

B. P. Yadav and Another

Vs

Dr. Ratneshwar Prasad Singh

Civil Appeal Nos. 4284-85 of 1996

(G. N. Ray, B. L. Hansaria JJ)

14.03.1996

JUDGEMENT

G. N. RAY, J.:-

1. Leave granted.

2. Heard learned counsel for the parties.

3. The decision of a Divisional Bench of the Patna High Court dated 26-5-1995 disposing of two writ petitions being C. W. J. C No. 5854 of 1994 and C. W. J. C. No. 8221 of 1994 is impugned in these appeals. Two main issues were raised in the said writ petitions by the writ petitioners Dr. Ratneshwar Prasad Singh and Dr. Meera Das Gupta and others namely (a) whether constitution of Bihar University (Constituent Colleges) Service Commission by the notification dated 16-3-1994 is invalid and if so whether the selections by the said Commission for the post of Principle are illegal or void and (b) whether the reservation sought to be made in the post of Principle of the Constituent Colleges at a fixed percentage is arbitrary, unreasonable and untenable? With regard to the second issue, further question was raised to the effect that even if reservation to the post of Principle be permissible whether such reservation would apply retrospectively in respect of the post which fell vacant and for filling of which applications were already invited and received from the eligible candidates prior to the enactment of Bihar Reservation of Vacancies in the Post and Service for Schedule Castes, Scheduled Tribes and other Backward Classes Act, 1992.

4. It may be stated here that the Bihar University (Constituent Colleges) Services Commission herein after referred to as College Service Commission was formed under notification dated 16-3-94 according to the amended provision of section 6 of the Bihar State University (Constituent Colleges) Service Commission Act, 1987. On the relevant date when the College Service Commission was formed, Section 6 of the said Service Commission Act stood amended by the Bihar State University (Constituent Colleges) Service Commission Amendment Act, 1993 (Bihar Act 5 of 1993) to the following effect :

Section 6 - Qualification of Chairman and Members :

(i) A person to be appointed as Chairman shall have a minimum of 5 years' experience as a University Professor.

(ii) Excluding the Chairman, half of the members shall not be below the rank of University Professor and half of the members shall not be below the rank of

Additional Secretary of the Government of India/State Government."

5. The College Service Commission was formed by the Notification dated 16-3-94 with the following members :-

1. Prof. Syed Abdul Waheb Asharfi, M. A. (Urdu), M. A. (Persian) M. A. (English)
B. L. Ph. D. University Professor and (Sic), the Ranchi University, Ranchi.
Chairman

2. Prof. L. N. Sahu, Head of the Department of Electrical Engineering, B. I. T.
Jamshedpur Member

3. Prof B. P. Yadav, Former Member, Bihar State University Service Commission.
Member

4. Prof. Suresh Pd. Singh, University Professor of Jeeva Vigyan (Biology) College of
Engineering, Bhagalpur. Member

5. Shri Satyanarayan Prasad, Professor of Physics, Bhagalpur College of
Engineering Bhagalpur. Member

6. The members of College Service Commission were impleaded in the writ petitions and it was contended that none of the members of the said College Service Commission including appellant No. 1 Prof. B. P. Yadav and Appellant No. 2 Prof. Suresh Prasad Singh had requisite qualification to be appointed as the members of the said College Service Commission.

7. By the impugned judgment, the High Court has held that two of the members namely Prof. Satyanarayan Prasad and Prof. L. N. Sahu had requisite qualification for being appointed as members of the said College Service Commission but both the appellants were lacking in requisite qualification for being appointed as members to the said Commission. On account of ineligibility of both the appellants to be appointed as members of the said College Service Commission comprising half of the total members of the said Commission (excluding the Chairman), the High Court has held that the constitution of the said College Service Commission was illegal and invalid. Consequently, the selection of Principals made by the said Commission was also illegal, invalid, inoperative and void. The High Court directed for reconstitution of the College Service Commission with qualified members at an early date so that vacant posts of Principals in the Constituent Colleges are filled up without any further delay. The Presiding Judge of the Division Bench relying on the observation at paragraph 442 of the judgment of this Court in Indra Sawhney v. Union of India, (AIR 1993 SC 447) has held that the said observation also applies against reservation of the post of Principal of the Constituent College and a mechanical approach of keeping reservation for the post of Principal at a uniform percentage is unreasonable and unrealistic. The other member of the Bench, without going into the question of reservation, concurred with the finding that the constitution of the College Service Commission was illegal and invalid and on that ground alone, the writ petitions will succeed.

8. In these appeals, the decision of the High Court in so far as it strikes down the formation of the said College Service Commission on the finding that the appellants had no requisite qualification to be the members of the said College Service Commission has been impugned and the question as to propriety or validity of reservation of the post of Principal has not been raised before us.

9. Mr. Gopal Subramaniam learned Senior counsel appearing for the appellants has contended that both the appellants were members of the previous College Service Commission. Considering their qualification and long experience in the field of education and also considering their previous experience as members of the said Commission, both of them were made members of the College Service Commission constituted by the notification dated 16-3-1994. Since the appellants had the requisite qualification for being appointed as members of the College Service Commission, nobody had raised any objection against their inclusion in the preceding College Service Commission.

10. Mr. Subramaniam has contended that the appellants were promoted as professors under the time bound promotion scheme framed under Section 5(2) of the Inter University Board Act. The appellants, ever since such promotion under the time bound promotion scheme, continued to hold the post of Professor and they were never reverted from such position. It has also been contended by Mr. Subramaniam that the order of time bound promotion of the appellants has not been withdrawn and the question of confirmation was pending before the College Service Commission.

11. Mr. Subramaniam has submitted that so long the College Service Commission does not disapprove the time bound promotion, such promotion remains effective and the persons getting such promotion enjoys all the benefits flowing from such time bound promotion.

12. Mr. Subramaniam has referred to Section 58(10) of the Bihar State Universities Act as incorporated by Act 17 of 1993. That Section reads as follows :

Notwithstanding anything to the contrary contained in this Act or Statute, Rules or Regulations made thereunder promotion given on temporary basis to 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.

13. Mr. Subramaniam has submitted that the High Court has failed to appreciate that Section 58(10) of the Bihar Universities Act had no application to the time bound promotion given to the appellants long before the said Section 58(10) was brought on the statute book by amendment dated 22-8-1993. Such amended provision has no retrospective operation as indicated in the decision of this Court in Civil Appeals Nos. 2660-2667 of 1993. Hence, promotions given to the appellants were not affected by Section 58(10) of the said Act.

14. Mr. Subramaniam has further submitted that time bound promotion scheme stands on a separate footing. Such promotion should not be equated with temporary promotion which may be given for coping with exigencies in manning some posts as temporary measure.

15. It has been contended that promotion under time bound promotion scheme is personal promotion of the person getting such promotion. Under the time bound promotion scheme, the post held by the promotee gets upgraded and such upgraded post shall be deemed to be a substantive post till the promotee holds it but thereafter, such post will cease to be an upgraded post. Hence limitation to six months for a temporary promotion under Section 58(10) of the Bihar Universities Act is not applicable to time bound promotion scheme which is regulated by statute framed on the recommendation of Bihar Inter University Board and the State Government since approved by the Chancellor under the provisions of Bihar Inter University Board Act, 1981. Mr. Subramaniam has submitted that the impugned decision of the High Court in cancelling the constitution of College Service Commission by notification dated 16-3-1994 on the finding that appellants were

disqualified to be the members of the said Commission is patently erroneous and such decision should be set aside by allowing these appeals.

16. It appears to us that in order to mitigate stagnation in the case of qualified and experienced Lecturers, the time bound promotion scheme was evolved. Under the time bound promotion scheme, a Lecturer with requisite qualification and requisite length of service in a University Department or in the Degree College managed and maintained by the University, shall on the recommendations of the College Service Commission, be promoted on the basis of time bound scheme to the post of Reader subject to the conditions indicated in the scheme framed under Section 5(2) of the Inter University Board Act. Similarly, a Reader possessing the qualification of a University professor prescribed by the University Grants Commission serving in a University Department or in a Degree College managed and maintained by the University and who has completed at least 16 years of continuous service as Lecturer / Reader in one or more Universities, shall on the recommendation of the College Service Commission, be promoted to the post of University Professor. It has been specifically indicated in the scheme itself that "such promotion shall be deemed to be personal promotion. It shall not be automatic but shall be made on the recommendation of College Service Commission on consideration of experience and C. C. Roll of the teacher concerned."

(Emphasis supplied)

17. It has also been indicated that where C. C. Rolls have not been maintained before implementation of these statutes for giving time bound promotion, the case of the teachers who are eligible for promotion as Reader or University Professor on the date of implementation of this statute, shall be considered by the College Service Commission on the basis of experience and certificates from the Heads of the University departments or Principals of Colleges concerned in regard to the satisfactory service of the teachers after the same have been screened by Committee consisting of the Vice-Chancellor, the Dean of the Faculty concerned, the Head of the University concerned and two experts appointed by the Vice-Chancellor from the panel prepared by the Bihar University Board. It has also been clearly indicated that the report of the Committee in each case shall be referred to the College 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 pass orders for promotion of such a teacher on a temporary basis till final decision is taken on the recommendation of the College Service 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.

(Emphasis supplied)

18. It appears that appellant No. 1 was given provisional promotion to the rank of Professor under the statute for time bound promotion by Notification dated 8-2-1989 with effect from 1-2-1985. Appellant No. 2 was also made Professor on temporary basis under the said statute for time bound promotion vide Notification dated 25-9-1989 with retrospective effect from 1-2-1985. The Notification of promotion to the post of Professor in the case of the appellants was not withdrawn at any stage by the University or by the College Service Commission. But in the notifications giving provision promotions it was indicated that if the College Service Commission does not concur to the provisional promotions, such provisional, promotion would cease to be effective immediately.

(Emphasis supplied)

19. It appears that teachers who had been reverted because of the notifications for provisional promotion made in their favour were withdrawn, had moved the Patna High Court challenging the notifications of withdrawal of recommendations leading to their reversion and such writ petitions were allowed by the High Court cancelling withdrawal notifications. The decision of the High Court, however, was impugned before this Court by filing Special Leave Petitions which were admitted and the appeals arising from such Special Leave Petitions being Civil Appeal No.s 2660-61, 2662-62 (sic), 2664-65, 2666-70, 2671-72, and 2673-77 of 1993 were disposed of on May 5, 1994 by a three Judges Bench of this Court. The said decision has been annexed to the Special Leave Petitions being Annexure III at page 57. After noting various provisions of the statute for giving time bound promotion as Reader and Professor it has been held in the said judgment of this Court that : "Although, the statute has been framed to give time bound promotion to Lecturers to the post 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 basis of recommendation of the Commission (College Service Commission) on consideration of experience and C. C. Roll of the teacher concerned."

20. This Court indicated that such time bound was not a matter of course or a routine matter or completion of required length of service and possession of requisite qualification, but even for recommending for such time bound promotion, service records were required to be screened by a Committee, to be formed in the manner indicated hereinbefore. As without considering service records, recommendations were made for giving promotion under the time bound promotion scheme, the College Service Commission withdrew the recommendations for temporary promotions. This Court allowed the said appeals by setting aside the impugned judgment of the High Court and gave various directions for screening the records.

21. It is, therefore, quite evident that the time bound promotion under the said statute is not automatic and as a matter of course. Even for provisional promotion under the said scheme, the service records of the eligible teacher are required to be properly assessed by the competent Committee for recommendation for provisional promotion. Such provisional promotion thereafter requires to be considered and recommended by the College Service Commission and only on such recommendation, the time bound promotion by way of personal promotion of the concerned teacher becomes permanent.

22. It appears that although to mitigate stagnation, the time bound promotion scheme was evolved, it was ensured that even for such time bound promotion, service records of the teachers with requisite qualification and requisite length of service should be screened by an appropriate Committee for provisional appointment and such provisional appointment must get approval by the College Service Commission and if such approval is not given by the College Service Commission such promotion will cease to be operative with immediate effect.

23. 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 the 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."

24. In the case of the appellants, College Service Commission had not given approval within the time frame indicated in Section 58(10) of the Bihar State Universities Act. Hence, the provisional promotions must be held to have ceased to be operative under the said Amendment Act which was published in the Bihar Gazette on 25th August, 1993. The High Court, therefore, was justified in holding that the appellants not being Professors on the relevant date could not be nominated as members of the College Service Commission.

25. The apart, we fail to understand how both the appellants could be nominated as members of the College Service Commission, even if it is assumed that their provisional promotions as Professor did not cease to be valid under Section 58(10) of the Bihar Universities Act. Admittedly both the appellants were given temporary promotion under the time bound promotion scheme with express stipulation that in the event of non-approval of their promotions by the College Service Commission, their promotions would cease to be operative with immediate effect. A promotee whose promotion is only provisional and continuance in the post is dependent on the approval of the College Service Commission is ex facie disqualified to be a member of the College Service Commission. How the College Service Commission being constituted with such promotee can consider the case of the approval of the promotee? We fail to understand why the concerned authority became oblivious of such patent disqualification of the appellants before appointing them as members of the College Service Commission. To say the least, such course of action may only raise reasonable suspicion of undue favour.

26. We, therefore, dismiss the appeals with cost. We also indicate that the appellants having ceased to be Professors consequent upon the enforcement of Section 58(10) of the Bihar Universities Act, the question of approval of provisional promotion did not arise. Therefore, decision of approval of provisional promotion purported to have been subsequently made by the College Service Commission when in law, the appellants ceased to be Professors even on provisional basis, is of no consequence and such approval, therefore, stands annulled. We, however, direct that properly constituted College Service Commission will consider the suitability of the appellants for the time bound promotion as Professor after proper scrutiny of service records within a period of two months from the date of this order. If the College Service Commission recommends for the time bound promotion, the concerned authority will pass appropriate orders for promotion of the appellants in accordance with law. Appeals dismissed.