

PATNA UNIVERSITY
v.
AWADH KISHORE PD. YADAV AND ORS. ETC. ETC.

MAY 5, 1994

[KULDIP SINGH, P.B. SAWANT AND N.P. SINGH, JJ.]

Service Law :

Bihar Inter University Board Act, 1981 : Time Bound promotion Scheme for Lecturers and Readers—Requirements for—Grant of temporary promotion awaiting recommendations of State University Commission—Promotion recommended by Commission—Subsequent withdrawal of recommendation by Commission on the ground that Screening Committee was not constituted in terms of the Statute—Consequential reversion order by University—Directions by Supreme Court.

A Time Bound Promotion Scheme for Lecturers and Readers was framed by the State of Bihar under which Lecturers and Readers were to be promoted on completion of the prescribed continuous service. However, under the scheme, promotions were to be deemed to be personal promotions but were not automatic and were to be made on the recommendations of the Bihar State University Service Commission on consideration of experience and C.C. Roll of the teachers concerned and in the absence thereof on the basis of experience and certificates from the Heads of University Departments or Principals of Colleges concerned in regard to the satisfactory service of the teachers after the same were screened by a Committee consisting of the Vice-Chancellor, the Dean of the Faculty concerned, the Head of the University Department concerned and two experts appointed by the Vice-Chancellor from the panel prepared by the Bihar Inter University Board. Further, the report of the Screening Committee was to be referred to the Commission for its recommendation and the final decision was to be taken by the Syndicate and in the absence of Syndicate by the Vice-Chancellor on receipt of the recommendation of the Commission. However, temporary promotions, subject to recommendation by the Commission, were permissible, but in case the Commission does not recommend for promotion, the temporary promotion given to such a teacher shall cease to be effective immediately.

A The respondents were promoted from the posts of Lecturer to the posts of Reader on temporary basis awaiting the recommendation of the Commission. The Commission in due course sent its recommendation, but later withdrew its recommendation on the ground that the Screening Committee was not constituted as per the provisions of the statute inas-

B much as in place of required expert some other person had participated as expert. Thereafter, the Vice-Chancellor of the concerned Universities, issued reversion orders of the respondents. The respondents challenged the orders before the High Court which quashed the orders passed by the Vice Chancellors of the different Universities reverting the respondents from the posts of Reader to the Post of Lecturer. Various Universities and

C the Bihar State University Service Commission filed appeals in this court.

On behalf of the appellants, it was contended that since the promotions given to the respondents were not in accordance with the statute, the Commission was justified in withdrawing its recommendation and consequently the Vice-Chancellors of the different Universities had to withdraw the promotions.

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On behalf of the respondents it was contended that promotions under the Time Bound Promotion Scheme being personal promotions the same could not be treated at par with the regular promotions where the rule of seniority-cum-merit is applied.

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Allowing the appeals and setting aside the judgment of the High Court, this Court

HELD : 1. It is true that personal promotion under the Time Bound Promotion Scheme cannot be treated at par with promotion from a lower post to a higher post where not only seniority but even merit has to be examined by a duly constituted Committee or Commission. At the same time, it does not appear from the relevant Statute, that the Committee was required only to examine whether the person concerned is holding a substantive post of Lecturer and has completed at least ten years of continuous service as a Lecturer in one or more universities. If that was the requirement, one fails to understand as to why the C.C. Rolls and in absence thereof the certificate from the Head of the University Department or Principal of the College concerned along with the experience of the persons concerned are to be screened by a Committee and after screening,

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H cases of fit teachers have to be referred to the Commission for its recom-

mentation and thereafter, the Commission is to apply its mind for the purpose of making recommendation. This exercise by the Screening Committee and the Commission for the purpose of giving time-bound promotion to the lecturers concerned, need not be at par with the process adopted for giving regular promotions on the principle of seniority-cum-merit. At the same time, it should not be an empty formality. [913-D-E, G-H, 914-A]

2. In the facts and circumstances of the case, the Screening Committee as well as the Commission have not performed their statutory duty while making recommendations for grant of promotion under the Time Bound Promotion Scheme. However, taking all the facts and circumstances into consideration, the following order is passed : [914-E]

(i) A duly constituted Screening Committee shall consider the cases only of such persons who had been considered earlier; [914-G]

(ii) Bihar Inter University Board is directed to make a panel, within two months from the date of receipt of this order, consisting of sufficient number of experts so that there is no difficulty in selecting the experts from the panel when the Screening Committee examine the cases of the Lecturers for promotion; [915-A]

(iii) The Committees should screen all such cases within six months and report within two weeks of screening the cases of those who in the opinion of the Committees, fulfil the prescribed conditions, for recommendation to the Commission; [915-B]

(iv) The Commission shall sent its recommendation to the Syndicate/Vice-Chancellors of the Universities concerned within two months from the date of the receipt of the reports of the Committees; [915-C]

(v) It will be open to the concerned Vice-Chancellors to give temporary promotions on the basis of the reports of the Committees in accordance with the second proviso to clause 2 of the Statute. The final decision shall be taken by the Syndicate/Vice-Chancellors within one month from the date of the receipt of the recommendations from the Commission; [915-D]

(vi) Such Lecturers who have continued as Readers in spite of the orders of cancellation of their promotion by the Vice-Chancellors con-

A cerned, because of the interim orders in the writ application, shall continue as such and shall be entitled to the salaries and emoluments of the posts of Reader. However, those whose promotions have been withdrawn pursuant to the order of cancellation issued by the Vice-Chancellors concerned, shall continue as Lecturers. They shall, however, not be liable to
B refund any excess amount which they have received for the period when they were working as Readers; [915-E-F]

(vii) When the promotions are given under the aforesaid Time Bound Promotion Scheme, the date of promotion shall be the same as had been given to respondents concerned earlier. Those respondents who have
C been reverted because of the orders of the Vice-Chancellor concerned, if promoted again, shall also be entitled to the salaries and other emoluments with effect from their earlier dates of promotions; [915-G-H]

(viii) This order shall also govern the cases of others, who had similarly been promoted and whose promotions might have been cancelled but who have not approached the High Court, by filing writ application.

[916-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2660-77 of 1993.

E From the Judgment and Order dated 16.4.93 of the Patna High Court in C.W.P. 1921/93 & 2550 of 1993.

With

(C.P. Nos. 305-06 I.A. Nos. 11-15 of 1993)

F Shanti Bhushan, Shashi Anugrah, R.K Garg, Harish N. Salve, K.K. Venogopal, M.N. Krishnamani, Rajinder Sacher, Prashant Bhushan, Vidya Sagar, K. C. Mohan Rao, Prabhes Kumar Yadav, A. Sharan, L.R. Singh Ms. Vimla Singh, Yunus Malik, E.C. Vidya Sagar, M.P. Jha, A.K. Srivas-
G tave, Vikas Singh, Anil K. Chopra, B.P. Singh, Gopal Singh, Navin Prakash and B.B. Singh for the Appearing parties.

The Judgment of the Court was delivered by

H N.P. SINGH, J. The different Universities in the State of Bihar and the Bihar State University (constituent-colleges) Service Commission

(hereinafter referred to as 'the Commission') have filed these appeals for setting aside a judgment of the High Court, quashing the orders passed by the Vice-Chancellors of the Universities in question, cancelling the promotions under the Time-Bound Promotion Scheme, given to the writ petitioners (hereinafter referred to as 'the respondents').

The Statute regarding the Time-Bound Promotion Scheme was framed on the recommendation of Bihar Inter University Board and the State Government which was approved by the Chancellor under the provisions of Bihar Inter University Board Act, 1981. It was circulated by Office Letter No. B.S.U.-27/25 - 4032 G.S. dated 21.12.1986. Under the Scheme aforesaid, a Lecturer having completed ten years of continuous service as lecturer in one or more Universities can be promoted to the post of Reader, in accordance with the procedure prescribed in the aforesaid Statute. Similarly, a Reader, having completed the prescribed period of continuous service as Reader can be promoted to the Post of University Professor in accordance with the procedure prescribed in the said Statute.

It appears that the case of the respondents in different appeals, for promotion from the posts of Lecturer to the posts of Reader was considered under the aforesaid Time-Bound Promotion Scheme. They were promoted on temporary basis on different dates between 1987 to 1992 awaiting the recommendation of the Commission. There is no dispute that the Commission in due course sent its recommendation, in respect of different Lecturers in the different Universities who had already been promoted on temporary basis to the posts of Reader. The last such recommendation is dated 25.01.1993. However, by a resolution dated 10.02.1993, the Commission withdrew its recommendation saying :

".....if the screening committee has not been constituted as per the provisions of the statute and in the screening committee in place of required expert some other person has participated as expert, then the Commission treats them as irregular, accordingly their recommendation for promotion is derecommended."

It is said that thereafter, the concerned Universities, issued orders reverting the respondents from the posts of Reader to the substantive posts of Lecturer. It may be mentioned, that some of the respondents in the different writ applications before the High Court had also been promoted

A from the posts of Reader to the posts of University Professor on temporary basis. It is an admitted position that recommendation of the Commission had not been received by the Universities, so far as their promotion from the posts of Reader to the posts of University Professor is concerned. The High Court has quashed the aforesaid resolution of the Commission dated 10.02.1993 withdrawing its recommendation. It has also quashed the different orders issued by the Vice-Chancellors of the different Universities reverting the respondents from the posts of Reader to the posts of Lecturer.

C On behalf of the appellants, it was pointed out that the promotions given to the respondents under the Time Bound Promotion Scheme was not in accordance with the Statute, framed for such promotions and as such the Commission having learnt about the same had no option but to withdraw its recommendation. Once the recommendation has been withdrawn by the Commission, the Vice-Chancellors of the different Universities had to withdraw the promotions.

E The Statute relating to the time-bound promotion of Lecturers to the posts of Reader provides that notwithstanding anything to the contrary as contained in the Statute, a Lecturer serving in a University department or in a degree college managed and maintained by the University, shall on the recommendation of the Commission, be promoted on the basis of the Time-Bound Scheme to the post of Reader, subject to the conditions that (a) he holds the qualification as prescribed for the post of Lecturer under the Statute in force at the time of his appointment as Lecturer; (b) he holds substantive appointment on the post of a Lecturer and has fulfilled the conditions laid down in the Statute; and (c) he has completed at least ten years of continuous service as Lecturer in one of more Universities. Clause 2 of the Statute which is relevant is as follows :

G "Such promotion shall be deemed to be personal promotion. It shall not be automatic but shall be made on the recommendation of the Bihar State University (Constituent Colleges) Service Commission on consideration of experience and C.C. Roll of the teacher concerned.

H Provided that where C.C. Rolls have not been maintained before implementation of these statutes, the ceases of teacher who

are eligible for promotion as Reader or University Professor on the date of implementation of this statute, shall be considered by the said commission on the basis of experience certificates from the Heads of University Departments or Principals of Colleges concerned in regard to the satisfactory service of the teachers after the same have been screened by a Committee consisting of the Vice-Chancellor. The Dean of the Faculty concerned, the Head of the University Department concerned and two experts appointed by the Vice-Chancellor from the panel prepared by the Bihar Inter University Board.

Provided further, that the report of the committee in each case shall be referred to the Bihar State University (Constituent Colleges) Service Commission for its recommendation but where in the opinion of the committee a teacher fulfills the prescribed conditions and is found fit to be promoted, the Syndicate may, on the recommendation of the Vice-Chancellor order for promotion of such a teacher on a temporary basis till final decision is taken on the recommendation of the said commission, but in case the commission does not recommend for promotion, the temporary promotion given to such a teacher shall cease to be effective immediately.

Also provided that hereafter C.C. Rolls shall be regularly maintained in respect of each teacher according to the procedure and in the form to be approved by the Chancellor for the purpose."

Clause 4 provides that where a teacher is promoted to the post of Reader or University Professor, as the case may be, such promotion shall take effect from the date on which the Lecturer entered the 11th year of his qualifying service, as the case may be, or from the 1st February, 1985 whichever is later. In view of Clause 5, in case of a teacher, who is not recommended by the said Commission for promotion as Reader may again be considered for promotion after a period of one year has elapsed since his name was last considered. The promotion in such a case shall take effect from the date of the recommendation of the Commission. Clause 11 says :

"The Registrar of the University with the approval of the Vice-Chancellor shall place a list of eligible candidates giving all the

- A required information about each of them along with all the relevant papers including service records and C.C. Rolls before the screening Committee to be appointed by the Vice-Chancellor for scrutiny. The recommendation of the screening Committee along with all the relevant papers shall be submitted to the Bihar State University (Constituent Colleges) Service Commission and the recommendation of the said commission shall be placed before the Syndicate at the next meeting for orders."
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- Although the Statute has been framed to give time-bound promotion to Lecturers to the posts of Reader after they complete at least ten years of continuous service as lecturer in one or more universities, the same Statute says that promotions shall not be automatic. It shall be made on the recommendation of the Commission on consideration of experience and C.C. Roll of the teacher concerned. The first proviso to Clause 2 of the Statute, says that where the C.C. Rolls have not been maintained before implementation of the Statute, the cases of the teachers who are eligible for promotion as Readers on the date of implementation of the Statute, shall be considered on the basis of the experience and certificates from the Heads of the University Departments or Principals of Colleges concerned, in regard to the satisfactory service of the teachers. This has first to be screened by a Committee consisting of Vice-Chancellor, the Dean of the Faculty concerned, the Head of the University Department concerned and "two experts appointed by the Vice-Chancellor from the panel prepared by the Bihar Inter University Board". In view of the second proviso, the report of the Screening Committee has to be referred to the Commission for its recommendation. The final decision has to be taken by the Syndicate and in the absence of Syndicate by the Vice-Chancellor on receipt of the recommendation of the Commission. That proviso, however, in cases where the Committee aforesaid is of the opinion that the teacher concerned fulfills the prescribed conditions and has been found fit to be promoted, enables the Syndicate/Vice-Chancellor to order promotion of such a teacher on temporary basis till the final decision is taken on the recommendation of the Commission.
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- On behalf of the appellants i.e. the Commission and the Universities, it was pointed out that although the relevant Statute has made it clear that even such time-bound promotion shall not be automatic and the satisfac-
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tory records of service have to be properly screened by the Committee with the help of two experts appointed by the Vice-Chancellor from the panel prepared by the Bihar Inter University Board, in the present case, the Committee has treated the promotion of the respondents concerned as routine and automatic, after such respondents completed ten years of continuous service as Lecturer in one or more Universities. It was pointed out that in most of the cases, the experts have not been appointed, as required by the first proviso to Clause 2 of the Statute. The stand of the respondents appears to be that promotion under the Time-Bound Promotion Scheme being a personal promotion should not be treated at par with the regular promotions from the posts of Lecturer to the posts of Reader where the rule of seniority-cum-merit is applied. In this connection, it was pointed out that this is apparent from the expression "found fit to be promoted" occurring in the second proviso to Clause 2 of the Statute.

It is true that personal promotion under the Time-Bound Promotion Scheme cannot be treated at par with promotion from a lower post to a higher post where not only seniority but even merit has to be examined by a duly constituted Committee or Commission. At the same time, it does not appear from the relevant Statute, that the Committee was required only to examine whether the person concerned is holding a substantive post of Lecturer and has completed at least ten years of continuous service as Lecturer in one or more Universities. If that was the requirement, we fail to understand as to why the C.C. Rolls and in absence thereof the certificate from the Head of the University Department or Principal of the College concerned along with the experience of the persons concerned are to be screened by a Committee consisting of the Vice-Chancellor, the Dean of the Faculty concerned, the Head of the University Department concerned and "two experts appointed by the Vice-Chancellor from the Panel prepared by the Bihar Inter University Board". After screening those teachers who fulfill the prescribed conditions and are found fit to be promoted, their cases have to be referred to the Commission for its recommendation. Only on the basis of the recommendations of the Commission, promotions under the Time-Bound Promotion Scheme are to be given. The Screening Committee is to be properly constituted and has to apply its mind to different cases before sending its opinion to the Commission. Thereafter, the Commission is expected to apply its mind for the

A purpose of making recommendation. As already said earlier, this exercise by the Screening Committee and the Commission for the purpose of giving time-bound promotion to the lecturers concerned, need not be at par with the process adopted for giving regular promotion on the principle of seniority-cum-merit. At the same time, it should not be an empty formality.

B It was pointed out on behalf of the appellants, that the Screening Committee mechanically recommended the cases of the Lecturers concerned who were holding the posts of Lecturer on substantive basis and had completed ten years of continuous service. It was also pointed out, that in most of the cases, two experts had not been appointed by the Vice-Chancellor concerned from the panel prepared by the Bihar Inter University Board. On behalf of the respondents, it was stated that in view of the attitude of the different Universities towards the experts who were in the panel prepared by the Bihar Inter University Board, most of the were not willing to participate in the proceedings of the Screening Committee. In this connection, reference was made to some of the communications addressed by the experts on different dates.

E However, in the facts and circumstances of the present cases, we are satisfied that the Screening Committee as well as the Commission have not performed their statutory duty while making recommendations for grant of promotion under the Time-Bound Promotion Scheme. At the same time, we do not express any opinion as to whether the Commission had authority to withdraw the recommendations, after having made them. But taking all the facts and circumstances into consideration, We pass the following order:

F (i) Let the cases of the concerned respondents be placed before the duly constituted Committees in accordance with the first proviso to Clause 2 of the Statute;

G (ii) The Screening Committees shall consider, in accordance with the Statute aforesaid, cases only of such persons who had been considered earlier. The case of no other person shall be considered by the Screening Committees or the Commission;

H (iii) Since in many cases, experts from the panel prepared by the Bihar Inter University Board were not available, Bihar Inter University

Board is directed to make a panel consisting of sufficient number of experts so that there is no difficulty in selecting the experts from the panel when the Screening Committees are to examine the cases of the Lecturers for promotion. The Board shall prepare the panel within two months from the receipt of this Order;

(iv) The Committees should screen all such cases within six months from today and report within two weeks of screening the cases of those who in the opinion of the Committees, fulfill the prescribed conditions, for recommendation to the Commission;

(v) The Commission shall send its recommendation to the Syndicates/Vice-Chancellors of the Universities concerned within two months from the date of the receipt of the reports of the Committees;

(vi) It will be open to the concerned Vice-Chancellors to give temporary promotions on the basis of the reports of the Committees in accordance with the second proviso to Clause 2 of the Statute. The final decision shall be taken by the Syndicates/Vice-Chancellors within one month from the date of the receipt of the recommendations from the Commission;

(vii) Such Lecturers who have continued as Readers in spite of the orders of cancellation of their promotion by the Vice-Chancellors concerned, because of the interim orders in the writ application, shall continue as such and shall be entitled to the salaries and emoluments of the posts of Reader. However, those whose promotions have been withdrawn pursuant to the Order of cancellation issued by the Vice-Chancellors concerned, shall continue as Lecturers. They shall, however, not be liable to refund any excess amount which they have received for the period when they were working as Readers;

(viii) When the promotions are given under the aforesaid Time-Bound Promotion Scheme, the dates of promotion shall be the same as had been given to respondents concerned earlier. Those respondents who have been reverted because of the orders of the Vice-Chancellor concerned, if promoted again, shall also be entitled to the salaries and other emoluments with effect from their earlier dates of promotions;

A (ix) This order shall also govern the cases of others, who had similarly been promoted from the posts of Lecturer to the posts of Reader, under the same Time-Bound Promotion Scheme, and whose promotions might have been cancelled but who have not approached the High Court, by filing writ applications.

B The appeals are allowed in terms of the directions given above. The judgment of the High Court is set aside. The petitions for contempt and the interlocutory applications are also disposed of accordingly.

T.N.A.

Appeals allowed.