

THE STATE OF BIHAR ETC.

v.

DR. BRAJ KUMAR MISHRA AND ORS.

NOVEMBER 2, 1999

[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

Constitution of India.

Articles 226/227—Practice and procedure—Court quashing order of promotion under longer time bound promotion scheme from later date and directing promotion with effect from earlier date under shorter scheme—Order challenged—Held, under the peculiar facts and circumstances, there was no illegality or error of jurisdiction in the impugned order—Service Law—Promotion.

Respondent No.1 was selected by the Screening Committee under 16 years time bound promotion scheme for promotion to the post of Professor in 1990 with retrospective effect from 1.2.1985 and was promoted on provisional basis subject to approval of the Bihar State University (Constituent Colleges) Services Commission. The Commission did not take any decision in the matter upto 6.4.1995 when it asked the University to constitute new Screening Committee on the ground that the Screening Committee of 1990 was not properly constituted. Respondent No.1 despite working as Professor in view of the provisional promotion applied again under both the 16 years and 25 years time bound Promotion schemes but was selected only under the 25 years scheme and was promoted to the post of Professor vide notification dated 4.10.1996.

Respondent No.1 filed Writ Petition challenging the notification dated 4.10.1996 on the ground that he was eligible for promotion under the 16 years scheme Single Judge quashed the said notification and held the respondent No. 1 to have been promoted with effect from 1.2.1985 under the 16 years scheme. Appeal filed by the appellants against the order of the Single Judge was dismissed by the Division Bench. Hence these appeals.

The appellants contended that the Single Judge after quashing the impugned order should not have promoted respondent No. 1 with effect from 1.2.1985 and should have remitted the matter to the Commission for

A consideration of the case of respondent No.1.

Dismissing the appeals, the Court

B HELD: 1. Respondent No.1 was found suitable for promotion by the Screening committee as well as by the Commission but his claim under 16 years scheme was rejected only on account of the additional criteria laid down by the Commission by its resolution in 1992 which was declared ultra vires and ultimately withdrawn. In the absence of the criteria there was no reason to withhold the promotion of respondent no. 1 with effect from the date when he became eligible. [338-G]

C 2. Normally the Court, in exercise of its power under Article 226/227 of the Constitution of India, after quashing the impugned order should remand the matter to the concerned authority particularly when such authority consists of experts for deciding the issue afresh in accordance with the directions issued and the law laid down by it but in specified cases, as the instant case, nothing prevented the Court to issue directions when all the facts were admitted regarding the eligibility of respondent No.1 and his possessing the requisite qualifications. [338-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6246 of 1999. Etc.

E From the Judgment and Order dated 28.7.98 of the Patna High Court in L.P.A. No. 443 of 1997.

F P.S. Mishra, B.B. Singh, C. Shekhar, Ms. Ritu Singh, R.P. Singh, Ms. Sunita R. Singh, Vishnu Sharma, Anip Sachthey, A.L. Das, Ms. Sandhya Rajpal, Himanshu Shekhar, A. Sharan, Ms. Madhu Sharan, S.P. Sinha and Anjani K. Jha for the appearing parties.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

G Finding him eligible for promotion to the post of Professor under the time bound promotion scheme and being satisfied that the respondent No. 1 possessed the requisite qualification, the learned Single Judge of the High Court of Patna quashed the impugned notification dated 4.10.1996 and held the respondent No. 1 to have been promoted with effect from 1.2.1985 and not with effect from 1.6.1992. The Letters Patent Appeals filed were dismissed

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vide the impugned judgment in these appeals. The Appellants, the University and the State of Bihar are mainly aggrieved by the findings of the High Court in so far as it, after quashing the order of the Registrar, declared the respondent No. 1 to have been promoted with effect from 1.2.1985. It is urged that after setting aside the impugned notification in the writ petition, the matter should have been remitted to the authorities of the University for consideration of the case of the respondent No. 1 for promotion to the post of Professor.

It is not disputed that respondent No. 1 was appointed as Lecturer in the Department of Psychology in Doranda College on 16.8.1967 and he obtained the Ph. D degree on 14.2.1974. He was promoted to the post of Reader on 2.8.1991 with effect from 14.11.1980. On 15.4.1990 the respondent No. 1 was promoted to the post of the University Professor from the year 1985 and his name was recommended to the Bihar State University (Constituent Colleges) Services Commission (hereinafter referred to as "the Commission"). Vide notification dated 14.10.1996 the Vice Chancellor of the University directed the promotion of the respondent to the post of Professor under the time bound promotion scheme with effect from 16.9.1992. The grievance of the respondent No. 1 was that he was eligible for promotion to the post of Professor with effect from 1.2.1985, after completion of 16 years of continuous service and not with effect from 16.9.1992 on the basis of completion of 25 years of continuous service.

It is conceded before us that there are two schemes for time bound promotion to the post of University Professor, viz., (i) 15 years scheme under which a Reader can be promoted as Professor on completion of 16 years continuous service as Reader/Lecturer and (ii) 25 years scheme whereunder a Reader can be promoted as Professor on completion of 25 years of continuous service as teacher not below the rank of Lecturer. Admittedly, the respondent No. 1 had been promoted to the Post of Reader with effect from 14.11.1980 and was selected by the Screening Committee under 16 years scheme for promotion to the post of Professor in 1990 with retrospective effect. Vide notification dated 15.4.1990 he was promoted on provisional basis to the post of Professor with effect from 1.2.1985 subject to the approval of the Commission. The Commission is stated to have not taken any decision in the matter upto 6.4.1995 when it asked the University to constitute new Screening Committee for selection of teachers for promotion to the post of Professor on the ground that the Screening Committee which made the selection in 1990, was not properly constituted. Despite the fact that respondent No. 1 was working as Professor in view of his provisional promotion, he was compelled to apply again for promotion to the post of

A Professor under both the schemes but he was selected only under the latter scheme of 25 years.

Learned counsel appearing on behalf of the appellants have submitted that as the recommendation by the Screening Committee and consequent promotion was subject to the concurrence of the Commission and the Commission had not approved the promotion, the same had lapsed under Sub-Section (10) of Section 58 of the Bihar State Universities Act which, *inter alia*, provide :

“Notwithstanding to the contrary contained in this Act or Statute, Rules or Regulations made thereunder promotion given on the post of Reader or Professor or officer of the University shall not be valid for a period exceeding six months unless recommended by the Bihar State University (Constituent Colleges) Service Commission.”

The submission has to be noted only to be rejected inasmuch as the amendment came into force when the respondent No. 1 stood recommended for promotion and the effect of the amendment had not been made retrospectively. For the negligence of the Commission, the respondent No. 1 could not be penalised.

It has not been disputed before us that the respondent No. 1 was eligible for consideration to promotion under 16 years time bound scheme. The only objection raised before us, as it was canvassed before the High Court, is that the learned Single Judge was not justified in declaring the respondent No. 1 to have been promoted with effect from 1.2.1985. It is contended, as earlier noted, that after setting aside the order impugned in the petition, the matter should have been referred to the Commission for consideration to ascertain as to whether the respondent No. 1 possessed the requisite qualifications or not. Technically speaking the submission is correct but when examined in the context of the peculiar circumstances of this case it cannot be sustained. The requisite qualifications for the post of University Professor are :

“(1) *University Professor* : Qualification —an eminent scholar with published work of high quality engaged in research, about 10 years experience of teaching and research, experience of guiding research at doctoral level;

OR

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An outstanding scholar with established reputation who has made significant contribution to the knowledge." A

Despite our repeated queries the learned counsel appearing for the appellants could not satisfy us that the respondent did not possess the requisite qualifications. It is worth noticing that the Division Bench of the High Court examined the record of the Screening Committee which was produced before it and found : B

"The proceeding of the Screening Committee consists of two sheets of paper, one of which contains the names of 13 teachers, who have been recommended for promotion by the screening committee. The name of respondent No. 1 is at Sl. No. 12 of the said list and he has been shown as eligible under both the schemes of 25 and 16 years. His total length of continuous service has been shown as 27 years 10 months as on the date of screening committee considered the matter on 27.7.1995. Against the name of this respondent, only this much has been stated by the Committee: C D

"Recommended w.e.f. 16.8.1992 lower grade."

Similar recommendations have been made with regard to other candidates also, whose cases have been recommended with effect from different dates. The other sheet of paper appears to be a formal recommendation, which is reproduced below : E

"The Committee met to consider the cases for promotion from Reader to Professor in Psychology under 16/25 yrs. time bound promotion scheme of the following confirmed Readers: F

<i>Sl. No.</i>	<i>Name</i>	<i>Date of Promotion</i>
1.	Dr. Birendra Narain Sinha	01.02.85
2.	Dr. Md. Khurshid Hassan	01.02.85
3.	Dr. Subodh Kumar Sinha	18.09.87
4.	Dr. (Mrs.) Geeta Chakravarty	25.11.88
5.	Dr. Enautulla	10.01.90 (Lower Scale)
6.	Dr. Shiv Prakash Singh	10.12.87
7.	Mrs. Indira Shahi	18.09.86

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A	8. Mr. Gitali Chatterjee	01.02.85
	9. Sri Jaleshwar Bhagat	01.06.89 (Lower Scale)
	10. Shri S.M. Daud Quli	23.09.86
B	11. Sri Abul Hasnat	09.09.87
	12. Dr. Braj Kumar Mishra	16.08.92 (Lower Scale)
	13. Dr. Tantreshwar Jha	24.08.88

C The record of the screening committee and the resolution passed by it does not disclose any reason as to why respondent No. 1 was selected for promotion under 25 years scheme, instead of 16 years. The screening committee has made non-speaking recommendation regarding the promotion of all the teachers whose cases were placed before it for consideration. That apart, there is no other material on the records produced by the screening committee to indicate as to why the promotion of respondent No. 1 was not made under 16 years scheme and why he was selected under 25 years scheme."

D The Court also perused the proceedings of the Commission and noted its contents in para 11 of its judgment. From the records it appeared that the only ineligibility attributed to the respondent No. 1 was the non-fulfilment of the additional criteria laid down by the Commission by its resolution in 1992. It is worth noticing that the said additional criteria, when challenged in a court of law, was declared *ultra vires* and the Chancellor withdrew the same. The Court also found that the respondent No. 1 had been found suitable on merit for promotion to the post of Professor in 1990. He was again found suitable for promotion by the Screening Committee as well as by the Commission but his claim under 16 years scheme was rejected only on account of the additional criteria. In the absence of the criteria there was no reason to withhold the promotion of the respondent with effect from the date when he became eligible.

G It is true that normally the Court, in exercise of its power under Article 226/227 of the Constitution of India, after quashing the impugned order should remand the matter to the concerned authority particularly when such authority consists of experts for deciding the issue afresh in accordance with the directions issued and the law laid down by it but in specified cases, as the instant case, nothing prevented the Court to issue directions when all the

facts were admitted regarding the eligibility of the respondent No. 1 and his possessing of the requisite qualifications. Remand to the authorities would have been merely a ritual and ceremonial. Keeping in mind the lapses attributable to the Commission which had failed to take appropriate action despite recommendation made in favour of the respondent No. 1, the learned Single Judge as also the Division Bench of the High Court felt it necessary to declare the respondent No. 1-promotor with effect from 1.2.1985. We do not find any illegality or error of jurisdiction. Learned counsel appearing for the appellants were apprehensive that if the impugned judgment is not set aside, it may become precedent and in other cases pertaining to the University, such directions may be issued in future also preventing the authorities and the State Government from exercising their statutory powers. The apprehension is misconceived and without any substance. To allay even such apprehension we deem it appropriate to clarify that the impugned judgment has been passed under peculiar circumstances of the case and is no precedent with respect to the subject regarding which the appellants have conceived an apprehension.

There is no merit in these appeals which are accordingly dismissed but without any order as to costs.

A.K.T.

Appeals dismissed.