sustainable if the post of Professors are sanctioned. In time bound promotion, promotions are not granted against the sanctioned post, but is temporary upgradation of post for financial upgradation and



after vacancy the post falls back to the original position.

15. Considering the totality of the facts and circumstances indicated above and the reasons assigned in C.W.J.C. No. 7962 of 2016, the Court does not find any merit in the contention of the writ petitioners. Accordingly, both the writ applications are devoid of any merit. It is, accordingly, dismissed.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.05.2018
Transmission Date	

