

(2016) 03 PAT CK 0044

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No. 8864 of 2014

Padmalata Thakur Nee Sharma

APPELLANT

Vs

The Patna University and Others

RESPONDENT

Date of Decision: March 30, 2016

Hon'ble Judges: Ajay Kumar Tripathi, J.

Bench: Single Bench

Advocate: Y.V. Giri, Senior Advocate and Tuhin Shankar, Advocate, for the Appellant; Soni Shrivastava, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Ajay Kumar Tripathi, J.

1. Writ application has been filed by the petitioner for setting aside the provisional seniority list dated 08.12.2008 (Annexure-5) as well as the final seniority list dated 28.04.2009 (Annexure-7) by virtue of which the private respondent No. 3 has been shown to be senior to the petitioner. It is urged on behalf of the petitioner that since petitioner was appointed on a substantive post prior to the private respondent and thus was senior all along and the same cannot be undone now by the University for no justifiable reason. Petitioner is seeking her seniority position after quashing of the two notifications.

2. It is the case of the petitioner that when the draft seniority list was published on 08.12.2008, petitioner raised objection. The objection was considered by a Committee of the University and the Committee in the decision dated 03.07.2011 did declare the petitioner to be senior to Dr. Amar Nath Singh. This position would emerge from perusal of Annexure-10 to the writ application but since this decision could not be notified due to change of guard, the decision remained in file. The reason for non-notification of the decision emerges from communication made by Registrar of Patna University to the Additional Secretary to the Hon'ble Chancellor and the communication dated 08.12.2011 which is Annexure-11 to the writ application. The petitioner, therefore, raised objection before the concerned

authorities but since no clear decision emerged at the level of the University, the writ application has now been filed seeking the relief mentioned above.

3. During the course of arguments, the counsel for the petitioner tried to create an impression that only because there was a change of the Vice-Chancellor and because of oblique reasons, the decision to notify the petitioner to be senior to the private respondent was not taken. The Court directed the present Vice-Chancellor to take a fresh decision on the rival claims of seniority and bring such a decision on record by way of an affidavit. A third supplementary counter affidavit on behalf of Patna University has been filed. They have brought on record Annexure-F, dated 14.12.2015 which is the decision of the Statutory Approval, Seniority and Pay Fixation Committee, which held its meeting to determine inter se seniority between Prof. Amar Nath Singh and Prof. Padmalata nee Thakur. The resolution reads as under:--

"The Statutory Committee as per the order dated: 24/11/2015 of the Hon"ble Patna High Court as contained in the CWJC No. 8864 of 2014 reiterates the decision taken on 25/04/2009 and then holds that Dr. Amar Nath Singh, Private Respondent No. 03 in the CWJC No. 8864 of 2014 is senior to Dr. Padmalata Thakur in terms of the Rule 1(3) of the Statute 16 and Governor's Secretariat, Bihar letter No. 2546/GS(1) Patna, dated 23.07.2004 which provides for promotion under 16 years of Time Bound Promotion Scheme on the basis of possessing the requisite academic qualification prescribed for the post of Professors as prescribed by the University Grants Commission."

4. In view of the latest decision taken by the Committee and reproduced as above, the Court need not go into the other aspect of the matter as to when the petitioner was initially appointed as a Lecturer and the seniority position emerging therefrom. The legal question which is required to be tested is whether the basis provided by the Committee that the private respondent is senior by virtue of the promotion, he got as a Professor in terms of statute 16 Rule 1(3) coupled with the Governor Secretariat Letter No. 2546/GS(1) dated 23.07.2004 holds the field on such dispute or not.

5. The private respondent No. 3 has filed a detailed counter affidavit buttresses the history of his appointment and promotions which he earned over a period of time which is not a matter of dispute now. Such settled positions cannot be unsettled now. He claims that the issue is seniority on the post of Professor in the Department of History in Patna University and the private respondent had earned his promotion as University Professor in terms of the statute on 12.08.1992 since he fulfilled all the requirements laid down by the U.G.C. So far as the petitioner is concerned, she was promoted on the post of University Professor on 26.12.1992 because of certain reasons attributable to the petitioner herself in fulfilling the statutory requirements.

6. The private respondent has provided the reason for the petitioner being granted promotion as a Professor from a later date. It is relevant to reproduce some of those paragraphs which are of significance.

"23. That it is rather startling to note here at this stage that the writ petitioner as a matter of fact did not even hold Ph.D. degree on 23/12/1992 and it was rather the date of submission of her Ph.D. thesis and subsequently, she was awarded the Ph.D. degree on 27/04/1993 and this fact would be manifest from a perusal of the information supplied to respondent No. 3 vide a letter dated 03/06/2014 issued by the concerned authorities under the University in terms of the provisions contained under the Right to Information Act.

24. That it is submitted here at this stage that in terms of the provisions contained under the Statutes for Time Bound Promotion as amended on 20/11/1987 by which Article 1(3) was inserted in the said statutes, a candidate was required not only to hold Ph.D. degree for the purposes of grant of promotion in the rank of University Professor but also the experience of guiding research was also expected of a candidate and in view of the fact that the writ petitioner had herself been awarded Ph.D. degree on 27/04/1993, there is no question of any valid experience of guiding research under her on 23/12/1992, the date from which she has been granted promotion in the rank of University professor.

25. That it is also startling to note here at this stage that from the information supplied by the concerned authorities under the University under the Right to Information Act, it came to light that a candidate registered under the writ petitioner was awarded the Ph.D. degree even before the writ petitioner had been awarded the Ph.D. degree and these facts manifestly establish the illegalities committed on part of the concerned authorities under the University in extending under benefits and favours to the writ petitioner.

26. That it is stated here that from a perusal of the aforesaid information as contained in Annexure-R/5 to this counter affidavit supplied by the University, it would also be established that the writ petitioner did not have any article or publication to her credit when she was granted promotion in the rank of University Professor under the Merit-cum-Time Bound Promotion Scheme under the University and it was only summary of the research work of the writ petitioner that had been enclosed by her while her case was considered for grant of promotion in the rank of University Professor, which is highly illegal and untenable in the eyes of law.

27. That it would be pertinent to state here at this stage that in the meantime, a controversy cropped up with respect to deciding the inter se seniority between the teachers who had been granted promotions under the Statutes for Time Bound promotion scheme in terms of the provisions contained under Rule-9 of the said Statutes and as such, pursuant to an order passed by a division bench of this Hon'ble Court in C.W.J.C. No. 5961/2004, the said matter was examined and decided

by the Hon"ble Chancellor of Universities.

28. That it is stated here that having taken into account the various aspects relating to the Statutes regarding Time Bound Promotion and the provisions contained in the Rule 1(1), 1(2) and 1(3), vide an order dated 01/07/2004 passed by Hon"ble Chancellor of Universities, it was held that the provisions contained under Rule 9 of the said Statutes was not applicable to Readers promoted as Professors after they had put in 16 years of service on account of their possessing the academic qualification prescribed for the post of Professor by the University Grants Commission under Rule 1(3) of the Statutes regarding Time Bound Promotion scheme and therefore, the seniority of University professors promoted under Rule 1(3) of the said Statutes had to be fixed on the basis of their date of appointment as University Professor under the said Rule; and subsequently, vide a letter dated 23/07/2004 issued by the concerned authorities under the Governor"s Secretariat, Bihar, Patna all the Vice Chancellors of different universities within the State of Bihar were sent copies of the said order passed by the Hon"ble Chancellor on 01/07/2004 and as such, the Vice Chancellors of all the universities within the State of Bihar were directed to follow the said order and rearrange the seniority of persons and take other follow-up actions.

29. That it is stated here that the Statutes for Time Bound Promotion of Lecturers to the posts of Readers and for Readers to the post of University Professors was approved by the Chancellor of Universities and notified vide a letter dated 24/12/1986, which laid down the provisions for consideration of cases of eligible Lecturers for promotion to the post of Reader and Readers to the posts of University Professors in the services of different universities within the State of Bihar."

7. The decision of the Hon"ble Chancellor with regard to the interpretation given to Rule 1(3) of statute 16 has been brought on record as Annexure-R/6 of the counter affidavit of private respondent. The Hon"ble Chancellor has given his ruling in paragraph-14 of his decision which is reproduced herein below:

"[14] Rule-9 of statute - 16 which prescribes that "the inter se seniority of teachers will not be adversely affected by time bound promotion" which means that the time bound promotion given to lecturers after 10 years of service to the post of Readers and to the Readers to the post of University Professors after 25 years of service does not alter their inter se seniority as existed in the cadre of lecturers applies only to persons promoted under Rule-1(1) and 1(2) of statute-16 [Time Bound Promotion Scheme] and it is not applicable to Readers promoted as Professors after they had put in 16 year"s of service on account of their possessing the academic qualification prescribed for the post of Professor by the University Grants Commission under Rule-1(3) of Statute-16 and therefore the seniority of University Professors promoted under Rule-1(3) had to be fixed on the basis of their date of appointment as University Professors under Rule-1(3) of Statute-16."

8. Patna University has filed a 4th supplementary counter affidavit and they take a stand that ever since the decision of the Hon"ble Chancellor giving interpretation to promotions on the post of Professor under time bound scheme, the University has been following the said interpretation and seniority has been accorded on the basis of promotion given to the teachers on the post of Professors for working out inter se seniority. They have categorically stated in paragraphs-5 and 6 that the directive of the Hon"ble Chancellor dated 23.07.2004 has been followed by the University with regard to teachers of all the subjects when the seniority position of the various teachers working in the University was communicated to His Excellency vide letter dated 24.04.2013 which is Annexure-G to the 4th supplementary counter affidavit.

9. Learned counsel for the University thereafter has randomly demonstrated from the list as to how it is not the initial date of appointment as Lecturer which ultimately decides the seniority position as Professors. It is the directive issued by the Hon"ble Chancellor dated 23.07.2014 that the inter se seniority of all teachers in different subjects have been decided.

10. The Court after having given a detailed hearing to the parties and perusing the materials does opine that since seniority and promotions on the post of Professors are being granted and treated for the purposes of inter se seniority right from 23.07.2004, i.e., the date of the decision of the Hon"ble Chancellor, the Court would not like to unsettle the settled positions of such seniority by giving new interpretation to the relevant statute and rules governing such position.

11. If a uniform yardstick has been maintained by the Patna University and the date of grant of promotion as Professor has been a deciding factor while deciding the inter se seniority, the same is not required to be interfered with on the ground of initial appointment on the post of Lecturer.

12. The Court is not unmindful of its previous decision rendered in the case of Kameshwar Prasad Singh v. Patna University which is Annexure-14 to the writ application but keeping in mind the interpretation given by the Hon"ble Chancellor with regard to Statute 16, Rule 1(3) that promotion on the post of Professor is different from grant of promotion on the post of Lecturer or Reader, the principle that time bound promotions are personal promotions will not apply in cases of grant of promotion on the post of Professors.

13. Till the decision of the Hon"ble Chancellor dated 23.07.2004 is struck down or declared to be a nullity, the petitioner cannot be shown to be senior to private respondent No. 3 who admittedly earned his promotion as Professor earlier than the petitioner.

14. Writ application, therefore, is dismissed being devoid of merit.