

Present:
Mr. Justice Shamim Hasnain
and
Mr. Justice Md. Ruhul Quddus

Writ Petition No.3057 of 2010

Shahina Begum
...Petitioner

-Versus-

Government of the People's Republic of
Bangladesh and others
...Respondents

Ms. Zubaida Gulshan Ara, Advocate
... for the petitioner
Ms. Kashefa Hossain, A.A.G.(with leave of the
Court)
... for the respondents

Judgment on 27.2.2013

Md. Ruhul Quddus,J:

This Rule at the instance of a Lecturer of a Private College was issued for a direction to accord permission for her promotion and thereby to ensure her seniority and other benefits including salary and other remunerations.

It is contended in the writ petition that the petitioner is a Lecturer of Philosophy in Alhaj Mokbul Hossain University College, Dhaka. She joined the College on 25.9.1993 and was enlisted in the monthly pay order (M.P.O.) on 1.4.1999. While she was serving the College

with utmost sincerity and diligence, the Principal of the College illegally dismissed her from service on 10.6.2001, challenging which she filed an appeal before the Vice-Chancellor of National University, Gazipur (herein respondent 3). On receipt of the appeal the National University authority formed a three member committee to enquire into the matter. After completion of enquiry the said committee submitted a report on 17.7.2002 (annexure-B) terming her dismissal to be illegal. On the said report, the National University authority directed the College authority to reinstate the petitioner in service and pay her back wages. Accordingly, the Governing Body of the College in its meeting held on 6.8.2002 reinstated the petitioner and communicated her its decision by a letter as contained in Memo No.A.M.H. Co/600/02/(Kha) dated 11.8.2002. In pursuance thereto, the petitioner joined the College on the same day.

It is pertinent to mention that by the same report dated 17.7.2002 (annexure-B) the enquiry committee proposed suspension and departmental proceeding against Mr. Md. Mohibullah, the then Principal of Alhaj Mokbul Hossain College. Pursuant thereto he was put under suspension on 8.8.2002. Mr. Md. Mohibullah filed Writ Petition No. 4309 of 2002 challenging both the said report dated 17.7.2002 and the order of suspension dated

8.8.2002. Meanwhile, the decision of the Governing Body for reinstatement of the petitioner was acted upon.

The High Court Division ultimately made the rule absolute in the said writ petition by its judgment and order dated 29.11.2006. Relevant portion of the judgment is quoted below:

“Under the circumstances we are of the view that the direction contained in the University letter dated 17.7.2002 and the order of suspension passed on 8.8.2002 under the direction of the University authority have been made without lawful authority and this is of no legal effect”

Against the said judgment and order of the High Court Division, the college authority filed Civil Petition for Leave to Appeal No. 277 of 2007 before the Appellate Division, which was also dismissed on 30.10.2007. The petitioner Ms. Shahina Begum was made a party neither in the said writ petition nor in the civil petition for leave to appeal.

In the meantime considering the seniority of the writ petitioner, the Governing Body of the College, recommended her for promotion to the post of Assistant Professor and forwarded the matter to the Director General, Directorate of Secondary and Higher Education, Dhaka. While the matter was in progress, Mr. Md.

Mohibullah, the Principal of the College taking advantage of the judgment passed in Writ Petition No. 4309 of 2002 raised objection against the proposal of her promotion.

In a supplementary affidavit (affirmed on 19.2.2013) filed by the writ petitioner it has been stated that initially she was prevented from joining in service, but ultimately could join on 11.11.2002 and got her back wages. After forwarding the proposal of her promotion, she along with her another colleague Mahmud Mostafa Al-Mamun made a joint representation dated 12.4.2008 to respondent No.2 and served notice demanding justice upon all the respondents on 2.4.2010, but without any result. It has also been stated that during pendency of the Rule no one was promoted to the post of Assistant Professor in the Department of Philosophy and the post is still vacant.

The President of the Governing Body, Principal in-charge and concerned public functionaries are made respondents in this writ petition but no one has appeared and controverted the facts placed in the writ petition as well as in the supplementary affidavit.

It appears from the relevant portion of the judgment as quoted above that Mr. Md. Mohibullah moved Writ Petition No. 4309 of 2002 so far it was related to the proposal of his suspension and commencement of a departmental proceeding against him. The present

petitioner was not made a party therein. Moreover, she was reinstated in service on the basis of the report dated 17.7.2002 and was allowed to draw her salaries and back wages. In such a position we do not think that the judgment passed in Writ Petition No. 4309 of 2002 is a barrier on the way of her promotion.

In the present case, the writ petitioner has sought for a direction to promote her on the basis of tenure in service as a lecturer i.e. seniority. Seniority alone does not create the right to promotion. Some other factors like sincerity, honesty, integrity, efficiency, commitment, service record etc. are also taken into consideration and as such this Court would not be within its jurisdiction in directing the respondents to promote the petitioner. It is within the domain of the authority concerned to make decision in the matter of her promotion in the facts available to them as well as upon due compliance of the applicable Rules and Regulations. But it is definitely her right to be considered for promotion on the basis of seniority as well as other factors. [reliance placed on the Chairman, Board of Intermediate and Secondary Education, Jessore Vs. Nazir Ahmed, 16 BLT (AD) 264]. We have already held that in considering the petitioner's promotion, the judgment as referred to above is not a barrier.



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Under the above facts and circumstances, we are of the view that justice would be met if the respondents are directed to consider the proposal of promotion of the writ petitioner subject to fulfillment of all other legal requirements.

Accordingly, the Rule is disposed of. The respondents are directed to consider the promotion of the writ petitioner in accordance with law and dispose of her representation dated 12.4.2008 (annexure-I) within three months from receipt of this judgment.

Communicate a copy of this judgment.

Shamim Hasnain, J:

I agree.