

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22444 of 2012

Sri Krishna Murari Dubey, son of Late Nageshwar Dubey, Resident of Mohalla- D. N. Singh Ghat Road, (Deep Nagar), P.S.-Adampur (under Kotwali), District-Bhagalpur.

... .. Petitioner/s

Versus

1. The Tilka Manjhi Bhagalpur University through the Vice Chancellor, T.M. Bhagalpur University, Bhagalpur.
2. The Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
3. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
4. The Finance Officer, Tilka Manjhi Bhagalpur University, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Radha Raman Verma, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, Senior Advocate
		Mr. Ashhar Mustafa, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-07-2019

The petitioner raises a short question relating to the cancellation of his promotion in the year 2003 which has been challenged through this writ petition after nine years. A learned Single Judge having noticed the judgement of a learned Single Judge dated 24.10.2011 in CWJC No.7687 of 2009 (Sushil Kumar Singh Vs. The Tilka Manjhi Bhagalpur University & Ors.) found that there appears to be a conflict, inasmuch as the said writ petition was allowed, whereas another writ petition, namely that of Sri Ram Narayan Mishra Versus The Tilka Manjhi Bhagalpur University & Ors, CWJC No.7574 of 2012



has been dismissed on laches. Finding this conflict, the matter was referred and, accordingly, the present writ petition as well as CWJC No. 23281 of 2012 (Ganesh Prasad Sah Vs. The Tilka Manjhi Bhagalpur University & Ors) have been heard by us simultaneously with the consent of the parties as noted in our order dated 9th of May, 2019 which is extracted hereinunder:-

“This matter has arrived before this Court on a reference made by a learned Single Judge pointing out a conflict between two judgements, one delivered in CWJC No.7687 of 2009 (Sushil Kumar Singh Vs. The Tilka Manjhi Bhagalpur University & Ors.) and the other in CWJC No.7574 of 2012 (Ram Narayan Mishra Vs. The Tilka Manjhi Bhagalpur University & Ors.).

Prima facie, from a perusal of the two judgements, we do not find any exposition of law on delay and laches in the judgement in the case of **Sushil Kumar Singh** (supra) so as to give rise to any conflict with the judgement in the case of **Ram Narayan Mishra** (supra). However, in the judgement in the case of **Ram Narayan Mishra** (supra), the learned Single Judge has dismissed the writ petition on the ground of delay and laches carving out a distinction on facts as against the facts in the case of **Sushil Kumar Singh** (supra). The distinction drawn is that in the case of **Sushil Kumar Singh** (supra) the petitioner therein suffered an order of cancellation of promotion after his



superannuation and, therefore, his writ petition was entertained and was allowed, whereas in the case of **Ram Narayan Mishra** (supra), the learned Single Judge came to the conclusion that the cancellation order had been passed when the petitioner therein was still in service and he did not choose to challenge the same and therefore, it suffered from laches.

In the present case also, the petitioner appears to have been sitting on the fence for almost 9 years and he has assailed the order of the cancellation of his promotion which had been passed within three months of the promotion order in the year 2003 itself. The petitioner retired in the year 2004. Thus, his cancellation order was prior to retirement and he did not choose to challenge the same for almost 9 years. It is in this context that the learned Single Judge who has referred the matter was of the opinion that the issue of delay and laches would not be ordinarily applicable in cases where there is violation of principles of natural justice, but at the same time, it has been pointed out by Sri Shivendra Kishore, learned Senior Counsel for the University that keeping in view the law laid down in the case of **State of Uttar Pradesh and others Versus Arvind Kumar Srivastava & others**, reported in (2015) 1 SCC 347, paragraph 22, the issue of laches does arise in the present case and, therefore, the learned Single Judge was not justified in carving out an exception without even referring to the aforesaid exposition of law.



It is, therefore, submitted that the reference should be answered against the petitioner without going into the merits of the matter.

We have, however, scanned the counter affidavit filed on behalf of the University and we find that the stand taken is that the petitioner had been granted promotion without following the prescribed procedure, but the affidavit nowhere discloses as to what procedure had not been followed resulting in the cancellation of his promotion. It is in this context that we find it appropriate to get a supplementary affidavit from the University explaining the reason as to why the promotion order was cancelled and as to what rule had been violated while promoting the petitioner. We are passing this order in order to satisfy ourselves so that the cause of justice is not defeated even if we come to the conclusion that there is no delay or laches on the part of the petitioner and also for the reason that the learned counsel for the parties have jointly agreed that the matter may be finally disposed of by this Bench itself.

Let the affidavit be filed by the respondent-University within a period of two weeks.

List on 18th of July, 2019.”

The contention is that the petitioner was promoted as a Section Officer from the post of an Assistant in the respondent-University, but the same was cancelled by the office



order dated 30th July, 2003. It is this order which has been challenged in the writ petition instituted in the year 2012 after almost 9 years. The same is the situation in the connected writ petition.

From the records we find that the judgement in the case of **Sushil Kumar Singh** (supra) was rendered on 24th of October, 2011 and the writ petition had been filed in the year 2009. The said writ petition had also been filed almost after six years of the passing of the order on 30th July, 2003. Nonetheless after these two writ petitions were entertained, a counter affidavit has been filed by the University contending that the promotion of the petitioner Krishna Murari Dubey was not in accordance with rules, inasmuch as, the provisions prescribed were not followed. However, in paragraph 7 of the counter affidavit it has been stated that due to unavoidable administrative reasons, the order of promotion was cancelled by the competent authority. We had called upon the University to file a supplementary affidavit explaining as to under which provision of law and circumstances was the promotion cancelled, but no supplementary affidavit has been filed. Learned Senior Counsel for the University has, however, urged that the stand which is to be taken in this regard on the basis of



instructions received is already contained in the counter affidavit filed in the connected writ petition being CWJC No.23281 of 2012 wherein in paragraph 5 it has been categorically stated that the appointment had not been recommended by the Promotion Committee and the Vice Chancellor had proceeded to make the appointments without following the procedure in law. Even though the said statement of fact is not contained in the counter affidavit in the present writ petition, yet we have examined the same keeping in view the fact that the same stand is being taken herein by the University.

From the record we find that the order of promotion of the petitioner which is office order no. 104/03 and is Annexure-2 to the writ petition categorically recites that the Vice-Chancellor in exercise of the powers conferred on him under Section 10 (17) of the Bihar State Universities Act, 1976 has been pleased to appoint 9 persons and the name of the petitioner Krishna Murari Dubey figures at Serial No.1 in the said order. The very first sentence of the said order recites “**On the recommendation of the Committee constituted for the purpose**”.

We have been assisted by the learned Senior



Counsel for the University to study the provisions under which the Vice-Chancellor is empowered to make such appointments and which according to the University has to be on the recommendation of the Promotion Committee. The power under the Bihar State Universities Act, 1976 is defined under Section 10 (17) which reads as under:-

“10(17) Save as otherwise provided in the Act, or the Statutes the Vice-Chancellor shall appoint officers (Other than the Pro-Vice-Chancellor) with the approval of the Chancellor, and teachers and shall define their duties;”

In the instant case the promotion is to the post of Section Officer that has been cancelled.

This is further substantiated by the Statutes that have been framed and have been promulgated under the orders of His Excellency the Governor who is the Chancellor of the University. The Statute framed for the purpose of promotion is Statute No.30 contained in Part II of the compilation of the Manual of Universities Laws. The same provides for the constitution of a Promotion Committee (Officers and non-teaching Staff) under clause (d) of Statute 1 which reads as under:-

“1 (d) Promotion Committee (Officer & non-teaching staff)”



The Promotion Committee and its function has been described in detail under the same Statutes which reads as under:-

(d) Promotion Committee

The Committee shall consist of the following:-

1. The Vice-Chancellor-Chairman
2. The Pro-Vice-Chancellor
3. Two members to be nominated by the Syndicate
4. The Registrar-Member Secretary

The Committee shall consider the cases and make its recommendations for promotion of officers and other non-teaching staff of the University.”

The framing of such Statutes is empowered under Section 36 of the Bihar State Universities Act, 1976 read with the provisions of the Bihar Inter University Board Act, 1981. Accordingly, the Vice-Chancellor, who is empowered to make appointments, gathers his powers under the General Conditions of Service of Employees as provided under Statute No.3 of Part II of the Statutes contained in Chapter I of the Manual of Universities Laws.

A conspectus of the aforesaid provisions, therefore, leaves no room for doubt that for the purpose of appointment of an officer of the category of a Section Officer it is the Vice Chancellor who can appoint on the recommendation of the



Promotion Committee referred to hereinabove. The recital contained in the Statute 30 and extracted hereinabove specifies that the Committee (Promotion Committee) shall consider the cases and make its recommendation for promotion of officers and other non-teaching staff of the University. This, therefore, specifies that the order of the appointment of the Vice-Chancellor has to follow only upon the recommendation of the Promotion Committee which is obliged to consider the cases of promotion and make its recommendation as a mandatory measure under Statute 30.

In the light of the aforesaid provisions and the facts of the present case, we find that Krishna Murari Dubey has been promoted under an order which categorically recites that it is on the recommendation of a Committee. There is nothing on record or in the counter affidavit to demonstrate that the appointment of Krishna Murari Dubey was made otherwise than in accordance with the aforesaid provision prescribed for promotion. It is for this reason that we had called upon the University to file an appropriate affidavit and which has not been done till date, yet on the basis of instructions received, the stand taken in the counter affidavit in the connected writ petition has been pressed into service. Even the instructions that have



been received from the University and have been stated at the Bar do not find favour as they do not answer the query that has been raised by us. We have gone through the same and on the facts of the present case, we are satisfied that the recommendation had been made in favour of Krishna Murari Dubey, whereafter the Vice-Chancellor has exercised his power of promoting him as a Section Officer.

In this view of the matter, we see no reason for the University to have cancelled the promotion order in so far as it relates to the petitioner.

We accordingly allow this writ petition and quash the order dated 30th July, 2003 cancelling the promotion of the petitioner with a direction that he shall be entitled to all consequential benefits.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.07.2019
Transmission Date	

