

Dr. Ram Narayan Singh and ors. Vs. the State of Bihar and ors.

Dr. Ram Narayan Singh and ors. Vs. the State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/135939

Court : Patna

Decided On : Feb-29-1996

Judge : S.K. Homchaudhuri, J.

Appeal No. : C.W.J.C. No. 150 of 1995

Appellant : Dr. Ram Narayan Singh and ors.

Respondent : The State of Bihar and ors.

Advocate for Def. : Mr. Shyama Prasad Mukherjee, Mr. Ganesh Prasad Singh

Advocate for Pet/Ap. : Dr. Sadanand Jha

Disposition : Petition Allowed

Judgement :

S.K. Homchaudhuri, J.

1. In this petition under Article 226 of the Constitution of India, the petitioner have approached this Court impugning the order of the Government of Bihar, Science and Technology Department dated 7.12.1994, a copy of which is annexed as Annexure 1 to the petition. By the impugned order, the Government have cancelled the final seniority list dated 175.1993 of the Professors of three Government Engineering Colleges, namely, Muzaffarpur Institute of Technology, Muzaffarpur (in short 'M.I.T., Muzaffarpur'), Bihar Institute of Technology, Sindri (in

short 'B.I.T., Sindri') and Bhagalpur Engineering College. Bhagalpur (in short 'B.E.C., Bhagalpur'), and published a provisional seniority list, including the names of the time-bound promotes to the post of Professor in the three Colleges. The petitioners have also challenged the appointment of respondent No. 6, I.D.P. Singh, to the post of Director, B.I.T., Sindri on the ground that respondent No. 6 does not possess the basic qualification for appointment to the post of Director.

The English translation of the impugned order (Annexure 1) supplied at the Bar runs as follows:

A seniority list of Professors in the Engineering Colleges was issued by departmental letter No. 1490/ Patna, dated 17.5.93. In the said seniority list names of those teachers who were promoted by upgrading the posts held by them to the Posts of Professor basically were not included as per the earlier opinion tendered by the Personnel and Administrative Reforms Department. The Yardsticks on which the earlier opinions of the Personnel and Administrative Reforms Department were based, are not yard-sticks applicable to those teachers of this department who have been given promotion by upgrading, on basis, the posts held by them. As a result, the Personnel Department was asked to reconsider their earlier advices for these reasons.

After full consideration of the recent advice given by the Personnel and Administrative Reforms Department, the Government have decided that the benefit of seniority etc. in the Cadre of Professors be given to those promotes teachers who were lawfully promoted after the Concurrence of the B.P.S.C. to the posts of Professors by upgrading, on basis, the posts held by them. It may be known that these professors too were satisfying the prescribed minimum qualifications for the post of Professor on the date of promotion and in this promotion the B.P.S.C. had also examined the merit and qualification of the concerned teachers.

1. In the light of the above, the Intense-seniority list of the Professors published by the departmental letter No. 1490/ Patna, dated 17.5.93, is cancelled as directed.

2. A new seniority list of Professors in the Cadre in Engineering Colleges prepared in accordance with the Circular No. 3 R-1-106-72-15784 (Personnel 26.8.72 of the Personnel and Administrative Reform Department, is enclosed for Circulation. Its main provisions are as follows:

(i) If Officers are appointed by promotion and by direct recruitment at the same time.

(a) The Promoted Officers shall get precedence over the Officers directly recruited.

Note : 'at the same time' means 'the same transaction'.

(b) The inter-se-position of the promoted Officers shall be same as in their lower service.

(c) Seniority of direct recruits shall be according to their position as determined by the competent authority of their first appointment. Earlier ad-hoc appointment made to any post will not be considered for inter-se-seniority.

2. In order to appreciate the points raised by the petitioners, it is necessary to state the relevant facts, involved in the case in a nutshell.

The three Engineering Colleges, namely, M.I.T., Muzaffarpur, B.I.T., Sindri and B.E.C., Bhagalpur, are Government Engineering Colleges and these Colleges form one group under the Department of Science and Technology, Government of Bihar, for the purpose of appointment/promotion of teachers therein and a common seniority list is maintained of each cadre of teaching staff.

The Government of India, Ministry of Education and Social Welfare by letter dated 30.9.1975 addressed to all the Education Secretaries, Technical education of all State Governments intimated the All India Council of Technical Education (in short 'A.I.C.T.E.') at its meeting held on May 17.1974, recommended that the revised scales announced by the Central Government for teachers in Universities and Colleges should be made applicable to teachers in Technical Institutions. The Council, however, felt that before implementation of the decision of the revised pay scales of teachers in Technical Institutions, the details of qualifications, experience

and other requirements prescribed for various categories of teaching posts in Technical Institutions, should be examined vis-a-vis those recommended by the University Grants Commission (in short 'U.G.C.') for teachers in Universities and Colleges for whom the revised pay scales were applicable. It was further indicated that the implementation of the revised pay scale and the Central assistance would be subject to the conditions stipulated in Annexure I and II of the said letter. In Annexure I, the qualifications of Professor, Assistant Professor and Lecturer were prescribed Paragraph 3 of Annexure II reads as follows:

3. Recruitment to all categories of teachers shall be made strictly on merit and on the basis of all India advertisement and selection. The qualifications prescribed for the posts should essentially be related to academic attainments in the subject concerned and should not be linked with language or other regional considerations. Appointments should not be made on communal or caste considerations. Selection Committees should have not less than two outside experts (3 in the case of Professors, Principals) appointed by the University.

It was further indicated in the said letter that the central assistance to this would be available for the period from January 1, 1973 to March 31, 1979. The Government of Bihar in Science and Technology Department, thereafter, by letter issued under memo No. 1230 dated 28.2.1977, intimated the Accountant General, Bihar, that the Government of Bihar had approved the grant of U.G.C. scale to the teachers of the Engineering Colleges under the Department of Science and Technology as approved by the Government of India vide letter dated 30.9.1975. After acceptance of the Government of India's suggestion intimated by letter dated 30.9.1975, the mode of appointment to the posts of Teachers in the Government Engineering Colleges/Institutes was drastically changed. The Government of Bihar after giving effect to the norms prescribed by Government of India under letter dated 30.9.1975, however, decided that those teachers, who were due to be promoted prior to 30.9.1975, but were not considered for promotion, would be promoted after following due observance of procedures but after that date, the appointments would be made only on the basis of selection on All India competition.

3. With a view to providing statutory powers to the A.I.C.T.E. to ensure proper planning and co-ordinate development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. All India Council for Technical Education Act, 1987 (52 of 1987) was enacted by the Parliament. In the year 1989, the Government of India, Ministry of Human Resource Development by letter dated 28.2.1989 (Annexure 6) addressed to all the Secretaries dealing with Technical Education of all the States/Union Territories, intimated that following the appointment of Fourth Pay Commission for revision of pay scales of the Central Government Employees, and keeping in view of need to attract and retain the best talents, in the country as teachers in institution of technical education, National Expert Committee was set up under the Chairmanship of Prof. R.N. Dogra to make recommendations in respect of revision of salary structure, qualifications and conditions of service of teachers of technical institutions. The report of the Dogra Committee was placed before A.I.C.T.E. at its meeting held on 8.1.1988. The Government of India have carefully examined the recommendations contained in the Expert Committee's report and those made by the A.I.C.T.E. and have decided to implement the scheme of revision of pay scales of teachers of Engineering Colleges and Technical Institutions, including Librarians and Physical Education Instructors with effect from January 1, 1986. In the said letter, a copy of the Scheme for revision of pay scale was attached as Appendix. Paragraphs 10 and 18 of the Appendix attached to the letter, having bearing in the instant case are quoted below:

10. Appointment to the posts of Lecturers, Assistant Professors, Associate Professors, Professors, Librarians and Directors of Physical Education/Physical Education Instructors shall be by open selection on the basis of merit as per prescribed qualifications and experience. Placement in the Senior Scale and Selection Grade in the case of Lecturers, Librarians, and Directors of Physical Education Physical Instructors shall be through promotion as per conditions prescribed AICTE will lay down the constitution of selection/promotion committees; and the existing procedure will remain in vogue till AICTE does so. The details of the qualifications prescribed for various positions are given in Annexure-III.

18. Flexible staff structure will be admissible wherein the number of positions at various levels may be decided by the institutions themselves with the approval of their respective competent authorities to meet their specific requirement. Provision for the purpose should be made within the overall sanctioned strength, but without deviating from the normal principle of selection on the basis of merit. Specific guidelines in this behalf shall be evolved by the All India Council for Technical Education.

The Government of Bihar, after receipt of the said letter of the Government of India dated 28.2.1989, by letter dated 16.2.1990 addressed to the Accountant General, Bihar, Patna, communicated the decision about the grant of revised pay scale and approved U.G.C. scale to the teachers of the Engineering Colleges under the control of the Department of Science and Technology, pointing out that the revised pay scale would be given with effect from 1.1.1986, but actual payment would be made from August, 1989.

4. The Fourth Pay Revision Committee constituted by the Government of Bihar in its report, besides recommending the revised pay scale of all the categories of the State Government employees, also recommended for granting benefit of time-bound promotion to the employees by way of anti-stagnation measure.

With regard to the said time-bound promotion scheme, the Fourth Pay Revision Committee made following recommendations:

(i) Personnel management should envisage providing at least two promotions to each and every employee in Government service, the first by the end of ten years of service and the second by the end of 25 years of service.

(ii) If an employee who is otherwise fit for promotion and has not been able to get a single promotion by 10 years of service notwithstanding the fact that a specified percentage of the cadre as already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the junior selection grade at the end of the tenth year.

(iii) If an employee, although otherwise found fit for a second promotion, has not been able to secure a second promotion by the 25th year of his service notwithstanding the fact that a specified percentage of the cadre is already provided in the different levels of promotion inclusive of the selection grade, he should be promoted to the senior selection grade at the end of the 25th year.

(iv) The aforesaid facilities should be extended to all employees whether they belong to any formally constituted service or cadre, or not and including employees holding isolated posts. In their case, the pay scale immediately higher than the pay scale prescribed for the basic post should be considered as the pay scale for the junior selection grade, and the pay scale immediately higher to that of the aforesaid junior selection grade should be deemed to be the pay scale for the senior selection grade.

(v) The aforesaid scheme of time-bound promotion will not be applicable to services, cadres and posts of which the maximum of the pay scale of the basic grade exceeds Rs. 2,000/-.

(vi) The other conditions, the rules and procedures meant for usual promotion should be followed in case of the aforesaid time-bound system also.

(vii) Since the aforesaid scheme is meant as an anti-stagnation measure, it should be applicable in case of only such employees who have not been to get the first or the second promotion, as the case may be. In other words, the benefit of the time-bound system should be extended to those who are stagnating in the same pay scale to which they were appointed or its corresponding revised pay scale. The benefit should not be made applicable to such employees who, after once joining Government service have, for any reason, been elevated to a higher pay scale, by promotion, merger or even up gradation. This should require issue of specific orders in case of every employee which should obviously be done only after a careful examination of his service records.

(viii) The aforesaid scheme is obviously not intended to deny any employee earlier promotion that comes in his favour in the usual course.

The Government of Bihar, Finance Department, by resolution dated 30.12.1981, accepted the recommendation of the Fourth Pay Revision Committee, including the recommendation of the time-bound promotion. On the recommendation of the Bihar State University Board and after due approval by the State Government, the Chancellor of the Universities in the State of Bihar, in the exercise of power under Section 5(2) of the Bihar Inter University Board, Act, 1981 framed Statute for time-bound promotion of Lecturers to the posts of Readers and promotion of Readers to the posts of University Professors and the said Statute was circulated by letter dated 24.12.1986, issued from the Governor's Secretariat, Bihar. The relevant provisions of the said Statute having bearing in the present case are quoted below:

6. The post held by the Lecturer or Reader who is promoted to the post of Reader or University Professor shall be deemed to be upgraded with effect from the date of such' promotion and shall remain upgraded as such till the incumbent continues to hold the post, but the same shall be converted into the post of Lecturer, or Reader, as they case may be in the event of retirement, resignation, death or otherwise, provided that if the post of Reader or Lecturer was itself an upgraded post which was further upgraded as that of Reader or University Professor, the same shall be converted into the Lecturer's post in the event of vacancy.

7. The upgraded post shall be deemed to be a substantive post till the promote holds it/but any temporary vacancy on the post on account of the promote being on leave of on foreign service or officiating in or hold another post on temporary basis; shall be that of lecturer or Reader (not being as upgraded post), as the case may be.

8. The Lecturer who is promoted as Reader or the Reader who is promoted as University Professor shall from the date of promotion draw his pay in the higher scale which shall be fixed under the relevant provision of the service statute of the University.

9. The Inter-se-seniority of the teacher will not be adversely affected by time-bound promotion.

After the statute was framed, as many as 131 Associate Professors of the three Government Engineering Colleges/Institutes were given the benefit of time-bound promotion to the post of Professors with effect from 1.2.1985 and afterwards, by notification issued under memo No. 865 dated 18.3.1991 (Annexure 11).

5. Petitioners No. 1, 2 and 3 were originally appointed in the B.I.T., Sindri, to the posts of Assistant Professor in Civil Engineering on and from 10.10.1968, in Metallurgical Engineering on and from 25.3.1971 and in Mechanical Engineering on and from 12.9.1968, respectively. In course of time, they were promoted to the posts of Associate Professor. They were also given time-bound promotions as Professors in their respective disciplines by upgrading the posts held by them in the B.I.T., Sindri, along with other 128 Associate Professors of the three Colleges by the notification issued under memo No. 865 dated 18.3.1991. Petitioner No. 4 was appointed directly on the post of Professor in Pharmacy in the year 1987 in the M.I.T., Muzaffarpur. After petitioners No. 1 to 3 were granted time-bound promotion to the posts of Professor, advertisements were made by the Bihar Public Service Commission (in short 'B.P.S.C.') for filling the posts of Professor by open selection on All-India Competition basis by direct recruitment as per the norms prescribed by the A.I.C.T.E. On being selected by the B.P.S.C. on the basis of All India competition as per norms prescribed by the A.I.C.T.E., while petitioner No. 1 was appointed to the post of Professor of Civil Engineering in B.I.T. Sindri on regular basis by the notification dated 2.12.1991, the petitioner No. 2 was appointed to the post of Professor of Metallurgical Engineering, B.I.T., Sindri on regular basis by the notification dated 5.12.1991 and the petitioner No. 3 was appointed to the post of Professor in Mechanical Engineering, B.I.T., Sindri, on regular basis by the notification dated 2.3.1993.

6. After the benefit of time-bound promotion was given, the Government of Bihar, Personnel and Administrative Reforms, opined that it would not be proper to allow the time barred promotes with the cadre of the Professors. Petitioner Nos. 1, 2, 3 and 4 were appointed against on vacant cadre posts after being selected on the basis of all India competition. A provisional gradation list of Professors of the three Colleges was published on 2.7.1992 by the Government of Bihar, Department of Science and Technology, in which the names of 15 Professors including

petitioners Nos. 1, 2 and 4 were included. Petitioner No. 3 having been appointed on 2.3.1993, to the post of Professor, his name was not included in the said provisional gradation list of Professors dated 2.7.1992.

7. The time-bound promotes to the posts of Professor challenged the said provisional gradation list in C.W.J.C. No. 8692 of 1992 in this Court. Their prayer for interim stay was rejected by this Court, During the pendency of the said writ petition, the final gradation list containing names of 15 Professors was published on 17.5.1993 and the petitioners of C.W.J.C. No. 8692 of 1992 challenged the said order dated 17.5.1993 by making amendment application. The aforesaid seniority list was also challenged in a writ petition registered as C.W.J.C. No. 1977 of 1993(R). The petitioner of that writ petition was assigned seniority below respondents No. 5, 6 and 7 of that writ petition. However, the challenge was not accepted by the learned Single Judge and the petition was dismissed. The judgment of the learned Single Judge was affirmed by a Division Bench of this Court in Letters Patent Appeal. During the pendency of C.W.J.C. No. 8692 of 1992, in which no interim order staying the operation of either provisional gradation list or final gradation list was granted, the Government of Bihar, by the impugned order dated 7.12.1994, cancelled the final gradation list and published a provisional gradation list, including therein the time-bound promotes to the post of Professors of the three Colleges, against which the petitioners have approached this Court in this writ petition.

8. In C.W.J.C. No. 8692 of 1992 on behalf of the State of Bihar and other official respondents, a counter-affidavit was filed and in paragraph 3 thereof, amongst others, following contentions were made:

3(i) The petitioners are State employees in the Department of Science and Technology, Government of Bihar at three Government Engineering College, namely B.I.T. Sindri, M.I.T., Muzaffarpur and Bhagalpur Engineering College, Bhagalpur.

(ii) There are post of different four cadres of teachers in the aforesaid Colleges namely, Assistant Professor, Associate Professors, Professor and Principal/Director. Their different pay scale are governed by All India Council of

Technical Education which was adopted by State of Bihar also.

(iii)...

(iv) It is however stated that prior to 30.9.1975, promotional avenue to the cadre post was available but subsequently, in pursuance to the guide lines given by All India Council of Technical Education, the only mode of appointment to the cadre posts are fixed by direct recruitment through open selection on all India Basis and the 30.9.1975 was fixed as cut off date after which no promotion to the duly created cadre post has been allowed. The said cut off date was decided by the Government on 15.7.1977.

(v) The total numbers of duly created cadre posts of Professors in different faculties of the three Government Engineering College is 41 as on date, out of which only 15 person's have been appointed and posted in different institutions which includes direct appointees after 30.9.75 and promotes, prior to 30.9.75. After the aforesaid decision, the vacant posts have to be filled up by direct recruitment through All India basis by open selection on merit and prescribed criteria and qualifications as formulated by All India Council of Technical Education (the apex statutory body to control the standard of technical education through out the country).

(vi) On 30.12.1981, the Government of Bihar accepted the principle of time bound promotion and formulated rule for the same and the effect to time bound promotion has been indicated in paragraph 11 of the said rule, which is basically an anti-stagnation scheme for giving monetary benefit to the State Government employees.

(vii) By order No. 379 dated 16.2.1990, the State Government implemented the said time bound promotion for the teachers of Engineering Colleges also by which it was decided that Assistant Professors/Associate Professors, who have completed a total length of Service of sixteen years 25 years, they will be allowed time bound promotion to the scale of pay to the post of Professor and basically is based on length of service-cum-fitness.

(viii) Thus, it is clear that the time bound promotion to the scale of pay of Professor is not a promotion against substantively vacant duly created cadre post of Professors, which has to be filled up by a direct recruitment only. It is further stated that the time bound promotes never vacate their basis and substantive posts and on their retirement or otherwise, the said post is vacated.

(ix)...

(x) The impugned gradation list of the Professors has been provisionally prepared and published for the persons who were promoted or duly appointed against the cadre posts of Professors and they are only 15 in number and for the obvious reasons stated above, the names of the petitioners have not been included.

9. The petitioners assailed the impugned order dated 7.12.1994 amongst others following grounds:

(i) That after 30.9.1975, all appointments on teaching posts in the Engineering Colleges could only be made by direct recruitment on All India competition basis as per norms prescribed by the A.I.C.T.E.

(ii) The subject. 'co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions' having always remained the special preserve of Parliament and the norms and guidelines for appointment of Lecturers, Assistant Professors and Professors of the Technical Colleges having been prescribed by the Government of India, the direction issued by the Chancellor in the Statute for implementing the Scheme of time-bound promotion, cannot override the norms and guidelines prescribed by the A.I.C.T.E.

(iii) The time-bound promotes don't hold the post in the cadre of Professors and as such there is no question of clubbing them with the direct recruits, who hold the cadre posts.

(iv) The A.I.C.T.E's. norms and guide lines were accepted by the State of Bihar and in any event the State Government in the matter of technical education has no jurisdiction to make departure or deviate from the norms and guidelines as regards the recruitment and appointment of Professors in the Technical Colleges

prescribed by the A.I.C.T.E. This petition was filed on 5.1.1995. By the interim order dated 29.3.1993 passed in this petition, operation of the impugned order dated 7.12.1994 was stayed.

10. By notification dated 20.1.1992, respondent No. 6 was appointed as Director Incharge of the B.I.T., Sindri. The said notification was challenged in this Court in C.W.J.C. No 3814 of 1992 (R) by one Chandranan Thakur on the ground that he was superseded by his junior and that I.D.P. Singh, respondent No. 6 did not possess requisite qualification for the post of Director. By the judgment dated 4.3.1994, a learned Single Judge allowed the petition holding that I.D.P. Singh, respondent No. 6 did not possess the requisite qualification for the post of Director. Operative part of the judgment is as follows:

In the result, the notification, contained in Annexure 21, is also quashed. However, it is made clear that the authorities concerned will be entitled to consider the case of eligible persons for posting as Director, B.I.T., Sindri afresh. The Government may also, however, consider to relax the requisite qualification, if permissible in law, so that the case of the petitioner and respondents No. 3 also comes within the consideration zone. However, for the interim period i.e., until the appointment is made in terms of the direction aforementioned, if there is no other person senior to the petitioner is available for holding the post in question, the petitioner, who has been held to be senior to respondent No. 3 shall be allowed to function as Director Incharge of the institution.

Respondent No. 6 challenged the said judgment of the learned Single Judge in L.P.A. No. 28 of 1994 (R) before a Division Bench of this Court. But the Division Bench of this Court by judgment dated 30.11.1994, dismissed the Letters Patent Appeal and upheld the judgment passed by the learned Single Judge. Thereafter, the Government of Bihar, Department of Science and Technology, by notification dated 19.4.1995 cancelled the earlier notification dated 20.11.1992 in compliance with the direction of this Court. However, within seven days of the cancellation of the said notification, the Government of Bihar, Department of Science and Technology, by notification dated 25.4.1995, again posted respondent No. 6 as Director-Incharge. The petitioners have also challenged the said notification dated

25.4.1995 in this petition by way of amendment petition. By interim order dated 7.8.1995, this Court stayed the operation of the notification dated 25.4.1995 during the pendency of the writ petition.

11. On behalf of respondents No. 1 to 4, counter-affidavit has been filed in this writ petition. In the counter-affidavit, statements made in the writ petition, which are narrated above, are not disputed. In the counter-affidavit, respondents No. 1 to 4 have contended that the final gradation list of Professors of the three Engineering Colleges was made and circulated by the Government letter dated 17.5.1993 on the basis of the advice received from the Government of Bihar, Department of Personnel and Administrative Reforms. But the Department of Personnel and Administrative Reforms, while giving advice was not posted with full facts and particulars and the said department considered the case of the seniority of the Professors of Engineering Colleges in the light of the Rules applicable for granting time-bound promotion to the other Government servants. In case of Class-III of Government servants, benefit of time-bound promotion is given twice in the service career without changing the designation of such employees. They are given only the benefit of higher pay scale without changing the designation of the posts held by them. But in the case of teachers of the Engineering Colleges, benefit of time bound promotion is given under the Statute. In giving benefit of time-bound promotion, the post held by the Associate Professor was upgraded substantively to the-next higher post, namely, Professor and both the benefit of pay scale and designation are given to these teaching staff while granting benefit of time-bound promotion. As such, the time-bound promotion given to other Government employee and the time-bound promotion given to the teachers of the Engineering Colleges are quite different. Final gradation list of Professors was published on 17.5.1993. Keeping in view the grievances of the time-bound promotes, the matter was sent back to the Department of Personnel and Administrative Reforms for reconsideration and that advice and that after getting advice from the Department of Personnel and Administrative Reforms and taking into consideration all aspects of the Rules and Regulation and the fact that personal promotes were holding the up-graded posts of Professor substantively and were entitled to all benefits of Professors, including seniority in the rank of Professor, the Government took final decision cancelling the previous gradation

list dated 17.5.1993 and passed the impugned order.

12. Respondent No.10 has filed counter-affidavit in the writ petition and contended amongst others as follows:

(i) The writ petition having been filed against the provisional gradation list is premature.

(ii) the writ petition is bad in law for non-joinder of necessary parties.

(iii) The hierarchy cadre of teachers in the Engineering Colleges is consisted of (i) Assistant Professor, (ii) next higher post Associate Professor and (iii) Professor.

(iv) For the purpose promotion to the higher post, seniority of the particular faculty is taken into account and only for the purpose of appointment to the post of Principal, the joint seniority list, of all faculties in the cadre of Professors is prepared, otherwise, joint seniority list of Professors of different faculties is redundant.

(v) The posts of Associate Professor as well as the Professor of different faculties are filled up by direct recruitment and also by way of promotion and if a person does not get promotion to higher post of Associate Professor or Professor, because of non-availability of such posts, provision has been made for such promotion to the higher posts on completion of certain years of service from amongst the persons having requisite qualification, which is commonly known as time-bound and, or personal promotion.

(vi) The promotion, which is known as time-bound personal promotion, is also granted to the higher posts of Associate Professor or Professor by up-grading the post in the hierarchy and the persons are promoted on substantive basis.

(vii) Regular promotions are also granted after up gradation of lower post, which had, in fact, been done by the respondent State by issuing guidelines as far back as on 19th August, 1962 and 12th January, 1968 and the teacher does not get promotion before completion of certain period in a particular post. Such promotions are granted on the basis of seniority-cum-merit on the basis of the

recommendation of the Departmental Promotion Committee with the concurrence of the Bihar Public Service Commission.

(viii) Respondent No. 11 and other time-bound promotes to the higher posts of Professors have been promoted under the time-bound promotion scheme with retrospective effect from 1.2.1985 and the petitioners having not challenged their promotions and having not prayed for quashing the same, cannot challenge the seniority of respondent No. 11 and other, Professors, who were promoted of the up-graded posts of Professors.

In the counter-affidavit, it is further contended that petitioner No. 2, Dr. Sheojee Singh, was never appointed on regular basis to the post of Associate Professor in Metallurgical Engineering and that by notification dated 22.8.1989, he was granted time-bound promotion to the post of Associate Professor with effect from 25.3.1984. As such for not completing minimum period of experience for five years in the post of Associate Professor, he was not eligible for appointment to the post of Professor in Metallurgical Engineering as direct recruit. However, on the basis of notional promotion of retrospective date of 25th March, 1984, petitioner No. 2 was treated to be eligible for appointment to the post of Professor in Metallurgical Engineering as a direct recruit.

13. I have heard Dr. Sadanand Jha, learned Counsel for the petitioners, Mr. K.P. Yadav, learned Standing Counsel No. 5, Mr. Shyama Prasad Mukherjee, learned Counsel for respondent No. 11 and Mr. Ganesh Prasad Singh, learned Counsel for respondents No. 6 and 10.

14. Learned Counsel for the petitioners submitted that after 30.9.1975, appointments to all the teaching posts in Engineering Colleges, Institutes could only be made by direct recruitment on the basis of All-India competition as per the norms and guide lines prescribed by the A.I.C.T.E, That part after enactment of All India Council of Technical Education Act, 1987, the statutory powers to ensure proper planning and co-ordinate development of the technical education system throughout the country, the promotion of qualitative improvements of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system or for

matters connected therewith, have been vested in the A.I.C.T.E. As such all appointments of teaching staff to the posts of Assistant Professor, Associate Professors and Professor in the Engineering Colleges, Institutes are to be made only as per the norms and guidelines prescribed by the A.I.C.T.E., otherwise not. The Statute for time-bound promotion cannot override the provision of A.I.C.T.E. Act, 1987. Any provision or rule framed by the Chancellor or the University, inconsistent with the norms and guidelines for filling up the posts of Assistant Professors, Associate Professors and Professors in the Engineering Colleges, Institutes, are repugnant to the A.I.C.T.E. Act, 1987, could will be illegal and void. When under the norms and guidelines prescribed by the A.LC.T.E., the posts in cadre of Assistant Professors, Associate Professors and Professors in the Technical Colleges/Institutes can only be filled up by direct recruitment on the basis of All-India competition, filling up such posts by promotion under the time-bound promotion scheme being inconsistent with the provision of the A.I.C.T.E. Act, 1987 would be illegal and cannot be sustained. In support of his contention, learned Counsel for the petitioner placed reliance on a decision of the Supreme Court in the case of State of Tamil Nadu v. Adhiyaman Education & Research Institute reported in 1995 Vol. 4 SCC page 104. Learned Counsel for the petitioners submitted that no Associate Professor can be appointed to the cadre of Professor of Engineering Colleges/Institutes, save and except under the norms and guidelines prescribed by the A.I.C.T.E., namely, by recruitment made strictly on merit on the basis of All-India advertisement and selection. The time-bound promotion is made as per the recommendation of the Fourth Pay Revision Committee, which has been adopted by the University and that a person having been promoted under the Time-bound Promotion Scheme de hors the mode of appointment prescribed by the A.I.C.T.E., cannot be treated to be holding a post in cadre of Professor, The learned Counsel for the petitioners submitted that benefit under the time-bound promotion scheme has been extended by upgrading the post held by the Assistant Professor or the Associate Professor up to the period the promote holds the post. The upgraded post vanishes as soon as the promote ceases to hold the post because of retirement, death, resignation etc. or otherwise, whereas, the directly recruited Associated Professors or Professors have been appointed in cadre posts on the basis of selection made strictly on

merit on the basis of All-India advertisement. The time-bound promotion is not made against any cadre post and such promotion is personal to the promoter promotion and as such time-bound promotes form distinct class different from the direct recruits. The time-bound promotes hold ex-cadre posts and they cannot be treated equally with the direct recruits appointed under the norms prescribed by the A.I.C.T.F. in the cadre of Professors for the purpose of seniority and promotion. Learned Counsel for the petitioners further submitted, that number of time-bound promotes, who are included in the impugned provisional seniority list, although appeared, were not selected by the Bihar Public Service Commission as direct recruits in the cadre of Professor under the norms and criteria prescribed by the A.I.C.T.E. and that number of them also do not possess requisite qualification for the post of Professor. It has also been submitted by the learned Counsel for the petitioners that the time bound promotes do not hold the posts in the cadre of Professors had all along been the stand of the Government and rightly the Government took the said stand in their counter-affidavit filed in C.W.J.C. No. 8692 of 1992. However, the Government has now made a volta-face and taken a quite different stand that the direct recruits and the time-bound promotes are to be treated equally for the purpose of inter se seniority, which is ex facie arbitrary and illegal.

Learned Counsel for the petitioners placed reliance on a decision of the Supreme Court in the case of Reshmi Srivastava v. Vikram University reported in : [1995]3SCR572 .

15. Mr. Shyama Prasad Mukherjee, learned Counsel for respondents No. 10 and 11 submitted that the time-bound promotion having been made under the provisions of the Statute, framed by the Chancellor, the promote, under the time-bound promotion scheme fall in the same class with the direct recruits for the purpose of fixation of inter se seniority between them. Apart from the direct recruitment to the post of Professors, recruitment to such posts by way of promotion has also been opened by statute and that the time-bound promotes are not only given the benefit of higher pay scale, but also the designation of Professor and, as such, for all practical purposes, they have to be treated as Professors. Learned Counsel for the respondents further submitted that there are three cadres

in the Government Engineering Colleges, namely, Assistant Professors having the strength of 215, Associate Professors having strength of 56 and Professors having strength of 41, and the total strength of the teaching staff is 312. By framing Statute by the Chancellor under the power prescribed under Section 5(2) of the Bihar Inter University Board Act, 1981, time-bound promotion scheme has been introduced for promotion of the Assistant Professor to the post of Associate Professor and Associate Professor to the post of Professor and the said scheme remained effective from 1.2.1985 to 28.2.1989. By introducing the time-bound promotion scheme on the lines of the University teachers with effect from 1.2.1985 while strength of teaching staff was kept intact, the number of categories of posts of teaching staff has been made flexible and fixed number of posts of Professors at 41 ceased to exist. Time-bound promotions are made by upgrading the posts of Professors substantively. In support of his contention, learned Counsel for respondent No. 11 placed reliance on a decision of the Supreme Court in the case of Bal Krishna Agarwal v. State of U.P. reported in 1995 AIR SC Weekly Page 800.

16. Learned Standing Counsel No. 5 submitted that after the time-bound promotion scheme(was introduced under the Statute, the posts of Associate Professors held by the promotes were upgraded to the posts of Professors and their appointments were substantive to the upgraded posts. They are not only given the pay scale of Professor, but also they are designated as Professors. As such, they became part and parcel of the cadre of Professors in the Engineering Colleges/Institutes. Learned Standing Counsel No. 5 drew my attention to paragraph 18 of the Appendix attached to the Government of India's letter dated 28.2.1989, wherein flexible staff structure was made permissible and in giving time-bound promotion under the Statute, the staff structure was made flexible keeping the total strength of teaching staff intact.

17. Mr. Ganesh Prasad Singh, learned Counsel for respondents No. 6 and 10 adopted the submissions of the learned Counsel for respondent No. 11 and learned Standing Counsel No. 5, and also submitted that appointment of respondent No. 6 to the post of Director-Incharge of the B.I.T., Sindri, by notification dated 25.4.1995 was not contrary to the judgment and direction of this

Court in C.W.J.C. No. 3814 of 1992 (R), inasmuch as in paragraph No. 32 of the judgment, it was kept open to post the senior most person to hold the post in the interim, till the filling up the post in terms of the direction and that respondent No. 6 being the senior most person, he was posted as Director Incharge of the B.I.T., Sindri.

18. I have considered the submissions made on behalf of the petitioners as well as respondents and perused the materials on record.

19. It is not disputed that the Government of Bihar accepted grant of U.G.C. scale to the teaching staff of the Engineering Colleges/Institutions as per conditions laid down by the Government of India, Ministry of Education and Social Welfare in the letter dated 30.9.1995. Thereafter all the teaching posts, namely, Assistant Professor, Associate Professors and Professor in the three Government Colleges/Institutes were to be filled up only by the direct recruitments strictly on merit on the basis of All India Competition. Filling up the higher post of Associate Professors and Professor by promotion came to an end after 30.9.1995, save and accept by those who were due to be promoted to the higher post prior to 30.9.1995 but were not considered for promotion. In the subsequent letter dated 28.2.1989 (Annexure 6) the Government of India, Ministry of Human Resources Development also clearly prescribed that all appointments to the post of Lecturer, Assistant Professor, Professor, Librarian and Director of physical education should be by the open selection on the basis of merit as per prescribed qualification and experience. That apart, after the India Council for Technical Education Act, 1987 (Act 52 of 1987) was enacted, appointments to the post of Associate Professor, Assistant Professor and Professor in the Engineering Colleges/Institutions are to be made as per the norms and standards prescribed by the A.I.C.T.E.

Learned Counsel for the respondents, however, submitted that the time-bound promotions have been made as per provisions of the Statute framed by the Chancellor and as such, the posts of Associate Professor and that of Professor can be filled up by promotion also. In the case of State of Tamil Nadu (supra) in paragraphs 12 and 41 of the judgment the Hon'ble Supreme Court amongst others held as follows:

12. The subject 'coordination and determination of standards in institutions for higher education or research and scientific and technical institutions' has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State legislature from laying down standards above the said minimum standards. We will deal with this argument as its proper place.' 41. What emerges from the above discussion is as follows:

(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means patronization with a view to forge a uniform pattern for a concerned action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

(iii) If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause (2) of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

(iv) Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

20. In the facts of the case narrated above, it is apparent that the Statute time-bound promotion cannot be pressed into service to deviate from the norms, criteria and standard prescribed by the A.I.C.T.E. for filling up the post of Professor in the Engineering Colleges/Institutions. The post in the cadre of Professor can only be filled up as per the norms and criteria prescribed by the A.I.C.T.E. The decision of the Supreme Court in the case of Bal Krishna Agrawal (supra) on which the learned Counsel for the respondents has placed reliance, in my opinion, has no application on the facts of the present case. In that appeal, the appellant and 4th and 5th respondents were appointed to the post of Professor in Physics of the Allahabad University on the same date on 9.11.1984 and while the appellant was appointed by way, of direct recruitment and 4th and 5th respondents were appointed by promotion to grade of Professor under the Personal Promotion Scheme as provided under Section 31-A of the Uttar Pradesh Universities Act, 1972. However, for personal promotion, provisions prescribing length of service and qualification had yet to be framed, and that such provision was made in the Statute on 21.2.1985. The question for decision before the Hon'ble Supreme Court was whether the inter se seniority of appellant to the post of Professor should be assigned above 4th and 5th respondents. The Hon'ble Supreme Court held that personal promotion of 4th and 5th respondents was to be treated to have been given only after the date of notification of the provision prescribing length of service and qualification for personal promotion was made and as such the appellant, the direct recruit, was senior to 4th and 5th respondents. In the said case, the question as to whether the personal promotes held the cadre post or ex-cadre post and/or whether they would be treated equally with the direct recruit for

the purpose of inter se seniority was not raised and decided.

21. From the recommendation of the 4th Pay Revision Committee, it becomes apparent that the Scheme for time-bound promotion was meant as an anti-stagnation measure. Under the Statute for granting benefit of time bound promotion, the posts held by the Assistant Professor or Associate Professor should be deemed to be upgraded and would remain upgraded so long the promotee would continue to hold the upgraded posts. The upgraded post should be deemed to be a substantive post till promotee would hold it. The upgrade post would convert to the original post of Assistant Professor or Associate Professor, as the case may be as soon as the promotee to the upgraded post would cease to hold the upgraded post. It is, therefore, apparent that benefit of time-bound promotion given to the incumbents are purely personal and the upgraded posts to which they are promoted survive so long they hold the posts. That being so, it cannot be said that there was even temporary addition to the cadre strength of Professors because of giving time bound promotion to a number of Associate Professors of three Engineering Colleges by upgrading the post held by them to the post of Professor.

Learned Counsel for the respondents, however, submitted that under paragraph 18 of the Appendix of the Government of India's letter dated 28.2.1989 (Annexure 6) flexible staff structure being admissible, the time bound promotees having been given the pay scale and designation of Professor may be deemed to have been accommodated in the cadre of Professor by making staff structure flexible. This submission of the learned Counsel for the respondents is to be merely noted and rejected; inasmuch as it is apparent from paragraph 18 of the Appendix that the flexible structure cannot be made by deviating from the normal principle of selection on the basis of merit and that paragraph 10 of the Appendix clearly stipulates that the appointment to the post of teaching staff in the Colleges should be made by open selection on the basis of merit.

22. Learned Counsel for the respondent No. 11 has not disputed the submission of the learned Counsel for the petitioners that a number of time-bound promotees who are included in the impugned provisional gradation list, appeared before the

Bihar Public Service Commission for that selection to the post in the cadre of Professor as a direct recruit but failed and that a number of such promotees also do not possess the requisite qualification for appointment in the cadre of Professor as prescribed by the A.I.C.T.E. for the post of Professor.

23. In the case of Reshmi Srivastava (*supra*), the question arose as to whether the Assistant Professors and Readers promoted to the post of Readers and Professors under the Merit Promotion Scheme introduced by the U.G.C. held posts in the cadre of Readers and Professors respectively or they held the ex-cadre posts, the Hon'ble Supreme Court in paragraph 42 of the judgment amongst others held:

Merit promotee Professors and Readers form a distinct class of ex-cadre or supernumerary appointees as compared to cadre employee, namely, directly recruited Readers and Professors. They are unequal not only because of the source of their appointment but also because of the nature and character of their appointment and of the nature of the posts which they hold. They cannot be treated equally for all purposes and particularly for seniority and promotion, if any. For this purpose, the nature of work they do is irrelevant. The competition for seniority can only be amongst those who are in the cadre posts. Otherwise, the mandate of Articles 14 and 16(1) would get violated. For these reasons, there would be no occasion to fix inter se seniority of merit promotee Readers and Professors by treating them as forming one class.

In coming to the aforesaid finding, the Hon'ble Supreme Court in paragraph 41 of the judgment noted the distinct characteristics between the direct recruits and the merit promotee and observations which have bearing in the instant case are quoted below:

41 (i) The directly recruited Readers and Professors fill up the vacancies in the cadres of Readers and Professors for which direct recruitment is restored to. While the promotees under the merit promotion scheme stand outside the cadre and fill no posts as such, since no posts are created. The promotions given to them are purely personal and the posts to which they are upgraded do not survive their service career. The posts vanish with the incumbent person like the shade

vanishing with the substance. Such a promotee fills up no vacancy in the promotional avenue since no post is available by promotion.

(ii) The directly recruited Readers and Professors are recruited pursuant to the only source of appointment contemplated by Section 49, that is by way of direct recruitment. The promotee Readers and Professor are appointed not in the cadre posts but under an entirely different scheme, namely merit promotion scheme. Even under this scheme, no posts as such are created. Those selected under the Scheme are given personal posts which cease with their employment. In fact, the posts from which they are promoted do not become,, vacant and none can be appointed to the said posts while they hold the higher posts.

(iii)...

(iv) The promotee Readers and Professors are not holding any officiating or even temporary post of Reader or Professor nor is there any temporary addition to the cadre strength to Readers and Professors.

24. The aforesaid distinct characteristics between the merit promotees and the direct recruits as noted by the Hon'ble Supreme Court, apparently exists between the direct recruits and time-bound promotees in the instant case. In the Statute for time-bound promotion framed by the Chancellor, it has also been provided that the inter se seniority of the teachers would not be adversely affected by time-bound promotion.

The stand taken by the Government in this regard in the counter-affidavit filed in C.W.J.C. No. 8962 of 1992 appears to be correct. The persons and grounds, on which altogether a different stand is taken in the counter-affidavit filed on behalf of Respondents No. 1 to 4 in this writ petition, are not convicting and cannot be accepted.

25. For the aforesaid reasons, I have no hesitation to hold that the direct recruits to the post of Professor and the time-bound promotees to the post of Professor, upgraded for the purpose of extending benefit of time-bound promotion, do not and cannot fall in the same class. Time-bound promotees to the post of Professor

form a distance class of ex-cadre or supernumerary appointees as compared with the direct recruits appointed in the cadre of Professor. The time-bound promotees hold ex-cadre posts and as such they cannot be equated with the direct recruits, who are appointed in the cadre of Professors, for the purpose of fixation of seniority.

The contention made on behalf of respondent No. 11 that petitioner No. 2 did not possess the requisite qualification for appointment to the post of Professor under the norms and criteria prescribed by the A.I.C.T.E. inasmuch as he did not possess the teaching experience for the minimum period of five years in the cadre of Associate Professor, cannot be entertained in this petition since the appointment of petitioner No. 2 is not under challenge.

26. The contention on behalf of respondent No. 11 that the petition is not maintainable for non-joinder of necessary parties, is not tenable, inasmuch as in this writ petition, the petitioners have challenged the legality of policy decision of the Government to include the time-bound promotees in the seniority list along with the direct recruits in the cadre of Professors and that apart time-bound promotees are not unrepresented and their case is advanced by respondent No. 11.

27. As regards the challenge against the notification dated 25.4.1995, by which respondent No. 6 has been appointed as Director Incharge of the B.I.T., Sindri, learned Counsel for the petitioners submitted that this Court, by judgment passed in C.W.J.C. No. 3814 of 1992 (R), set aside the posting of respondent No. 6 as Director Incharge by notification dated 20.11.1992, holding that respondent No. 6 did not possess requisite qualification for the post of Director of Engineering College Institute. The judgment of the learned Single Judge passed in C.W.J.C. No. 3814 of 1992 (R) was affirmed by a Division Bench of this Court in L.P.A. No. 28 of 1994 (R). Although the Government, in compliance with order of this Court passed in L.P.A. No. 28 of 1994 (R), by notification dated 19.4.1995 cancelled the earlier notification dated 20.11.1992 by which respondent No. 6 was posted as Director Incharge of B.I.T., Sindri, yet within seven days by the impugned notification dated 25.4.1995, the Government again posted respondent No. 6 as

Director Incharge of B.I.T., Sindri.

28. Learned Counsel appearing on behalf of respondents No. 6 and 10, on the other hand, submitted that in paragraph 32 of the judgment passed in C.W.J.C. No. 3814 of 1992 (R) while this Court directed the Government to consider the case of eligible persons for posting as Director, B.I.T., Sindri, however, granted liberty to the Government to engage the seniormost person to hold the post of Director, B.I.T., Sindri, until appointment was made in terms of the direction. Respondent No. 6 was the seniormost person in the cadre of Professors on 25.4.1995 and, accordingly, by way of interim arrangement, he was posted as Director Incharge of B.I.T., Sindri.

29. On perusal of the judgment passed in C.W.J.C. No. 3814 of 1992 (R) and particularly paragraph 32 thereof, it becomes apparent that this Court directed the Government to consider the case of eligible persons afresh for posting as Director in the B.I.T., Sindri. It was further ordered that the Government might consider relaxation of requisite qualification if permissible under the law. Admittedly, by the judgment passed in C.W.J.C. No. 3814 of 1992 (R), posting of respondent No. 6 as Director Incharge was set aside on the ground that respondent No. 6 did not possess the requisite qualification. It is neither the case of respondent No. 6 nor of the Government that the requisite qualification for the post of Director in the Engineering Colleges/Institutes has been relaxed. As such there is no escape from holding that the seniormost person, who can be posted to hold the post of Director Incharge by way of interim arrangement till filling up the post on regular basis, should be the seniormost person amongst those, who possess requisite qualification for appointment to the post of Director. That being so, respondent No. 6 having not possessed the requisite qualification for the post of Director, B.I.T., Sindri, the impugned notification dated 25.4.1995 purporting to post him as Director Incharge, B.I.T., Sindri, cannot be sustained.

30. For the reasons stated above, this petition is allowed. The impugned order dated 7.2.1994 (Annexure 1) and the impugned notification dated 25.4.1995 (Annexure 38/1) are set aside and quashed.

It is not disputed that petitioner No. 3 has been appointed to the post of Professor in Mechanical Engineering in B.I.T., Sindri, by notification dated 2.3.1993 on the basis of selection made as per the norms and criteria prescribed by the A.I.C.T.E. and, as such, his name should be included in the seniority list of Professors published on 17.5.1994.

On the facts and circumstances of the case, I make no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com