

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3697 of 2020

Dr. Poonam Singh, wife of Shri Ajay Kumar Singh, resident of Chatarbhuj Thakur Marg, Near law College, Ward No. - 29, Gannipur, P.O.- Ramna, District- Muzaffarpur, Pin Code - 842002.

... .. Petitioner/s

Versus

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

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
For Respondent No. 1 & 2	:	Mr. Prashant Pratap, GP-2
For Respondent No. 3	:	Mr. Rana Vikram Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date :19-01-2024

The petitioner is aggrieved with the denial of the full benefit under the Statute for Career Advancement Scheme brought in under the Bihar State Universities Act, 1976; which University, is now rechristened B. R. Ambedkar Bihar University.



2. Sri Abhinav Srivastava, learned counsel appeared for the petitioner and Sri Prashant Pratap, GP-2 for the respondent No. 1 and 2.

3. The petitioner was appointed as a Lecturer in an affiliated college of the University after selection conducted by the Bihar College Service Commission, in the year 1997. The appointment was under Section 57A of the Universities Act, which recommendation is seen from Annexure-3 and the appointment evidenced by Annexure-4; as a Lecturer in the Hindi. Subsequently, the petitioner was appointed to a constituent college after selection by the Bihar State University (Constituent Colleges) Service Commission in the year 2003, as is seen from Annexure-5. The petitioner's contention is that the Statute for Career Advancement Scheme was approved by the Chancellor, in 29.06.2005, but, was implemented with effect from 27.07.1998. Since the statute existed with retrospective effect from 27.07.1998; the petitioner ought to have been given the higher scale, on her first appointment to the constituent college, as she had continuous service of four years in an affiliated college. Under para 10.1.0 of the Statute, the minimum length of service to move into the grade of Lecturer (Senior Scale) would be four



years for those with Ph.D; which doctoral degree the petitioner had at the time of her appointment to the affiliated college and the constituent college. As was the practice, the Career Advancement was delayed and none took up cudgels against the University since always when it was granted, it was granted with retrospective effect. Even in the case of the petitioner, the petitioner was granted the same in the year 2011, as is revealed from Annexure-11.

4. By Annexure-11 the petitioner's Career Advancement was granted only from 26.07.2007 deeming completion of four years from the date of her appointment as per Annexure-5 dated 26.06.2003, to a constituent college. This was based on the amendment made to the statute by the Chancellor, as is seen from Annexure-9. By the aforesaid amendment, the word 'constituent' was incorporated before the word 'college'. It was the contention of the University that only those persons, who had minimum service in the constituent colleges would be entitled to the Career Advancement Scheme. The amendment was not in accordance with the procedure, as prescribed under the State Universities Act and in any event, could not have taken away the accrued rights of the petitioner, is the contention raised.



5. The learned Government Advocate would argue that the State Government was also entitled to make suggestions, which could be reckoned by the Chancellor while considering the amendment of statutes. It is pointed out that it is on the basis of such a suggestion, as revealed from Annexure-9 that the amendment was made. It ensured that only service in constituent colleges would be enabled for Career Advancement since the statute is one under the University Act, wherein the affiliated and constituent colleges stand on distinct footing and are defined and treated differently. Reliance is also placed on *Registrar, Karnataka University and Another v. Dr. Prabhugouda and Another* reported in *(2021) 15 SCC 706* to contend that in an identical circumstance, the Hon'ble Supreme Court had held that only persons in constituent colleges would be entitled to the benefit of the Statute. Reliance is also placed on the counter affidavit filed on behalf of the Chancellor to contend that the Career Advancement Scheme has been completely revamped by a new scheme made effective from 18.07.2018.

6. Affiliated colleges and constituent colleges are separately defined under the Universities Act under Section 2(c) and 2(i). While affiliated college is an educational



institution receiving privileges from the University according to the provisions to the Act and statutes, the constituent college is an institution maintained and controlled by the University. The Statutes, Ordinances, Regulations and Rules are brought out under Section 34 of the Act which also deals with the classification of teachers in the University and the manner of their appointment and their recognition. It is under the said provision that the statute for Career Advancement Scheme was brought out in the year 2005, with effect from 27.07.1998. Clause 10.0.0 has the nominal heading 'Counting of Past Service' and 10.1.0 enables such previous service without any break as a lecturer or equivalent, *inter alia* in a College, enabled to be reckoned for placement of a Lecturer in Senior Scale/Selection Grade, subject to the terms and conditions. We need not refer to the terms and conditions since the question would be only as to whether the petitioner is entitled to reckon the past service spent in an affiliated college. The terms and conditions should be considered as satisfied especially since the petitioner was granted such Career Advancement Scheme with effect from 4 years of her completion in the constituent college; though it was delayed and the same was granted only in the year 2011.



7. Obviously, the grant of Career Advancement from 26.06.2006, four years from date of her appointment in the constituent college, is based on the amendment brought under Annexure-9. Annexure-9 speaks of the Hon'ble Chancellor having considered the recommendation of the State Government so as to incorporate the word 'constituent' before the word 'college'. In this context, reference to Section 36 which speaks of promulgation, amendment and repeal of statutes is relevant. It is the Senate which has the power to amend the statutes. The contention of the Government Advocate is that the proviso to sub-Section 7 of Section 36 enables the State Government also to make suggestions to the Chancellor, to frame statutes of any subject of common interest of all the Universities. In the context of the specific contention raised by the Government, we have to notice that Section 36 provides for the Senate on its own motion or submission by the Syndicate; make, amend or repeal statutes. Sub-Clause (5) also provides that a statute passed by the Senate shall have no validity unless it has been assented to by the Chancellor.

8. Sub-Clauses (6) and (7) have to be extracted which we do hereunder:-



“[(6) Notwithstanding anything contained in the above clauses, if at any time when the Senate is not in session and the Chancellor is satisfied that it is necessary to frame Statutes on any subject, the Chancellor after obtaining the advice of the Inter-University Board shall send the draft Statutes for opinion to the Syndicate of the University and it shall be binding on the Vice-Chancellor to convene a meeting of the Syndicate for consideration of the drafts statutes within 10 days of receipt of the said draft. The Chancellor shall then give his assents to the Statutes with such amendments as may deem necessary in the light of the opinion of the Syndicate. The Statutes shall be deemed to have come into force in the University from the date of assent. Statutes framed in this manner shall be placed before the next meeting of the Senate for confirmation :

[Provided that if there be any financial implication which may arise under the statute, it shall not be enforceable unless prior approval of State Government has been obtained.]

[(7) Notwithstanding anything contained in the above clause, if at any time, the Chancellor is satisfied that it is necessary to frame Statute of any subject of common interest, after obtaining the advice of the Committee of three Vice-Chancellors constituted by the Chancellor, shall send the Draft Statute to all the Vice-Chancellors for opinion, who shall send their opinion within ten days from the receipt of draft. The Chancellor shall give assent to the Statute with such amendment as he may deem necessary in the light of the opinion of the Vice-Chancellors.

The Statute shall be deemed to come into force in the Universities from the date of assent:

Provided that the State Govt. may also suggest the Chancellor to frame Statute of any subject of common interest of all the Universities.]”

9. Sub-Clause (7) is a non-obstante clause which enables the Chancellor to frame statutes when the Senate is not in session, which has to follow the specific procedure delineated in the said provision. We have to specifically notice that sub-clause (6), another non-obstante clause makes the



procedure therein; in the contingency of the Senate being not in session, valid, notwithstanding anything contained in the clauses above. This enables the Hon'ble Chancellor to frame a statute when the Senate is not in session; which has to be placed before the Senate at its next meeting and in the case of any financial implication, prior approval of the State Government had to be obtained. Sub-Clause (7) is also a non-obstante clause but, however, it specifically employs the word '*notwithstanding anything contained in the above clause*' (sic), which is in the singular and hence refers only to sub-clause (6). Even when the Senate is not in session, the Chancellor, if satisfied that it is necessary to frame any statute of any subject of common interest, after obtaining the advice of the Committee of three Vice-Chancellors constituted by the Chancellor, a draft statute shall be sent to all the Vice-Chancellors for their opinion. The Chancellor shall give assent to the statute with such amendment, with any amendment he deems necessary, in the light of the opinion of the Vice-Chancellors and it shall come into force in the Universities from the date of assent. The proviso definitely enables the State Government to make suggestions to the Chancellor to frame statutes of any subject of common interest of all the



Universities. If the Chancellor intends to act on the suggestion made by the State Government, it can only be under sub-clause (7), following the procedure delineated therein. We find absolutely no reference to any constitution of a committee of three Vice-Chancellors, to which committee the draft statute was sent, their opinion received and communicated to all the Vice-Chancellors before an assent is given to the statute, or its amendment, in the light of the opinion of the Vice-Chancellors.

10. On the above reasoning, we find the amendment under Annexure-9 to be not as per the procedure delineated in the statute and hold it to be of no consequence in considering the Career Advancement Scheme as was brought out retrospectively, effective at the time of the petitioner's appointment and her continuation till the year 2018 when a new scheme was brought in. After 2018, definitely the Career Advancement Scheme shall be under the terms of the new scheme.

11. We, in the present case are concerned only with the claim of the petitioner for consideration of the Career Advancement Scheme even at the time of her appointment to the post of lecturer in the year 2003, when she had already



completed four years in as college; though in an affiliated college. The Career Advancement Scheme as was available from the year 1998; though introduced in the year 2005 was implemented in the case of the petitioner, with effect from 2006, only by reason of the amendment brought out in the year 2006. The petitioner was found entitled to the Career Advancement by placement in the post of Lecturer (Senior Scale), four years from the date of her appointment to the constituent college. When the amendment is found to be of no-consequence, she would be entitled to the Career Advancement Scheme by reckoning her past service in an affiliated college also.

12. The statute only uses the word ‘college’ which would include the affiliated colleges and the constituent colleges; which are defined distinctly under the Act and for which, separate provisions are provided under the Act. Section 2(f) is the definition of a college which takes in both the affiliated and constituent college. The petitioner, hence, has to be granted the benefits as per the Career Advancement Scheme reckoning her previous service in the affiliated college.

13. We have to notice that though the petitioner



was appointed in the affiliated college in the year 1997 and when she was appointed to a constituent college in the year 2003, she had completed 6 years in the college affiliated to the University. The CAS having been given retrospective effect for implementation from 27.07.1998; she has completed her four years' service on 27.07.2002; if she holds a PhD. We have been told that the petitioner was a PhD even before she joined the affiliated college but there is no certificate available in the records, which would be verified by the University and in any event, the senior scale would be applicable from 6 years even if, she doesn't have a PhD.

14. It is also pertinent that if she was entitled to the benefit under the Career Advancement Scheme, even on the date of her appointment, she ought to have claimed it in the year 2005, when the scheme was introduced with retrospective effect. We reckon the submission of the learned counsel that often the fitment is delayed but, retrospective effect is given. We find credence to the said submission especially looking at Annexure-11 which in the year 2011 retrospectively granted the benefit from the year 2006, but reckoning only the service of the petitioner in the constituent college. We are again faced with the fact that though the full



benefit under the scheme was denied in the year 2011, the petitioner never challenged the same. The learned counsel for the petitioner submits that there were umpteen representations made. Un-represented memorials, as has been held by the Hon'ble Supreme Court does not save limitation or unreasonable delay in approaching the appropriate forum. The law favors the diligent and not the indolent. However, the benefit accrued to her cannot be denied, being a continuing wrong. In such circumstances, going by the decision of *Union of India v. Tarsem Singh* reported in (2008) 8 SCC 648, the petitioner can be given the benefit of payment of arrears only three years prior to the filing of the writ petition. The writ petition is filed on 17.02.2020 and hence, though the petitioner would be given the benefit of the Career Advancement Scheme from the date on which she is entitled, reckoning her service in the affiliated college as past service; since it is a continuing wrong, the same shall be notional upto 17.02.2017; due to the delay. The arrears shall be payable only from 17.07.2017 after reckoning the due increments and further advancements as provided under the CAS, from 17.02.2017 to 18.07.2017. Any further career advancements under the scheme shall also be entitled on the due dates as per the



statute; till 2017, and then as per the new statute. The arrears shall be paid in accordance with the statute of Career Advancement Program brought out in 29.06.2005 and then based on the new scheme introduced on 18.07.2017.

(K. Vinod Chandran, CJ)

Rajiv Roy, J.

(Rajiv Roy, J)

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