

Vice-Chancellor, L. N. Mithila University

Vs

Dayanand Jha

Civil Appeal No. 1534 of 1985

(E. S. Venkataramiah, B. C. Ray, A. P. Sen JJ)

25.04.1986

JUDGMENT

A. P. SEN, J. -

1. This appeal by special leave is directed against the judgment and order of the Patna High Court dated November 28, 1984 quashing an order of the Vice-Chancellor, L. N. Mithila University, Darbhanga dated February 28, 1984 transferring the respondent Dayanand Jha by virtue of his powers under Section 10(14) of the Bihar State Universities Act, 1976 ('Act' for short) from the post of Principal, V.S.J. College, Rajnagar to the post of Reader in R. K. College, Madhubani. The High Court has however reserved liberty to the University to transfer the respondent to any other college maintained by it.

2. The issue involved in the appeal is as to the power of the Vice-Chancellor of a university under Section 10(14) of the Act to transfer any teacher of any department or college maintained by the university from the post of Principal of a constituent college to the post of a Reader of another constituent college maintained by it. The High Court while allowing the writ petition held that although the two posts of Principal and Reader are carried on the same scale of pay, it could not be said that the post of a Reader is an equivalent post as that of the Principal in the legal sense. In coming to that conclusion, it placed emphasis on the difference in status and position of the Principal apart from the privileges that he enjoys which, according to the High Court, give him an edge over the teaching posts in an institution.

3. For a proper appreciation of the point involved, it is necessary to refer to some of the provisions of the Act which have undergone several change. The term 'Principal' as defined in Section 2(m) of the Act means the head of the college, while the term 'Reader' as defined in Section 2(r) means a teacher of a college or the university possessing such qualifications as may be prescribed.

4. The Bihar State Universities (Amendment) Act, 1982 by Section 10(ga) introduced a new sub-section (14) to Section 10 for the conferral of the power of transfer on the Vice-Chancellor, and it reads as follows :

10(14) The Vice-Chancellor shall have the power to transfer any teacher of any department or college maintained by the University to any equivalent post in any other department of college maintained by that University in accordance with the guidelines approved by the Chancellor.

The Amendment Act also introduced a new clause (ba) in Section defining the term 'teacher' and a

new clause (ka, chh) defining the expression 'other equivalent post' which are in these terms :

(ba) 'Teacher' includes Principal, University Professor College Professor, Reader, Lecturer, Demonstrator and also any other person engaged in teaching in any department or college of institution maintained by the University.

(ka, chh) 'Other equivalent post' means any other post having identical scale of pay or which may be declared equivalent by the State Government.

5. Learned counsel for the appellant has, in substance, advanced a twofold contention, namely : (1) Both the posts of Principal and Reader are in the same grade and also carry the same pay and therefore the Vice-Chancellor had ample power to transfer the respondent from the post of Principal to that of a Reader. It is urged that the words 'any equivalent post' in Section 10(14) must bear the same meaning in which the expression 'other equivalent post' has been defined in Section 2(ka, chh). And (2) The High Court was in error in introducing the concept of reduction in rank in view of the artificial definition of 'other equivalent post' which makes the scale of pay determinative as to whether the two posts are equivalent or not. Upon this basis, it is submitted that difference in status and responsibility are not really germane in determining the extent of the power of the Vice-Chancellor under Section 10(14) of the Act.

6. In reply, learned counsel for the respondent seeks to draw distinction between the words 'any equivalent post' as used in Section 10(14) and the expression 'other equivalent post' defined in Section 2(ka, chh), and accordingly contends that the power of the Vice-Chancellor to transfer any teacher of any department or college maintained by the university under Section 10(14) of the Act is in relation to any equivalent post in any other department or college of that university and therefore the definition of the expression 'other equivalent post' contained in Section 2(ka, chh) is not determinative of the question. He draws attention to the fact that the original text of the Amendment Act is in Hindi; and the actual word used in Section 10(14) is samakaksh which, according to him, means as 'belonging to the same class'. It is submitted that the post of Principal carries much higher duties and responsibilities than that of a Reader and it cannot be said that the two posts belong to the same class. It is further submitted that merely because the post of Principal and that of a Reader are carried on the same scale of pay, it could not be held that they are equivalent posts. Alternatively, it is urged that in any event since the post of Principal admittedly carries special pay of Rs 150 per month as teaching allowance and Rs 166 as house allowance, the post of Principal and that of Reader cannot be treated to be equivalent posts of Section 10(14) of the Act.

7. We have no hesitation in repelling the contention of learned counsel for the respondent that the words 'any equivalent post' used in Section 10(14) of the Act cannot bear the meaning of the expression 'other equivalent post' as defined in Section 2 (ka, chh). It must be remembered that both the provisions were inserted by the Amendment Act and the expression 'other equivalent post' was defined in Section 2(ka, chh) to give effect to the power of the Vice-Chancellor to transfer any teacher of any department or college maintained by the university to any equivalent post in any other department or college maintained by it. To remove any doubt or difficulty as to construction, and to make the conferral of power of transfer on the Vice-Chancellor under Section 10(14) of the Act meaningful and effective, the legislature thought it expedient to provide the definition of the expression 'other equivalent post' in Section 2(ka, chh). The definition clause must be read in the context of the phrase which it defines as the function of a definition clause is to give precision and certainty to a word or phrase which would otherwise be vague and uncertain. If the contention of learned counsel for the respondent were to be accepted, it would reduce the definition of the

expression 'other equivalent post' as contained in Section 2(ka, chh) a mere superfluity.

8. The prerequisite of the power of the Vice-Chancellor under Section 10(14) of the Act to transfer any teacher occupying a post in any department or college maintained by the University to any equivalent post in another department or college maintained by it is that they must, broadly, bear the same characteristics. The mere circumstance that the two posts are carried on the same scale of pay is not enough. That is because in the original text of the Amendment Act the words used in Section 10(14) as well as in the expression 'other equivalence post' as defined in Section 2(ka, chh) are samakaksh pad. Learned counsel of the respondent is therefore right in contending that equivalence of the pay scale is not the only factor in judging whether the post of Principal and that of Reader are equivalent posts. We are inclined to agree with him that the real criterion to adopt is whether they could be regarded of equal status and responsibility. The term 'teacher' is defined in Section 2(ka, chh) to include Principal, university Professor, College Professor, Reader, Lecturer etc. Professors of the university like head of the department college Professors, Readers, Lecturers belong to different grades and discharge different duties and responsibilities. The power of the Vice-Chancellor to transfer any teacher under Section 10(14) is controlled by the use of the word samakaksh and he cannot transfer any teacher from one post to another in a department of the university or a college unless they belong to the same class. In that view, there can be no doubt that the two posts of Principal and Reader cannot be regarded as of equal status and responsibility. The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights, such as : (i) He is the ex officio member of the Senate. (ii) He has the right to be nominated as the member of the Syndicate. (iii) As head of the institution, he has administrative control over the college Professors, Readers, Lecturers and other teaching and non-teaching staff. (iv) The Principal of a constituent college is also the ex officio member of the Academic Council of the university. And (v) He has the right to act as Centre Superintendent in the university examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense. Maybe, when the affairs of a college maintained by the university are mismanaged, the Vice-Chancellor may, for administrative reasons, transfer a Professor or Readers of any department or college maintained by it to the post of the Principal of such college, but the converse may not be true. While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of Section 10(14) of the Bihar State Universities Act, 1976, as amended.

9. The result therefore is that the appeal must fail and is dismissed. We however make it clear that the University shall be at liberty to transfer the respondent as Principal in any other constituent college.

10. There shall be no order as to costs.

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