

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1551 of 2018

In

Civil Writ Jurisdiction Case No.4164 of 2015

Dr. Raghu Bansh Prasad Singh son of Late Ram Pravesh Singh, resident of
Adarsh Nagar, Lane No. 3 P.O. - Khabra, P.S. - Sadar, District- Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Bihar, Patna
2. Chancellor of Universities of Bihar, Raj Bhawan , Patna.
3. B.R. Ambedker Bihar University, Muzaffarpur through its Registrar.
4. Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
5. Registrar, B.R. Ambedker Bihar University, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Abhinav Srivastava
For the Respondent/s : Mr.Ashutosh Ranjan Pandey -Aag15

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 30-04-2019

This intra Court appeal has been preferred by the
appellant against the order dated 13.09.2018 passed in C.W.J.C.
No. 4164 of 2015 whereby the learned Single Judge was pleased
to dismiss the writ application holding that the issue of grant of
promotion under Time Bound Promotion Scheme from Reader
to Professor has already been decided by this Court in the case
of **Sunil Kumar Yadav vs. State of Bihar** reported in **2018 (3)**
PLJR 354 and accordingly he dismissed the writ application.

2. The counsel for the parties were heard at length on



18.04.2019 and the submissions of learned counsel for the appellant as also the learned Additional Advocate General No. 15 were recorded by the bench that is reproduced herein under:

“The appellant's case is that the aforesaid judgment is inapplicable on the facts of the present case, inasmuch as, the appellant and such other similarly situated Readers are claiming promotion under the Time Bound Promotion Scheme as Professors. The grounds raised for challenge primarily are that the Statute which extended the benefit of time bound promotion has neither been expressly or impliedly repealed as the said scheme continues to be in force. For this, reliance has been placed on the provisions of the Statute relating to time bound promotion, as approved by the Chancellor in exercise of the powers vested in Section 36 of the Bihar State Universities Act, 1976. The said Statute dated 24th December, 1986, as approved by the Chancellor under Clause 1 (3), explains the contingencies and provides for ingredients under which such a promotion to the post of University Professor can be availed of. It is the contention of Shri Srivastava that this Statute, insofar as it relates to the promotion from the post of Reader to a University Professor, still continues to be in force, even though the Statute relating to promotion from Lecturer to Reader has been repealed by a notification approved by the Chancellor on 23rd September, 1995. It is urged that the recital of supersession contained in the notification dated 23rd September, 1995 nowhere abrogates the earlier Statutes of 1986 referred to above, and consequently, the



appellant having completed more than 16 years of service, is entitled for being promoted as a University Professor under the Time Bound Promotion Scheme.

It is further submitted that the State Government has been adopting double standards when it came to the enforcement of the Career Advancement Scheme, the cut off date whereof was given effect to from a date in the year 1998 and which is evident from the notification dated 10th July, 2001. He submits that this notification, therefore, clearly indicates that when it came to the extension of benefits under the Career Advancement Scheme, the retrospectivity was maintained, as is evident from Clause 19 of the said notification, but the same standards have not been applied, and rather without there being any express or implied repeal of the Statutes as applicable in the present controversy, the claim has been totally negated on the pretext of the Government of India letter dated 15th February, 1989. The said letter in Paragraph 4 (iii) clearly communicates to the State Government that the Career Advancement Scheme benefits were being given, but if the State Government decides to give an option to the teachers to exercise their claim under the Time Bound Promotion Scheme, then it is open to the State Government to do so, but in that event, Central assistance will not be available and there cannot be any compromise on this issue. Shri Shrivastava submits that as a matter of fact this advisory from the Government of India was never adopted by way of any exercise of repealing the Statute and, therefore, the recital contained in the notification dated 10th July, 2001 or even the Government order dated



1st of September, 2014 will not amount to repealing of the Statutes and consequently any such executive instruction cannot override a subordinate legislation which continues to exist. The presumption against repeal is the normal rule and in view of this admitted position of fact that there has not been an express repeal the inference and the assumption being drawn through the said documents is not sustainable in law.

It is further submitted that the provisions of the Time Bound Promotion Scheme were brought with a view to provide promotional benefits and even subsequently were aimed at removing stagnation. In the instant case, the appellant has been deprived of the benefit for even consideration for being promoted from the post of Reader to that of a University Professor, inasmuch as, if the Time Bound Promotion Scheme stands repealed, then in that view of the matter, the Career Advancement Scheme stipulates a clear bar for any such benefit and, therefore, either way, there is no scope or avenue for any such promotion for the appellant or similarly situated Readers. He, therefore, submits that this would, therefore, be a denial of opportunity and would also amount to an act of discrimination, inasmuch as, such of those Readers who had completed more than 16 years of service prior to 1995 would be getting the benefit, whereas the appellant and other such similarly situate Readers who had completed 16 years during 1995 to 1998 are being deprived of the said benefit. Thus, in effect, there is a permanent deprivation of consideration, inasmuch as, the Merit Promotion Scheme has come to an end, which even



otherwise had a bar with regard to the maximum number of teachers who could avail of the said opportunity. As already stated above, the Career Advancement Scheme itself has a bar provided for under which once a person who has obtained the benefit of the Time Bound Promotion Scheme would not be able to avail of any such benefit under the said scheme. This is how, there is a permanent deprivation and, therefore, the same violates Article 14 of the Constitution of India.

Learned counsel has further invited the attention of the Court to the clarification given by the Chancellor that there is nothing to indicate that the Time Bound Promotion Scheme had been expressly repealed and could not be enforced, but this opinion of the Chancellor to the extent it relates to promotion of Readers to Professors, did not find favour with the State Government and they came up with the executive clarification dated 1st September, 2014, which is impugned in the present proceedings.

The availability of the U.G.C. scale, the financial impact and also the contention on the issue of abandonment of the scheme as urged by the respondents has been criticized on various grounds to which Shri Pandey has responded by contending that the declaration that the scheme has been abandoned is evident from the document dated 10th July, 2001, where in Clause 14 there is a clear recital that the scheme of time bound promotion stood repealed with effect from 23.09.1995 and it is the same fact which has been reiterated in the impugned decision dated 1st of September, 2014. He, therefore, submits that this was a clear conscious act of the State



Government, and even if it was an executive instruction, the fact remains that no other person was ever given any benefit after the abrogation of the said scheme of time bound promotion with effect from 23.09.1995. The argument in substance is that the repeal was not only with regard to the scheme of promotion of Lecturers to Readers but also of any such benefit arising therein which includes the scheme for promotion from Readers to a University Professor. He has invited the attention of the Court to the chronological facts which have been brought out in the counter affidavit to urge that the decision of the Government does not suffer from any infirmity and it does not bring about any discrimination, inasmuch as, no other person has been extended the said benefit which may fall within the class of the appellant.”

3. On the submissions raised, the relevant facts that emerge are that the appellant, on the recommendation of the University Selection Committee, was appointed as a Lecturer in Chemistry at Saharsa College, Saharsa under the L.N. Mithila University, Darbhanga on 02.11.1982. Subsequently his services were transferred to the B.R. Ambedker Bihar University, Muzaffarpur. As such he gave his joining in the year 1988 as a Lecturer in Chemistry in M.S. College, Motihari under the Bihar University, Muzaffarpur.

4. It is the case of the appellant that the Statutes for Time Bound Promotion of Lecturers to the post of Readers and for



Readers to the post of University Professors were approved by the Hon'ble Chancellor of Universities vide letter dated 24.12.1986. The Statutes laid down details of provisions for consideration of their cases for promotion subject to fulfillment of requirements laid down under the Statutes.

5. Subsequently vide letter dated 24.11.1987 issued by the Governor's Secretariat, Clause 1(3) was added to the existing Statutes for Time Bound Promotion Scheme. As per the newly added Clause 1(3), a Reader possessing the qualification of a University Professor prescribed by the University Grants Commission serving in a University Department or 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. The appellant on recommendation of the Bihar State University (Constituent Colleges) Service Commission, Patna, by notification dated 22.02.1997, was granted promotion under the Statutes of Time Bound Promotion Scheme in the rank of Reader in Chemistry with effect from 02.11.1992. It is stated



that the Statutes for promotion of Lecturers in the senior pay scale to the post of Readers provides as herein below :

“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 selection 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-27/85-4099-GS (1) and 28.11.1987 (BSU-27/85-4213-GS (1).”

6. Thus, it is submitted that from the aforesaid Clause 8 of the Statutes under Career Advancement Scheme, the provisions with respect to promotion of Lecturers to the post of Reader under the Time Bound Promotion Scheme as approved by the Hon’ble Chancellor vide letter dated 24.12.1986 were superseded.

7. Further case of the appellant is that under the Career Advancement Scheme approved by the Hon’ble Chancellor on 23.09.1995, there was no provision with respect to promotion of Readers in the rank of University Professor. It is submitted that Clause 1(3) of the Statute for time bound promotion of



Lecturers to the post of Readers and for Readers to the post of University Professors approved by the Chancellor on 24.12.1986 provide as follows:

“(3) [A Reader possessing the qualification of a University Professor prescribed by the University Grants Commission serving in a University Department or 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. There being no such provision dealing with the promotion of Readers to the post of University Professor, it is submitted that the aforesaid provision in the Statutes for Time Bound Promotion Scheme would remain operative even after 23.09.1995.

9. It is further submitted by appellant that with respect to a teacher working in the Veer Kunwar Singh University, Ara, the matter came up for consideration before the Hon'ble



Chancellor of the University and in response thereto a letter dated 16.03.2013 was written by the Special Secretary to the Governor, Bihar to the Vice Chancellor of Veer Kunwar Singh University stating therein that as the CAS Statute which came into effect from 23.09.1995 does not provide for promotion from the post of Reader to the post of University Professor, the 16 years merit-time bound promotion to the post of University Professor has not been repealed yet. The relevant portion of the said letter sent by the Governor's Secretariat, Bihar, is being quoted herein below for easy reference :

“....The CAS Statute which came into force with effect from 23.09.95 does not provide any scheme for promotion from the post of Reader to the post of University Professor as it relates to the promotion from the post of Lecturer to the post of Reader only. In this or such legal position, the most deserving candidates to the post of University Professor could be given justifiable promotion by the Universities because of absence of proper provisions in the relevant Statute even though some of the claimant relates might have put in 25 years or decades of meritorious teaching service



to the students in the Universities...”

10. It is further submitted on behalf of the appellant that a letter dated 16.08.2013 was issued by the Registrar of the Babasaheb Bhimrao Ambedkar Bihar University to all the heads of the University Departments and Principals of constituent colleges under the University. They were requested to forward the duly filled up proforma of the eligible Readers in their department/college to the Registrar for being considered for promotion to the rank of University Professor in terms of the provisions under the Statute for time bound promotion of Readers to the posts of University Professors.

11. It is further case of the appellant that as per the directions contained in letters dated 16.08.2013 and 27.08.2013, the head of the University Department of Chemistry forwarded the copy of the duly filled in proforma in relation to the appellant for consideration of his case of promotion in the rank of University Professor in Chemistry under the Statute for time bound promotion. However, at this stage a letter dated 01.09.2014 was written by the Special Secretary, Education Department, Government of Bihar to the Registrars of all the Universities in Bihar stating that in view of the legal opinion of the Finance Department and the learned Advocate General, with



respect to the promotion of Lecturers to Readers and Readers to University Professors under the Statute for time bound promotion which had come to an end on 23.09.95, a decision was taken not to extend the date of operation of the said Statute. It was contended on behalf of the appellant that action of the State Government as contained in letter dated 01.09.2014 was arbitrary, unreasonable and in violation of the provisions of the Bihar State Universities Act, 1976 as the Hon'ble Chancellor of University by his letter dated 16.03.2013 had ordered that the Statutes regarding time bound promotion would remain operative even after 23.09.95 so far as the same related to the provisions for grant of promotion of Readers in the rank of University Professors.

12. A counter affidavit and two supplementary counter affidavits were filed on behalf of the Education Department, Government of Bihar while a counter affidavit was filed on behalf of B.R.A Bihar University, Muzaffarpur.

13. As per the case of the respondent State of Bihar it was averred that the Hon'ble Chancellor vide letter dated 24.12.1986 had approved the Statute for time bound promotion of Lecturers to the posts of Readers and for Readers to the posts of University Professors. Further the Hon'ble Chancellor vide



letter dated 22.12.1986 approved the Statute regarding merit promotion of Lecturers as Readers and vide letter dated 22.02.1984 amended vide letter dated 24.11.1986 approved the Statute regarding merit promotion of Readers as University Professors. On 23.09.95 the Merit Promotion Scheme was substituted by the New Promotion Scheme which was approved by the Hon'ble Chancellor vide letter dated 23.09.1995. It is further averred by the State of Bihar that the Time Bound Promotion Scheme was abolished with effect from 23.09.1995 and a new Career Advancement Scheme was launched vide letter dated 23.09.1995 which is known as the Statutes for placement of Lecturers to the post of Lecturers in the senior pay scale and Statute for promotion of Lecturers in the senior pay scale to the post of Readers and for placement of the Lecturers in the senior pay scale to the post of Lecturers in the selection grade under Career Advancement Scheme. Thus, it is stated that from 23.09.1995 two schemes remained operative i.e., Merit Promotion Scheme and Career Advancement Scheme. The Hon'ble Chancellor vide letter dated 29.06.2005 approved the Statute for Career Advancement Scheme to be implemented giving retrospective operation with effect from 27.07.1998.

14. Further case of the State of Bihar is that the Time



Bound Promotion Scheme was neither approved nor recognized by the University Grants Commission (the 'UGC' in short). The UGC recognizes the Merit Promotion Scheme and in light of the guidelines of the UGC, the Career Advancement Scheme has been framed. It is after introduction of the Career Advancement Scheme as per guidelines of the UGC that the Time Bound Promotion Scheme was dropped. As such it is submitted that with the coming of the Career Advancement Scheme with effect from 23.09.1995, the Time Bound Promotion Scheme was superseded and since the said date, no teacher was entitled to be promoted from the post of Lecturer to Reader or from the post of Reader to University Professor under the Time Bound Promotion Scheme. Further the matter with regard to extension of period was considered by the State Government which came to the conclusion that the same could not be extended beyond the cut of date of 23.09.1995 and with the coming of the Career Advancement Scheme. As per the case of the State of Bihar the Career Advancement Scheme superseded the Statute for Time Bound Promotion.

15. The appellant filed the writ application (CWJC No. 4164/15) with a prayer for quashing the Letter dated 01.09.2014 issued by the Education Department, State of Bihar whereby, the



decision was taken not to extend the operation of the Statutes regarding Time Bound Promotion Scheme beyond 23.09.1995, for a direction to the authorities under B.R. Ambedkar Bihar University, Muzaffarpur to consider the case of the appellant for promotion in the rank of University Professor in accordance with the provisions contained under the Statutes for Time Bound Promotion, for a declaration to the effect that the provisions contained under the Statutes for Time Bound Promotion, so far as the same related to promotion of a person working in the rank of Reader to the rank of University Professor remained operative even after 23.09.1995 and they were not superseded, for a direction to the respondent authorities to grant all consequential benefits to the appellant with effect from the date of his promotion in the rank of University Professor under the Statutes for Time Bound Promotion Scheme and for other reliefs.

16. The said writ application was dismissed vide order dated 30.09.2018 passed by the Learned Single Judge holding that the grant of promotion under Time Bound Promotion Scheme from Reader to Professor, was decided by this Court in the case of **Sunil Kumar Yadav Vs. State of Bihar** reported in **2018 (3) PLJR 354**. It is against this order of dismissal that the



instant appeal has been preferred by the appellant.

17. It was the submission on behalf of the appellant that the the case of **Dr. Sunil Kumar Yadav Vs. State of Bihar** reported in **2018 (3) PLJR 354** involved different questions of law and issues from the instant case. So far as the case of **Dr. Sunil Kumar Yadav** (supra) is concerned, the facts were that the petitioner therein would be eligible to be considered for promotion as he was completing 10 years period of continuous service on 30.09.1995. In view of Letter No. 1075 dated 01.09.2019, the State Government had directed the Universities of Bihar not to extend the operation of the Statute regarding time bound promotion beyond 23.09.1995. Thus, it was contended on behalf of Dr. Sunil Kumar Yadav that it was a very hard case where he was falling short by only six days in completing the 10 years continuous service upto 23.09.1995. The contention on behalf of Dr. Sunil Kumar Yadav was that in view of the Statute dated 23.09.1995 not having been acted upon, as a result of the doctrine of desuetude, has to be treated as not applicable. The said submission was rejected by the learned Single Judge. On the other hand the facts and contentions in the instant case were that the Career Advancement Scheme came into effect from 23.09.1995. As in



the said scheme, there was no provision dealing with the promotion of Readers to the post of University Professor, thus as per the appellant, the provisions in the Statutes for Time Bound Promotion Scheme relating to promotion of Readers to the post of University Professor would remain operative even after 23.09.1995. Although, the issue in the case of **Dr. Sunil Kumar Yadav** also related to grant of benefit of time bound promotion beyond 23.09.1995, however we respectfully disagree with the observation of the Learned Single Judge made in his order dated 13.09.2018 as the facts of both the cases are different and distinct.

18. In exercise of powers under Section 36 of the Bihar State Universities Act, 1976, the Statutes for time bound promotion of Lecturers to the post of Readers and of Readers to the posts of University Professors was approved by the Chancellor Vide Letter No. (BSU-27/85-4032-GS(1) dated 24.12.1986. The Statutes which was for time bound promotion of Readers to the post of University Professors, provided promoted under Clause 1(1) for promotion of a Lecturer to the post of Reader and under Clause 1(2) for promotion of Reader to the post of University Professor, both on the recommendation of the Bihar State University (Constituent Colleges) Service



Commission. In the year 1987, by amendment, as approved by the Chancellor vide Letter no. BSU-26/85-4099-GS (1) dated 20.11.1987, clause 1(3) was added in the Statute for Time Bound Promotion. The same provided that a Reader possessing the qualification of University Professor prescribed by the UGC serving the University Department or in a Degree College managed and maintained by the University and who has completed at least 16 years of continuous service as 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. As per the case of the appellant, he was entitled for promotion to the post of University Professor, as his case falls under Clause 1(3) of the Time Bound Promotion Statute. However, the Statutes for promotion of Lecturers in the senior pay scale to the post of Readers and for placement of the Lecturers in the senior pay scale to the post of Lecturers in the selection grade under Career Advancement Scheme got approval of the Chancellor vide letter no. (BSU-20/95-2132-GS (1) dated 23.09.1995. Although, this Statute for Career Advancement Scheme did not contain any express provision repealing the Statute for Time Bound Promotion, however, in



our opinion, the Statute stood impliedly repealed. While the Time Bound Promotion Statute provided for promotion to the post of Reader of a person having remained on the post of Lecturer for at least 10 years and to the post of University Professor on having completed 16 years of continuous service Reader, so far as Statute for Career Advancement Scheme is concerned, the same provided for promotion of Lecturer in the Senior Pay Scale to the post of Reader and for placement to the post of Lecturer in the selection grade. Thus with the introduction of the Career Advancement Scheme on 23.09.1995, in our opinion, under the doctrine of implied repeal, the Statute for Time Bound Promotion stood repealed/extinguished and there is no error or illegality in the Letter dated 01.09.2014, (Annexure-7 to the writ application of the Education Department) deciding not to extend the operation of the Statutes regarding Time Bound Promotion Scheme beyond 23.09.1995.

19. It would also be relevant to mention that clause 8 of the Statute for promotion of Lecturers in the Senior Pay Scale (Rs.3,000/- to Rs.5,000/-) to the posts of Readers in the pay scale of (3,700/- to Rs. 5,700/-) and placement of Lecturers in the senior scale of pay to the post of Lecturers in the selection grade (3700-5700) provided as follows:



“8. The Statute for placement for Lecturers in the senior pay scale and also the Statute for promotion for Lecturers in the senior pay scale to the post of Reader and placement for Lecturers in the senior pay scale to the post of Lecturers in the selection 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-27/85-4099-GS (1) and 28.11.1987 (BSU-27/85-4213-GS (1))”

20. From perusal of Clause-8 quoted hereinabove it would transpire that the promotion of Lecturer 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 selection grade has come into force by superseding the Time Bound Promotion Statute approved by the Chancellor on 24.12.1986 including the amendment of the Time Bound Promotion Statute approved by the Chancellor on 20.11.1987, whereby Clause 1(3) was introduced. It is under clause 1(3) of the Statute for Time Bound Promotion that the appellants claim that their case falls under and thus they are entitled for promotion as this has not been repealed.

21. After repeal of Time Bound Promotion Statute with effect from 23.09.1995 the appellants cannot be deprived of avenue for promotion from the post of Reader to University



Professor and thus would be entitled for consideration of promotion either under the Merit Promotion Scheme till it remained in operation up to 20.07.2001 or under the Career Advancement Scheme which was introduced from 23.09.1995.

22. In view of the facts and circumstances stated hereinabove, there being no merit in the case of the appellant, the appeal stands dismissed.

(Amreshwar Pratap Sahi, CJ)

(Partha Sarthy, J)

sushma/-

AFR/NAFR	A.F.R.
CAV DATE	18.04.2019
Uploading Date	30.04.2019
Transmission Date	

