

(2003) 12 JH CK 0030

Jharkhand High Court

Case No: CWJC No. 2591 of 1997 (R)

Dr. Yogendra Roy

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision: Dec. 1, 2003

Acts Referred:

- Bihar State Universities Act, 1976 - Section 58(10)
- Constitution of India, 1950 - Article 226

Citation: (2004) 1 JCR 654

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: Saurav and Arun, for the Appellant; A.K. Mehta, for the Respondent

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.

In this writ application the petitioner, who was a University Professor working in J.N. College Daruwa, Ranchi., has challenged the Annexure-4 i.e. notification issued by the Registrar Ranchi University dated 4.6.1997 whereby several teachers, who were given time bound promotion on Adhoc/Provisional basis, were reverted back to the post of the Readers including the petitioner whose name figures at page 3 of Annexure-4 in the subject of the Chemistry at serial No. 3.

2. It is stated on behalf of the petitioner that he was appointed as Lecturer on 15.11.1972 in the subject of Chemistry under the respondent No. 1 and he was given promotion to the post of Reader by order dated 31.12.1987 w.e.f. 1.2.1985.

3. Subsequently by order dated 9.4.1990 as contained in Annexure-3 to the writ application the petitioner was further promoted to the post of University Professor w.e.f. 15.11.1998 under 16 years promotion scheme (Time Bound Promotion). It is further stated that the petitioner was awarded Ph.D. degree from the Ranchi

University in the year 1976.

4. Subsequently, a notification as contained in Annexure-4 to the writ application dated 4.6.1997 was issued under the signature of the Registrar Ranchi University, wherein it is mentioned that in pursuance of the decision of the Syndicate in its meeting held on 12.5.1997, the teachers who were promoted as University Professors on Adhoc/Provisional basis under 16/25 years time bound scheme, cease to be University Professor w.e.f. the date, the Screening Committee of the Ranchi University/Commission did not recommend/reject their names, but their cases be considered as per guide line of the UGC concerning the promotion of teachers in senior or selected grade. Consequently, the teachers concerned stood ipso facto reverted to their posts of reader from the date noted against their names. They are directed t.o draw admissible salary in the pay-scale of Reader accordingly. The excess payment, if any, would be adjusted/ recovered in easy instalments as the case may be. The petitioner is also one of such professors who was reverted to the post of the Reader as it would appear form the page 3 of the Annexure-4 to the writ application.

5. Hence this writ application has been filed on behalf of the petitioner for challenging the Annexure-4 on several grounds.

6. Mr. Saurav Arun learned counsel for the petitioner has submitted that the petitioner was fully qualified for being promoted to the post of University Professor and he had got requisite experience as provided under 16 years time bound promotion Scheme and the petitioner was holding to the post of University Professor since last 10 years to the full satisfaction of the authority concerned but the Screening Committee had not recommended the name of the petitioner for being promoted to the post of University Professor on irrelevant consideration solely on the ground that the petitioner has not produced the Ph.D papers within the cut-off date though the same is not the requirement under the Act and Statute of the University. Therefore, the action of the respondents in reverting the petitioner to the post of Reader is arbitrary and illegal and is violative of Articles 14 and 16(1) of the Constitution of India. In support of his contention he has relied on the decision in the case of Patna University etc. v. Awadh Kishore Pd. Yadav reported in 1994 (2) (SC) 11 and also unreported judgment in the case of Uday Singh and Ors. v. Ranchi University and Ors. Passed in CWJC No. 2223 of 1997(R) and analogous cases disposed of on 19th February. 1999 by this Court.

7. Respondent Nos. 1 and 3 i.e. Ranchi University has filed counter affidavit, controverting the claim of the petitioner. The main stand taken by the University in its counter affidavit is that as per the amended Section 58(10) of the Bihar State Universities Act 1976 any Provisional/Adhoc promotion given to a person shall cease to have its effect on expiry on six months, if within the said period Bihar State University (Constituent College) Service Commission does not recommend the name of the concerned person for promotion to the post of Reader/Professor as case may

be. It is submitted by Mr.A.K. Mehta learned counsel for the respondents that the name of the petitioner was not recommended by the Bihar State University (Constituent Colleges) Service Commission, therefore, the Provisional/Adhoc promotion given to petitioner to the post of the University Professor automatically ceased to have any effect after expiry of the period of six months. In the supplementary counter affidavit filed by the respondents it has been stated that promotion given to the petitioner to the post of professor was purely provisional and subject to the concurrence of the University Service Commission and under the relevant notification it was mentioned that if the University Service Commission does not concur then in that case, the provisional promotion so given shall cease to be effective from with immediate effect. It has further been stated that provisional promotion granted to the petitioner vide notification dated 9.4,1990 was made on the recommendation of the screening committee which did not have the occasion to sit together and deliberate into the case of the petitioner. When the report of the Screening Committee was sent to the Commission, the Commission did not accept the same and in its turn, by issuance of letter No. 255/BSUSC dated 6.4.1995 addressed to all the Registrar of the Universities including Registrar of the Ranchi University directed that the case of promotion of the petitioner under 16/25 years Time Bound Promotion Scheme Screening Committee should be screened afresh. Accordingly, the Screening Committee was constituted and on 25.7.1995 the Screening Committee held in its meeting and the committee members after due deliberation and after taking into consideration the cases of all the applicants, took decision in the matter. So far as the petitioner is concerned, the Screening Committee did not recommend his case for promotion of the case of the applicants. It is submitted that promotion given to the petitioner to the post of Professor was not in accordance with the statues of the University as contained in Annexure-1. It is stated hat since the provisional promotion of the petitioner to the post of professor has not been ratified by the commission and therefore, in view of the Provisions u/s 58(10) of the Bihar State University Act, 1976, the University had no other option but to issue notification as contained in Annexure-4 reverting the petitioner back to the post of readers. In support of his contention Mr. Meheta has relied on the decision in the case of [Dr. B.P. Yadav and Another Vs. Dr. Ratneshwar Prasad Singh and Others,](#)

8. In the case of Patna University etc. v. Awadh Kishore Pd. Yadav (supra) it has been held that Commission must not make recommendation mechanically for promotion for the purpose of time bound promotion. It must be done after proper application of mind because it is not an empty formality.

9. In the case of Dr. B.P. Yadav v. Dr. Ratneshwar Prasad Singh (supra) it Is relevant to quote para 23 of the said judgment which reads as under:--

"Such scheme necessarily contemplates consideration of the cases of provisional promotion by the College Service Commission promptly so that unsuitable teacher

does not hold the post of Reader or Professor for long even on provisional basis. It is unfortunate that cases of teachers getting provisional promotions under the time bound promotion scheme had not been taken for consideration by the College Service Commission for years and the teachers by virtue of provisional promotions continued to hold superior posts without their merits being properly assessed by the College Service Commission for approval or disapproval. As a matter of fact both the appellants were given provisional promotions with retrospective effect in 1989 but their cases were not considered by the College Service Commission for years and they continued to enjoy the provisional promotions for a number of years. In order to put an end to continuance of temporary promotions in the post in respect of which approval of College Service Commission was necessary, Sub-section (10) was added to Section 58 of Bihar State Universities Act by the Bihar State Universities (Amendment) Act, 1993. That sub-section makes it abundantly clear that "promotion given on temporary basis shall not be valid for a period exceeding six months unless recommended by the College Service Commission".

10. In the case of Dr. Uday Singh and Anr. v. Ranchi University and Ors., the learned Single Judge of this Court while discussing the fact of the said case has stated that the Screening Committee was not properly constituted which resulted in large number of reversion of the University teachers and therefore, the learned Single Judge remanded the matter to the respondents for reconsideration the case of those petitioners for promotion with observation and direction in the said judgment. In the present case it is not in dispute that first screening committee recommended the name of the petitioner on the basis of which, provisional promotion to the post of Professor was granted to the petitioner subject to concurrence of the Bihar State University Service (Constituent College) Commission. However, subsequently Commission found that the first screening committee without proper application of mind had recommended the name of the petitioner for promotion to the post of Professor and therefore, the second Screening Committee was constituted and after due deliberation and taking into consideration the relevant materials, the Committee did not recommend the name of the petitioner for promotion to the post of University professor. Therefore, the case of Dr. Uday Singh is fully applicable in the facts and circumstances of the case. However, from the Judgment of the Supreme Court in the case of Dr. B.P. Yadav and Anr. v. Dr. Ratneshwar Prasad Singh and Ors. it appears that the functioning of the Commission is not an empty formality but the order has to be passed after proper application of mind. It has also been held in the said decision that if the concurrence of the commission is not granted within six months then the provision u/s 58(10) of Bihar State Universities 1976, the provisional promotion so granted automatically cease to have its effect.

11. In the present case the Screening Committee did not recommend the name of the petitioner for promotion to the post of University Professor and therefore, the consequences of Section 58(10) of the Act shall follow and thereby University issued

notification as contained in Annexure-4 whereby University Professor named in the said notification including the petitioner were reverted back to the post of readers. In my view the order as contained in Annexure-4 does not suffer from any infirmity and is perfectly justified.

12. In the result this application has got no merit. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.