

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.260 of 2020

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Gopal Krishna Gokhle Son of late Binda Prasad, Resident of Mohalla-Daldali Bazar, P.S. Chapra, District- Saran(Chapra), Retired Lecturer from Bharat Mishra Sanskrit College, Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Higher Education, Govt. of Bihar, Patna.
2. The Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Vice Chancellor.
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
4. The Finance Officer, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
5. The Principal, Bharat Sanskrit College, Salempur, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shashi Shekhar Tiwary
For the Respondent/s : Mr.Smt.Shilpa Singh (Ga12)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 07-07-2020 Heard learned counsel for the petitioner and the counsel appearing on behalf of the State as well as learned counsel for the University.

2. Petitioner superannuated on 31.7.2013.

3. The issue of appointment of the petitioner and one Prem Kumari engaged this Court on several occasions.

4. At the relevant time after hearing the parties the both writ petitions one by this petitioner and another by Prem Kumari bearing C.W.J.C. No. 5850 of 2003 and C.W.J.C. No. 6816 of 2003 was decided by a common order on 16.8.2010.



The coordinate bench of this Court has passed the following order:-

In view of the fact that now post is one and there are two claimants, petitioner Gopal Krishna Gokhale by virtue of his appointment on the post of lecturer in Economics and petitioner Prem Kumri on the post of lecturer in History and both are claiming to be appointed on the same day by the same Governing body at a point of time when the college was only affiliated college and both of them have also claimed to be continuing in the college which became a constituent in the March 1982, this Court would find it necessary that the University in exercise of its power under section 4 (1) (14) of the Act should decide as to who out of the two or whether any one of the two is entitled to be absorbed in the services of the University.

Sections 4 (1) (14) reads as follows:-

“Purposes and powers of the University:- (1) There shall be the following purposes and powers of the University:- (14) to enter into agreement with other bodies and persons for promoting the purposes of this Act and to assume the management of any institution under them and to take over its assets and liabilities; Provided that before entering into such an agreement the University shall obtain the sanction of the State Government, or shall do so upon receiving such a proposal from the State Government; Provided further that if at any time any irregularity is found in determination and payment of any pay, special pay or allowances, or in any appointment in an institution taken over by the University in its management under such an agreement, then, notwithstanding anything to the contrary contained in this



Act, the University shall have the powers to take decisions after reviewing it and such a decision shall be final and binding.”

Admittedly this college was made constituent in the March 1982 and therefore, the University will have to exercise its power and jurisdiction to decide the case of both the petitioner for their continuance in service and payment of salary from the funds of the State Government. As the provision of section 4 (1) (14) will go to show that in such exercise the University has to also find out as to whether there was any illegality in the earlier determination made and to review such decision, any earlier order passed either in favour of Gopal Krishna Gokhale or Prem Kumari will not stand in the way of the University to take an appropriate decision. In such exercise the University will however take into account the provisions which were then in force at the time of their appointment on the post of lecturer and if it is found that either of them or both of them did not possess the requisite qualification, there will be no question of their appointment being approved and absorbed with the consequential benefit of payment of salary. The University must take a final decision within a period of six months, but only after affording an opportunity of personal hearing to both Gopal Krishna Gokhale and Prem Kumari, who may produce any evidence that they may choose for demonstrating that their appointment was made validly by the governing body and such appointment could be approved by the University.

Since there is a provision of only for one post in modern subject, the University will also decide as to who amongst the two will be entitled for payment of salary at least from the date of order. The claim for payment of arrears of salary, in case of Gopal Krishna Gokhale is found to



be rightful person for being absorbed in services of the University, would be examined separately, but in case of appointment Prem Kumari is found to be valid, her payment of salary shall be kept continued. However, payment of salary of Prem Kumari henceforth i.e, from the month of September, 2010 shall not be made till the issue as with regard to absorption of services of Gopal Krishna Gokhale and Prem Kumari is finally decided by the University in exercise of power under section 4 (1) (14) of the Act.

With the aforementioned observation/directions this application is disposed of

5. Again the matter was considered in C.W.J.C. No. 4202 of 2011 by another coordinate bench of this Court and vide order dated 6.8.2012 the writ petition was disposed of with a direction to the Vice-Chancellor to grant personal hearing and pass reasoned and speaking order within a maximum period of three months from the date of receipt/production of a copy of this order.

6. Against the decision of the writ court dated 21.8.2013 in C.W.J.C. No. 15811 of 2013, Prem Kumari preferred LPA No. 1776 of 2014 which was partly allowed on 11.8.2014. The relevant part of the order of the LPA Court is quoted below:-

The challenge to the aforesaid orders dated 8th March 2013 and 24th June 2013 in above



CWJC No.15811 of 2013 has failed before the learned Single Judge. Therefore, this Appeal.

Learned counsel Mr. Y V Giri has appeared for the appellant. He has strenuously urged that although on 31st July 1980 the appellant had not yet acquired qualification of M.A., she had already taken the M.A. examination, result was declared in February 1981 and the appellant was declared to have passed M.A. examination in second class. The appellant was thus qualified to hold the post of Lecturer. Mr. Y V Giri has taken us through the records of the writ petitions and the counter affidavit filed by the University in CWJC No. 12418 of 1993 filed by the aforesaid Gopal Krishna Gokhale, the respondent no.6.

The order made by the Vice Chancellor does not leave scope for doubt that, on 31st July 1980 the governing body of the College made two appointments on a single sanctioned post of Lecturer. Of the two appointments made by the governing body, the respondent no.6 was fully qualified to hold the post, whereas the appellant had not yet acquired the requisite qualification. She was, however, accommodated by shifting the respondent no.6 on an unsanctioned post.

Mr. Y V Giri has also submitted that the respondent no.6 has already reached the age of superannuation of 62 years. He having retired from service, the matter at dispute has now become academic. In absence of the respondent no.6, the appellant can be continued in service.

We see no merit in the contention raised by Mr. Y V Giri. The real issue is whether the appointment of the appellant was legal and valid. From the above discussion, it is clear that her appointment has indeed been found to be illegal for want of sanctioned vacant post of Lecturer in History. The impugned order made by the University does not call for interference except that the appellant shall be entitled to receive salary for the period she has discharged service from the date of her appointment till the date of her removal from service on the principle of 'Quantum Merit'.

The order of the University directing



recovery of the salary paid to the appellant is set aside. The impugned order of the learned Single Judge dated 21st August 2013 made in CWJC No. 15811 of 2013 is modified to the aforesaid extent.

Appeal is partially allowed in the above terms.

7. The aforesaid judgment of the division bench was assailed in Civil Appeal No(S). 6427 of 2019. The judgment of the apex court is quoted below:-

The following order was passed by this Court while entertaining this petition on 05.12.2014:-

“Learned counsel for the petitioner points out, that the petitioner was employed as a Lecturer in History as far back as on 31.7.1980 in the Bharat Mishra Sanskrit College, Salempur. He further states, that in March, 1982 the above college was taken over as a constituent college of the University. It is submitted, that the petitioner has continued in the employment of the University till the impugned order was passed on 24.6.2013 (Annexure P/14, at page 103 of the SLP paper book). It is accordingly contended, that the petitioner has rendered 33 years ‘ of service. It is pointed out, that the termination order of the petitioner was passed consequent upon the determination of the superior right of respondent no.6, who has since retired on attaining the age of superannuation. It is therefore contended, that the petitioner would not be usurping anybody’s right if the petitioner is allowed to continue in service.

Issue notice.”

The aforesaid facts have not been disputed. In the peculiar facts and circumstances of the case, the ground of qualification could not have been availed to



remove appellant from services particularly after lapse of three decades. Thus, we set aside the impugned order of termination of the services of the appellant. She be reinstated and be paid all the benefits which would have accrued to her had she been continued in the service.

Respondent no.6 has attained the age of superannuation, his right shall not be adversely affected to claim the salary as per the impugned order passed by the High Court.

This order is passed in the peculiar facts and circumstances of the case.

The appeal is, accordingly, disposed of.

Pending application(s), if any, shall stand disposed of.

8. Notwithstanding the finality of the judgment up to Apex Court and there is clear decision of the Apex Court that respondent no.6(the petitioner in this case) has attained the age of superannuation shall not adversely affect to salary as per impugned order passed by the high court. Unfortunately, even after finality of the decision up to Apex Court dated 19.8.2019, the petitioner is moving pillar to post.

9. Under the aforesaid circumstances, the writ petition is disposed of with a direction to the respondent University as well as Additional Chief Secretary cum Principal Secretary, Education Department to ensure payment of entire dues with detailed calculation chart to the petitioner within a



period of one month from today, failing which the petitioner would be entitled to payment of interest @ 12 per cent from the date of retirement till the date of actual payment which shall be born by the officers of University as well as Education Department as the petitioner cannot be made to suffer notwithstanding the finality of the decision up to the Apex Court.

10. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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