

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1968 of 2017

Dr. Prabhakar Bhatt, Son of Late Jagdhari Rai, Resident of Yoga Vidya Samvardhak Mandal, Mohall- Boring Road, P.S. Kotwali Patna, District-Patna. Retired University Professor, Post Graduate Department of Zoology, Science College Patna University.

... .. Petitioner

Versus

1. The Patna University, Patna through its Registrar.
2. The Vice Chancellor, Patna University, Patna.
3. The Registrar, Patna University, Patna.
4. The Finance Officer, Patna University, Patna.
5. The State of Bihar through its Principal Secretary, Department of Education, Govt. of Bihar, Patna.
6. The Director, Higher Education, Government of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha Mr. Anil Kumar Tiwary
For the Patna University :		Mr. Digvijay Singh Mr. B.J. Jha

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 27-09-2018

Heard learned counsel for the parties.

2. Following reliefs are being sought by the petitioner in the present writ application :-

“(i) That this application is being filed before this Hon’ble Court for issuance of writ in the nature of Certiorari for quashing the order dated 14.09.2016 passed by Respondent No.2, whereby upon placing reliance on the State govt. Resolution as contained in Memo No. 15/m 10-218/98 (Uchh Shiksha) 1669 dated 18.05.2010, the Respondent No. 2 has



declined to grant Two Advance Ph.D. increment to the petitioner.

(ii) For issuance of a writ in the nature of Mandamus commanding the Respondents to sanction and grant two advance Ph.D. Increment to the Petitioner w.e.f. 01.01.1996/27.07.1998 until the petitioner attained the age of Superannuation e.g. 65 years on 31.1.2013.

(iii) For commanding and directing the Respondents to make calculation of the due financial benefits admissible to the petitioner consequent upon the grant of said two advance Ph.D. Increment to the petitioner w.e.f. 01.01.1996, arrears of salary, Revision of Pension/Gratuity, Earn Leave Salary as has been ordered by this Hon'ble Court vide order dated 15.11.2010 in C.W.J.C. No. 15136 of 2010 and many other cases.

(iv) To direct the concerned Respondent authorities to make payment of Interest @ 12% per annum for delay payment upon the said benefit.

(v) To pass any other order/orders in the shape of a consequential relief to which the Petitioner may be found to be legally entitled to the facts and circumstances of the instant case in hand.”



3. The petitioner retired on 31.01.2010 as Professor in Department of Zoology, Science College, Patna, under Patna University. He was awarded Ph.D. degree in the year 1979. Under the Scheme of the University Grants Commission (UGC), such teachers, who acquired Ph.D. degree during service and prior to 01.01.1996 and did not get the benefit of any advance increment as per the Career Advancement Scheme, have been declared to be entitled to benefit of two advance increments. This decision of the UGC was communicated to the Registrars of all the Universities and the State Education Secretaries on 24.07.2002, which has been brought on record by way of Annexure-B to the counter affidavit filed on behalf of the Patna University. The said letter, however, clarifies that these two advance increments shall not be admissible to teachers who were recruited/promoted to a post for which Ph.D. was an essential qualification.

4. The petitioner had joined the service of Patna University as Lecturer on 07.01.1976 and he was promoted as Reader on 07.01.1986, after completion of 10 years and subsequently as Professor, after completion of 16 years of continuous service under the Time Bound Promotion Scheme of promotion of Lecturers to the post of Readers and for Readers to



the post of Professor. In the meanwhile, he obtained his Ph.D. degree in 1979, as has been indicated above. The facts are not in dispute. The sole dispute, which has emerged in the present proceeding for adjudication of the petitioner's claim, is as to whether the petitioner had taken advantage of his Ph.D. qualification for the purpose of time bound promotion to the rank of Reader and subsequently to the rank of Professor or not. In view of the letter, dated 24.07.2002, of the University Grants Commission, as noted above, the petitioner would not be entitled for the benefit of two advance increments, unless he can establish his case that he did not take advantage of his Ph.D. degree for promotion to the post of Reader and Professor.

5. It is the specific case of the Patna University that the petitioner was granted promotion to the post of Reader on account of having his Ph.D. degree, which fact has been denied by the petitioner in reply. The notification, issued by the Patna University, dated 22.07.1987, has been brought on record by way of a supplementary affidavit filed on behalf of the Petitioner (Annexure-P/12 Series), whereby the petitioner was given promotion to the rank of Reader with effect from 07.09.1986. The said notification clearly mentions that the promotion was being granted under the provisions of the Statute



approved by the Chancellor and issued by letter No. BSU-27/85-4032-GS(1) dated 24.12.1986 (hereinafter referred to as 'the 1986 Statute') for Time Bound Promotion of Lecturers/Readers to the post of Readers/University Professors. The notification, whereby the petitioner had been given promotion to the rank of University Professor dated 05.04.1997, has been brought on record by way of same Annexure-P/12 Series, wherein the effective date of the petitioner's promotion has been indicated as 11.12.1991. Evidently, he has been granted promotion to the rank of Professor upon completion of 16 years. In the light of the aforesaid facts, the question, which needs consideration, is as to whether without aid of Ph.D. degree, the petitioner could have been allowed promotion to the rank of Professor under Time Bound Promotion Scheme on completion of 16 years of his service.

6. In the absence of any controversy that the petitioner's promotion to the rank of Professor was under 1986 Statute, in my opinion, the relevant provisions under the said Statutes are required to be examined. Article (1) of the Statute provides for promotion of a Lecturer to the post of Reader serving in the University Department or in a Degree College, if he fulfills following conditions :



(i) He holds qualification as prescribed for the post of Lecturer under the Statute enforced at the time of his appointment as Lecturer.

(ii) He holds substantive appointment on the post of Lecturer.

(iii) He has completed at least 10 years of continuous service as Lecturer.

7. It is evident, on reading of the said provisions, that there was no requirement of Ph.D. degree for promotion to the post of Reader under 1986 Statute. The petitioner was not having Ph. D. degree at the time of his appointment as Lecturer and, therefore, there would have been no question of his appointment as Lecturer based on his Ph.D. qualification. Articles (2) and (3) of the Statute deals with promotion to the rank of University Professor, which reads thus: -

“(2) A Reader, serving in a University Department or in a degree college, managed and maintained by the University and has completed at least twenty five years of continuous service as teacher not below the rank of lecturer in one or more Universities shall on the recommendation of the Bihar State University (Constituent Colleges) Service Commission, be promoted on the basis of time bound scheme to the



post of University Professor subject to the condition given in provisos to clause (I) above.

(3) A reader possessing the qualification of a University Professor prescribed by the University Grants Commission serving in a university Department on in a degree college, managed and maintained by the University and who has completed at least 16 years of continuous service as lecturer/Reader in one or more Universities, shall on recommendation of the Bihar State University (Constituent Colleges) Service Commission be promoted to the post of University Professor, other conditions remaining the same.”

8. The difference between Articles (2) and (3) of 1986 Statute is clear. To get promotion to the rank of University Professor on completion of 16 years of continuous service as Lecturer/Reader, a Reader must have “the qualification of a University Professor prescribed by the University Grants Commission”. Such requirement that Reader must possess the qualification of University Professor for grant of promotion on completion of 25 years under Article (2) of 1986 Statute is not there.



9. There is no gainsaying that benefit of the said two advance increments can be refused only if Ph.D. is found to be an essential qualification either for promotion to the rank of Reader or to the rank of Professor.

10. Mr. Purushottam Kumar Jha, learned counsel appearing on behalf of the petitioner, has relied on the revised Statute in respect of qualification of teachers of University/Colleges and thereafter, referring to Article (1), has submitted that Ph.D. is not essential qualification for appointment as University Professor. Article (1) reads thus:-

“(1) University Professor:

Pay Scale-Rs. 1500-60-1800-100-2000-125-2-2500.

Qualification.- An eminent scholar with published work of high quality actively engaged in research. About ten years experience of teaching and or research. Experience of guiding research at doctoral level

Or

An outstanding scholar with established reputation who has made significant contribution to the knowledge.”

11. It is, thus, his submission that neither for promotion to the rank of Reader nor for promotion to the rank of



Professor, Ph.D. was an essential condition and, therefore, the petitioner cannot be denied the benefit of advance increments in view of the language used by the University Grants Commission in the letter dated 24.07.2002. For ready reference, the contents of the letter dated 24.07.2002 is reproduced hereinbelow :

“It is clarified that these two advance increments shall not be admissible to teachers, who were recruited/promoted to a post for which Ph.D was an essential qualification.”

(Emphasis added)

12. I have already held that for promotion to the rank of Reader, Ph.D. is not essential qualification. The University Grants Commission Regulations, 1991, provides following qualification for University Professor:

“(1) Professor:

Qualification.- An eminent scholar with published work of high quality actively engaged in research with 10 years of experience in postgraduate teaching and/or research at the University/National level Institutions including experience of guiding research at doctoral level

Or

An outstanding scholar with established reputation who has made significant contribution to knowledge.”



13. On reading of the provisions under the Statute and the University Grants Commission Regulations, it is evident that Ph.D. was not an essential qualification for promotion to the post of Reader and University Professor to which the petitioner was promoted at the relevant point of time.

14. Learned counsel, appearing on behalf of the State, has submitted that the petitioner has taken aid of his Ph.D. qualification for promotion to the rank of Reader and University Professor and, therefore, he is not entitled to the advance increments. He has also referred to the statements made in the supplementary affidavit to convince this Court that the petitioner was granted higher pay-scale in view of his Ph.D. qualification.

15. Be that as it may, the fact remains that the University Grants Commission did not prescribe, at the relevant point of time, Ph.D. as essential qualification for appointment to the post of University Professor. The benefit of two advance increments could be denied to the petitioner only in the circumstance indicated in the letter dated 24.07.2002 of the University Grants Commission (supra).

16. In the light of above noted discussion, I am of the view that the Vice Chancellor could not have denied the



benefit of two advance increments by the impugned decision. In the impugned order dated 14.09.2016, the Vice Chancellor has given a reason for denial stating that the petitioner superannuated on 31.01.2010, whereas such benefit has been sanctioned from 18.05.2010. My attention has been drawn to a judgment and order of a Division Bench of this Court dated 27.07.2017, passed in L.P.A. No. 269 of 2016 (***Dr. Brahmdeo Sah. Vs. State of Bihar and Others***), relevant portion of which reads, thus:

“On the basis of a recommendation made by the University Grants Commission, a decision was taken to grant two advance increments to such teachers who had acquired the Ph.D. Degree prior to 01.01.1996. Admittedly, the appellant had also acquired the said Degree and when it was not granted to him, he filed the writ application in question. During the pendency of the writ application, we find that the order was passed granting benefit to the appellant with effect from 18.05.2010 and it was ordered that the claim of the appellant for actual payment from 27.07.1998 cannot be accepted but he would only be granted proforma pay fixation from 27.07.1998 and actual monetary benefit from 18.05.2010. Challenging this action in only



granting proforma benefit from 27.07.1998 and not granting actual monetary benefit, this appeal has been filed.

Having heard the learned counsel for the parties, we find that apart from the fact that various other identically situated teachers have been granted the actual benefit with effect from 27.07.1998 when the decision was taken by the State, in the case of present appellant the benefit of actual payment is being denied only on the ground that after retirement from the service in the year 2001 he approached the University for payment of his post-retiral benefits by filing CWJC No. 6076 of 2002 and C.W.J.C. 5293 of 2004 followed by filing of a contempt application being M.J.C. No. 2020 of 2011 and when these matters were pending no such claim has been made by the appellant that he was not getting two advance increments from 27.07.1998.

In our considered view when all other identically situated teachers have been granted the benefit effective from 27.07.1998, the appellant is also entitled to the said benefits. Merely because in the earlier round of litigation the appellant had not agitated his claim with regard to payment of two advance increments from 27.07.1998, he cannot be deprived of the said benefits.



Keeping in view the aforesaid, we allow this appeal, direct for payment of two advance increments to the appellant effective from 27.07.1998. The payment must be made by the State Government within a period of two months from the date of receipt/production of a copy of the order. So far as the right of the respondents to take any other action against the appellant is concerned, it is for the respondents to proceed in the matter in accordance with law.”

17. In the light of the above noted discussion and Division Bench decision of this Court, in case of ***Brahmdeo Sah*** (supra), this application deserves to be allowed and is accordingly allowed.

18. The impugned order, dated 14.09.2016, passed by the Vice Chancellor, Patna University, is hereby quashed. The respondent University is directed to sanction and grant two advance Ph.D. increments to the petitioner with effect from 27.07.1998, as directed in case of ***Brahmdeo Sah*** (supra). The petitioner shall be entitled for all consequential benefits in terms of arrears of salary, revision of pension etc., which must be released within three months from the date of receipt/production



of a copy of this order.

19. This application is allowed, accordingly, with the aforesaid direction and observation.

20. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/Ashish

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	12.10.2018
Transmission Date	N/A

