

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Civil Review No. 38 of 2009

Jharkhand Public Service Commission, through its Secretary @
Usha Rani Singh, Office situated at Doranda, now Circular Road,
P.O. – G.P.O., P.S. Lalpur, district – Ranchi (Jharkhand).

... .. **Respondent No. 5/Petitioner**

Versus

1. Dr. Mrs. Vanmala Choudahry,]

... ..

... ..

... .. **Petitioner/Respondent**

2. The State of Jharkhand, through the Secretary, Higher Education,
Human Resources Development Department, Govt. of Jharkhand,
Project Building, Dhurwa, Ranchi.

3. The Vinoba Bhave University, through its Registrar, Hazaribagh.

4. The Principal, K.B. Women's College, P.O. G.P.O. Hazaribagh,
P.S. Hazaribagh (Muffasil), district – Hazaribagh

5. The Hon'ble Chancellor of the Universities, State of Jharkhand,
Ranchi. **Respondents**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

22/13.06.2022

1. Heard Mr. Sanjay Piprawall, learned counsel appearing on behalf of the petitioner.

2. Nobody appears on behalf of respondent No.1.

3. Heard Mrs. I. Sen Choudhary, learned counsel appearing on behalf of the respondent-University.

4. Heard Mr. Siddharth Roy, learned counsel appearing on behalf of the respondent-State.

5. This petition has been filed for the following reliefs: -

“for review of order dated 8.7.2008 passed in W.P. (S) No. 3596 of 2004 by Hon'ble Mr. Justice R. K. Merathia, whereby and whereunder his Lordships has been pleased to set-aside the orders dated 15.12.2007 and 16.2.2008 issued by the Jharkhand Public Service Commission, Ranchi, so far as petitioner is concerned and further been pleased to direct the University to grant promotion under 16 years' time bound promotion scheme to the petitioner (respondent no. 1 herein) from due date within 4 weeks and further been pleased to impose cost of Rs. 5,000/- on

*the Jharkhand Public Service Commission, Ranchi (hereinafter called as ' the J.P.S.C.' in short);
For the issuance of any other order/orders or direction/directions as to Your Lordships may deem fit and proper in the facts and circumstances of this case."*

Arguments of the petitioner

6. The learned counsel for the petitioner, while advancing his argument, has referred to the order dated 08.07.2008 passed in W.P. (S) No. 3596/2004 and has submitted that the entire background of the case has been narrated therein. The learned counsel further submits that from the side of the University there were two recommendations so far as the writ petitioner is concerned; one was dated 21.11.2005 and another was dated 07.04.2006 and on account of two recommendations, no decision was taken by the Jharkhand Public Service Commission and it has been recorded in the order dated 08.07.2008 that the subsequent recommendation dated 07.04.2006 was superfluous. The learned counsel submits that ultimately the claim of the writ petitioner was rejected by the J.P.S.C. on 15.12.2007 by citing that the writ petitioner did not fulfil the criteria on the cut-off date. He submits that the cut-off date at various places in the order dated 08.07.2008 has been mentioned as 22.09.2005, which ought to have been 22.09.1995 and such error is a typographical error. The learned counsel submits that this Court directed the J.P.S.C. to pass a fresh and reasoned order, which was ultimately passed on 16.02.2008 and was challenged by the writ petitioner by filing amendment petition being I.A. No. 1039/2008. The learned counsel submits that the fresh order dated 16.02.2008 was not found sustainable and this court recorded that J.P.S.C. did not care to give reasons in spite of direction issued on 29.01.2008 to pass a reasoned order. The learned counsel submits that thereafter this Court considered the matter on merits and relied upon a judgment passed by the Hon'ble Patna High Court in C.W.J.C. No. 2014/1997 dated 30.09.1997, wherein it was held that while counting of experience of guiding research at the doctoral level, the date from which the student was guided is relevant and not the

date from which such student obtains Ph.D. Degree. The learned counsel submits that this Court recorded that the experience of guiding research at the doctoral level was enough and it was not necessary that the research scholar is awarded Ph.D. degree and decided the writ petition in favour of the writ petitioner.

7. The learned counsel further submits that the student who was being guided for research by the writ petitioner was enrolled as back as in the year 1987 and as per the provision, the Ph.D. work was to be completed within a period of 4 years with a further extension of 2 years' time and the entire period expired in the year 1992 and subsequently, the student got re-registered on 14.12.1996. The learned counsel submits that the cut-off date was 22.09.1995.

8. The learned counsel submits that this Court while disposing of the writ petition though recorded that J.P.S.C. had disobeyed the order of this Court by not giving reasons in the impugned order dated 16.02.2008 and had also failed to take into consideration the relevant records and accordingly, this Court had set-aside the two orders passed by the J.P.S.C. dated 15.12.2007 as well as 16.02.2008 and found that there was no point in asking J.P.S.C. to pass a fresh order again and directed the concerned respondent to grant promotion to the petitioner under 16 years' time bound promotion scheme from the due date within four weeks from the date of passing of the order and a cost of Rs. 5,000/- was also imposed on J.P.S.C.

9. The learned counsel submits that the final order in the writ petition dated 08.07.2008 was challenged by the J.P.S.C. before the Hon'ble Division Bench in L.P.A. No. 326/2008 and the Hon'ble Division Bench found that the controversy was purely a question of appreciation of factual situation and dismissed the appeal with an observation that if J.P.S.C. succeeds in proving before the learned Single Judge that the writ petitioner was not duly qualified to be appointed as Professor, it is obvious that the order imposing cost on J.P.S.C. also will be liable to be quashed. A liberty was granted to J.P.S.C. to get the position clarified or rectified by filing a review

petition to consider as to whether the writ petitioner was duly qualified or not. The learned counsel submits that the present review petition has been filed pursuant to the order passed in L.P.A. No. 326/2008 dated 21.01.2009.

10. The learned counsel while referring to the records of the case has referred to both the recommendations of the University as contained in Annexure-6 which is dated 21.11.2005 as well as Annexure-8 dated 07.04.2006. The learned counsel also submits that so far as the subsequent recommendation dated 07.04.2006 is concerned, the recommendation was not in favour of the petitioner. The learned counsel submits that admittedly the research candidate of the writ petitioner was not granted Ph.D. degree and discontinued the research work and got re-registration on 14.12.1996, therefore, the writ petitioner was not entitled to the benefit of guiding a candidate for Ph. D and thus was not qualified to be appointed as Professor.

11. The learned counsel has also submitted that so far as other eligibility conditions are concerned, there is no dispute.

12. The learned counsel submits that one of the essential conditions for being appointed as Professor was guidance of a student for Ph.D. degree and the same having not been satisfied, the writ petitioner was not having the requisite qualification for consideration and therefore, the J.P.S.C. had rightly rejected the claim of the writ petitioner.

13. The learned counsel has further referred to the supplementary-affidavit filed by the J.P.S.C., wherein the orders passed in L.P.A. Nos. 443, 467 and 468 of 2001 along with the order dated 04.01.2005 passed by his Excellency Chancellor, University of Bihar have been annexed as Annexures 17 and 18. The learned counsel submits that the order passed in the case of *Dr. Kalapnath Singh & Others vs. Bihar State University Service Commiaion & Others* has also been considered by the Hon'ble Chancellor and the Hon'ble Chancellor has interpreted the term "experience of guiding research at doctoral level" and has held that the same cannot be interpreted as the date of registration of the students for Ph.D. Degree under a teacher and also

it cannot be said that on the date of registration, a teacher acquires sufficient experience of guiding research at doctoral level and fulfils the qualification as laid down in the U.G.C. Regulation for promotion to the post of University Professor. The Hon'ble Chancellor has also held that the expression "experience of guiding research at doctoral level" means experience acquired by a teacher or guide during the intervening period i.e., from the date of registration up to the conclusion of the research. So, while recommending for promotion, the date of registration should not be mechanically taken as a cut-off date for promotion. The Screening Committee of the University should examine the eligibility, suitability and fitness of a teacher on the basis of gained experience of guiding research during length of time supported by actual research work done by the student and publication of standard research papers and other materials which may really be considered as contribution to the knowledge. This may or may not be up to award of Ph.D. Degree, but there must be considerable work during a considerable span of time towards achieving the goal under the same guide. The learned counsel submits that in view of the order passed by Hon'ble Chancellor, the writ petitioner was not qualified in the matter of guiding the student who was not granted Ph.D. degree and discontinued the research work and got re-registration on 14.12.1996.

Arguments of the respondents

14. Learned counsel appearing on behalf of the respondents-University, while opposing the prayer, has referred to the recommendation made by the University which is dated 21.11.2005 and submitted that a positive recommendation was made in favour of the petitioner and she has also referred to Annexure-7 of the review petition to submit that the same is the application filed by the original writ petitioner which clearly indicates that her candidate for Ph.D. Mrs. Prabha Rana had submitted her thesis. She submits that though registration was done on 12.12.1987, but Mrs. Prabha Rana was re-

registered on 14.12.1996 and though the candidate was not conferred the Ph.D. Degree, but the thesis was submitted, which indicates that the writ petitioner had guided her in the matter of research. She also submits that the recommendation dated 07.04.2006 was sent inadvertently and accordingly, the same may not be taken into consideration. She submits that there was specific order passed by this Court indicating that it was the earlier recommendation only, which was to be taken into consideration and on that basis, the decision was to be taken, but the decision which was taken by J.P.S.C. was non-speaking order.

15. The learned counsel further submits that order passed by Hon'ble Chancellor has been brought on record in the review petition by filing a supplementary-affidavit which never formed part of the writ record and therefore, the same cannot be taken into consideration in the review jurisdiction. She also submits that as per the application filed by the petitioner, it apparently goes to show that the thesis was already submitted which indicates that some research work was done by the candidate, though it is not in dispute that the candidate was not conferred the Ph.D. Degree within the stipulated time and got re-registered on 14.12.1996 after the cut-off date. She submits that considering the ratio of the judgment passed by this Court in the case of *Dr. Kalpnath Singh & Others vs. Bihar State University Service Commiaaion & Others* dated 30.09.1997, the requirement of issuance of Ph.D. Degree in favour of the student is not a condition precedent and accordingly, the order passed by this Court on 08.07.2008 disposing of the writ petition in favour of the writ petitioner does not call for any interference in the limited review jurisdiction of this Court.

16. The learned counsel for the respondent university has relied upon the judgement passed by the Hon'ble Supreme Court in the case of *State of Bihar versus Dr.Braj Kumar Mishra* reported in (1999) 9 SCC 546 to submit that, if at all this court interfere with the order of the writ court , the matter may be remanded for fresh consideration to

decide as to whether the writ petitioner was duly qualified for the promotion to the post of professor on the cut-off date.

17. During the course of argument, it is not in dispute that the original writ petitioner has already retired from the services.

Findings of this Court

18. The writ petition being W.P. (S) No. 3596/2004 was initially filed by the writ petitioner seeking a direction upon Jharkhand Public Service Commission (for short 'J.P.S.C.') to recommend and grant promotion to the petitioner on the post of Professor under Time Bound Promotion Scheme w.e.f. 09.03.1988 as recommended by the Vinoba Bhave University (hereinafter referred to as the "University").

19. From perusal of the writ petition, it appears that the specific case of the writ petitioner was that as per the statute for time bound promotion of teachers under the Bihar Universities Act, a teacher was entitled to be promoted after 16 years of continuous service to the post of professor as a time bound promotion, subject to concurrence of the University Service Commission. It was further case of the writ petitioner that since the writ petitioner and many other teachers under Ranchi University had qualified themselves on the post of continuous teaching after their substantive appointments for 16 years under the University, the Vice Chancellor, Ranchi University in exercise of powers of the Syndicate was pleased to promote 21 such teachers to the post of University Professor on provisional basis in the prescribed pay-scale together with other allowances under the rules of University, subject to the concurrence of the University Service Commission with effect from the dates mentioned against their names. So far as the writ petitioner is concerned, her name figured at serial No. 17 and she was promoted w.e.f. 09.03.1988.

20. The recommendation of the writ petitioner for time bound promotion was duly forwarded by the Principal of the College on 22.11.1995 to the University, but the matter remained pending at the

level of the University. The proforma for promotion filled by the writ petitioner was annexed as Annexure-12 to the writ petition.

21. It has been recorded in the order under review that the matter of promotion of the writ petitioner was hanging since 1997 and after a long delay, University sent all the papers of the writ petitioner to J.P.S.C. vide letter dated 21.11.2005 and thereafter, an objection was taken by the J.P.S.C. that since two recommendations were forwarded by the University; one was dated 21.11.2005 and the other was dated 07.04.2006, no action was taken. Consequently, the University clarified vide letter dated 06.06.2006 addressed to J.P.S.C. that the subsequent recommendation dated 07.04.2006 was superfluous and J.P.S.C. could act on the basis of recommendation dated 21.11.2005. Consequently, J.P.S.C. was directed to take decision in the matter on the basis of recommendation dated 21.11.2005 vide order dated 21.11.2007 passed in the writ petition.

An affidavit dated 09.01.2008 was filed by the J.P.S.C. in the writ petition stating that the claim of the petitioner was rejected on 15.12.2007 and such rejection was also on the ground that there were two recommendations in spite of the fact that the University had already clarified that earlier recommendation dated 21.11.2005 was required to be taken into consideration. It was also recorded in the order passed in the writ petition that other ground was also taken while rejecting the claim of the petitioner on 15.12.2007 that the petitioner did not fulfil the requisite criteria on the cut-off date i.e., 22.09.1995.

It has been pointed out by the learned counsel for the J.P.S.C. during the course of arguments of this case that the cut-off date mentioned in the order under review i.e., 22.09.2005 is incorrect on account of typographical mistake and the correct cut-off date is 22.09.1995 and this aspect of the matter has not been disputed by the learned counsel appearing on behalf of the respondents.

The writ court subsequently passed an order dated 29.01.2008 directing the J.P.S.C. to pass a fresh and reasoned order with regard to

the claim of the writ petitioner and thereafter, J.P.S.C. again rejected the writ petitioner's claim vide Memo dated 16.02.2008, which was challenged by the writ petitioner by way of amendment petition i.e., I.A. No. 1039/2008. The said interlocutory application was heard on 27.03.2008 and as directed to form part of the writ petition and the parties were directed to complete the pleadings with regard to the interlocutory application and ultimately the writ petition was finally heard on 08.07.2008.

22. The aforesaid facts and sequence of events and the narrations recorded in the order under review are not in dispute.

23. From perusal of the final order of the writ court dated 08.07.2008 which is under review, the writ court was pleased to set-aside the order dated 16.02.2008 by holding that J.P.S.C. did not care to give reasons in spite of the direction issued on 29.01.2008, to pass a reasoned order and also held that the purported reason that the writ petitioner was not eligible on the cut-off date was also wholly unsustainable. It was also observed that the J.P.S.C. had tried to support the said order dated 16.02.2008 by supplying reasons in rejoinder to I.A. No. 1039/2008 filed on 17.04.2008 and according to J.P.S.C., it is not bound to mechanically accept the recommendation of University.

24. Further the writ court considered the provision of Statutes of 1986 as well as provision of University Grant Commission Regulation, 1991 and considered the judgment passed by Hon'ble Patna High Court in *C.W.J.C. No. 2014 of 1997 dated 30.09.1997 (Dr. Kalpnath Singh & Others)*, wherein it was held that the petitioners of the said case were entitled to count their experience of guiding research at the doctoral level from the date they guided their respective students and not from the date such students obtained Ph.D. Degree.

25. The writ Court was of the considered view that experience of guiding research at the doctoral level was enough and it was not necessary that the research scholar is awarded Ph.D. degree. The writ

court referred to the proforma filled by the petitioner on 09.09.1997 (Annexure-12) recorded that it was clear that (i) the writ petitioner obtained Ph.D. Degree on 09.11.1985; (ii) she guided student doing Ph.D.; (iii) the papers were published and were presented in conferences. Writ Petitioner also fulfilled the criteria laid down by the University Grants Commission Regulation, 1991, i.e. “good academic record with a doctoral degree ‘or’ equivalent published work”, which was required for open selection of the Reader. The writ court also recorded that it appeared that J.P.S.C. mixed the criteria for open selection with the criteria of time bound promotion and that it was also not denied that J.P.S.C. had accepted the recommendation of similarly situated candidates. Consequently, the following order was passed by the writ court: -

“11. Thus, it is clear that J.P.S.C. has not only disobeyed the order of this Court by not giving reasons in the impugned order dated 16.2.2008, but has also failed to take into consideration the relevant records such as the proforma - Annexure 12 and has taken into consideration irrelevant matters while rejecting the petitioner’s claim. It is not known why J.P.S.C. is bent upon rejecting the claim of the petitioner.

12. In this result, the impugned orders dated 15.12.2007 and 16.2.2008 are set aside insofar as the petitioner is concerned. In the circumstances, there is no point in asking J.P.S.C. to pass fresh order again. University is directed to grant promotion under 16 years’ time bound promotion scheme to the petitioner from due date within four weeks from today. The actions of J.P.S.C. are deprecated. When it was going to impose heavy cost on J.P.S.C., on the humble request of Mrs. Sheela Prasad, a nominal cost of Rs. 5,000/- is imposed which will be paid by J.P.S.C. to the petitioner within four weeks from today.”

26. Thereafter, J.P.S.C. moved before the Hon’ble Division Bench in L.P.A. No. 326/2008 challenging order of the writ court. The Hon’ble Division Bench passed order dated 21.01.2009 and recorded that the court was faced with a situation where the learned Single Judge has recorded that the writ petitioner was duly qualified and the

Hon'ble Division Bench was of the view that such controversy is clearly a question of appreciation of a factual situation which cannot be made a subject matter of consideration by way of an appeal and hence J.P.S.C. was held to be at liberty to get this position clarified or rectified by filing a review petition to consider as to whether the writ petitioner was duly qualified or not. It was also observed that if the J.P.S.C. succeeds in proving before the learned Single Judge that the writ petitioner was not duly qualified to be appointed as Professor, it is obvious that the order imposing cost on J.P.S.C. also will be liable to be quashed. Thereafter, the present review petition was filed.

27. The crux of the argument of J.P.S.C. is that the writ petitioner was not duly qualified on the cut-off date i.e. on 22.09.1995 as the student who was being guided for research by the writ petitioner was enrolled as back as in the year 1987 and as per the provision, the Ph.D. work was to be completed within a period of 4 years with a further extension of 2 years' time and the entire period expired in the year 1992 and subsequently, the student got re-registered on 14.12.1996. The learned counsel has submitted that on the cut-off date i.e. on 22.09.1995, no student was enrolled for research under the writ petitioner and the student who was enrolled earlier in the year 1987 did not complete his research within the stipulated time and was not granted Ph.D. and was re-registered on 14.12.1996. During the course of arguments, the learned counsel for J.P.S.C. has raised the sole point that according to J.P.S.C., the writ petitioner did not possess the necessary experience of guiding research at doctorate level as on the cut-off date i.e., 22.09.1995. In the aforesaid factual background, the point to be decided in this review petition is,

Whether the writ petitioner can be said to in possession of requisite qualification for time bound promotion as on the cut-off date i.e., 22.09.1995 with regards to experience of guiding research at doctoral level.

28. In the judgment passed by Hon'ble Patna High Court in CWJC No. 2014 of 1997 (*Dr. Kalpnath Singh and Ors. Vs. the Bihar State*

University Service Commission and Others), the petitioners had challenged the notification by which the effective date for grant of time bound promotion as University Professor was altered through their detriment. In the said case, the only point for consideration was with regard to their *experience of guiding research at doctoral level*. The University took into consideration the date of registration of the first research scholar for guidance of one or the other petitioners whereas, the commission considered the date of publication of result of the first research scholar under the guidance of one or the other petitioner, which resulted into different dates of grant of time bound promotion to the post of University Professor, *one*, as per the University and *other*, as per the Commission.

29. The Hon'ble Patna High Court while deciding the aforesaid case of *Dr. Kalpnath Singh (supra)* recorded the date of registration of research scholars under the petitioners as well as date of publication of the research paper by the research scholars and examined the relevant provisions with respect to *the experience of guiding research at doctoral level* and was of the view that the regulations clearly provided that the Ph.D. students under the guidance of a teacher becomes student from the date of registration and guiding research at doctoral level starts from the date of registration of the students for Ph. D. degree which has nothing to do with the publication of result of Ph. D. degree of such student. It was also held that it is the experience during the intervening guiding period at the doctoral level which is the requirement to count experience of a reader for promotion to the post of University Professor and the same has nothing to do with the date the student obtains Ph. D. Degree on passing the examination.

30. After having held as aforesaid, the Hon'ble Patna High Court held that the petitioners of those cases were entitled to count their *experience of guiding research at doctoral level* from the date they guided their respective students and not from the date such student obtained Ph. D. Degree. It was also observed that the interpretation as was initially given by the University for promotion to the post of

University Professor was correct interpretation and the interpretation given by the Commission by the notification impugned in the said case dated 27th February, 1997 was not correct and the matter was remitted to the respondents for fresh consideration. Thus, the law was crystalized by holding that it is *the experience of guiding the research student*, which is the material consideration and not the actual passing of examination by the concerned student at Ph. D. level.

31. In the present case, admittedly prior to the cut-off date i.e. on 22.09.1995, the writ petitioner had *the experience of guiding a student for research* right from the year 1987 onwards though ultimately the student did not take the exam for Ph. D. within the stipulated time. Further, on the cut-off date i.e. on 22.09.1995, the stipulated time had expired and after the cut-off date the same student got herself re-registered for research under the writ petition in the year 1996. Counsel for the respondent University has submitted that the thesis was also submitted pursuant to the research and thus on the basis of materials on record, it cannot be disputed that the writ petitioner had *the experience of guiding a student for research*. This Court is of the considered view that the learned writ court while deciding the writ petition has rightly taken into consideration the judgment passed by Hon'ble Patna High Court in *CWJC No. 2014 of 1997 (Dr. Kalpnath Singh) (Supra)*. In view of the aforesaid findings, the arguments advanced by the learned counsel for the J.P.S.C. (the review petitioner) that the writ petitioner did not have the requisite *experience of guiding a student for research*, is devoid of any merits and hence rejected.

32. So far as the reliance made by the JPSC (review petitioner) on the order dated 04.04.2005 passed by the Hon'ble Chancellor, State of Bihar is concerned, the same also does not help JPSC in any manner on the fact of the binding precedent by virtue of the ratio laid down by Hon'ble Patna High Court in *CWJC No. 2014 of 1997 (Dr. Kalpnath Singh) (Supra)*.

33. It is also important to note that the order under review was passed by the writ court on 08.07.2008, but the order dated 04.04.2005 passed by the Hon'ble Chancellor, State of Bihar which has been filed vide supplementary affidavit dated 24.02.2010 was never brought on record of the writ proceedings and no explanation whatsoever has been furnished by the JPSC for not filing it in the writ proceedings and further, no leave of this court has been sought for by JPSC for bringing on record additional documents which never formed part of the writ records.

34. This Court finds that otherwise also the order dated 04.04.2005 passed by the Hon'ble Chancellor, State of Bihar which has been filed vide supplementary affidavit dated 24.02.2010 does not have any bearing in the present case calling of review of the impugned order passed by the learned writ court for the reasons explained below.

a. The Hon'ble Chancellor of the State of Bihar noted the controversy as follows: -

“It appears to me that the main controversy here is that what should be the minimum qualification for promotion to the post of university professor. The Rule 1 (3) of the Statute for Time Bound Promotion for the Lecturers to the post of Readers and for the Readers to the post of University Professors provides that a Reader possessing the qualification of a University Professor prescribed by the University Grant Commission with at least 16 years of continuous service as Lecturer/Reader in one or more Universities, shall be eligible for the promotion to the post of University Professor. Apart from other qualifications, the University Grant Commission Regulation, 1991 provides that candidate should have “experience of guiding research at doctoral level.” Here the matter for consideration is what is to be understood by the expression “experience of guiding research at doctoral level” as used in the minimum qualification prescribed for the post of professors. In the Statute or in the Guidelines of the University Grant Commission, nowhere it has been clearly mentioned that what is the meaning of expression “experience of guiding research at doctoral level.”

b. The Hon'ble Chancellor, State of Bihar, has noticed the the resolution dated 11.12.1992 interpreting the term “experience of guiding research at doctoral level” as used in the U.G.C.

Guidelines as follows: - “At least one research student must have been awarded Doctoral Degree under his / her supervision.” And also noticed that the same, though approved by the Hon’ble Chancellor on 11.05.1993, but, the approval was superseded by subsequent communication dated 15.07.1997 issued by the Hon’ble Chancellor, State of Bihar.

- c. The Hon’ble Chancellor, State of Bihar, also took note of one judgement passed in CWJC No. 3049 of 1988 and observed that it has been held by the high court that if there is any deficiency in the statute or any additional qualification is felt that can be done only by amending the statute and other connected provisions but this judgement nowhere stated that “experience of guiding research at doctoral level” means the date on which the research scholar got registered under a teacher for Ph.D.
- d. The Hon’ble Chancellor, State of Bihar also considered the judgement passed by Hon’ble Patna High Court in ***CWJC No. 2014 of 1997 (Dr. Kalpnath Singh) (Supra)*** and observed as follows:-

“.....the Hon’ble High Court held that a Ph.D student under the guidance of a teacher becomes student from the date of registration. The Hon’ble High Court has further observed that: -

“thus while guiding research at doctoral level starts from the date of registration of the students for Ph.D Degree, it has got nothing to do with publication of results of Ph.D Degree of such students. It is the experience during the intervening guiding period at the doctoral level, which is the requirement to count experience of a Reader for promotion to the post of University Professor and the same has got nothing to do after the student obtained Ph.D Degree on passing the examination.”

So it appear that although the Hon’ble High Court has observed that the experience starts from the date of registration of the student for Ph.D Degree, but it has nowhere mentioned

that the date of registration is sufficient experience for promotion of a Reader to the post of University Professor. In another words, it has nowhere been mentioned that the date of registration is sufficient to fulfil the criteria given in expression “experience of guiding research at doctoral level”. In my opinion, by no stretch of imagination, it can be said that a teacher got the sufficient experience of guiding research at doctoral level on the very date a student is registered under him. The registration of a student under a teacher is a procedural phenomena and a teacher starts guiding a student on or after the date of registration. Now, question is whether it is sufficient for promotion under UGC Regulation 1991.”

e. The Hon’ble Chancellor, State of Bihar held as follows:-

“ Thus, from the above mentioned provision, it is clear that University has to consult Commission in respect of the principle to be followed in making promotion, as also, the suitability of the candidates for such promotion and commission may suggest guideline in accordance with Act and Statute.

The date of registration cannot be treated mechanically as a cut date for fulfilment of the criteria regarding “experience of guiding research at doctoral level”. While giving the liberty to the Commission and the University to decide the suitability of a candidate for promotion to the post of University Professor, some guidelines has to be evolved according to the provisions of the Statute and it cannot be a mechanical process. In para – 7 of the judgment of CWJC No.2014/1997, Hon’ble Judge has observed that – to find out the “experience of guiding research at doctoral level”, it is necessary to quote the relevant provisions of the Magadh University Regulation for Ph.D. Degree. It means, while clarifying the expression “experience of guiding research” one has to take the help of the Regulation of different universities as well as Patna university and also the meaning of the word ‘experience’. In Regulation for Ph.D Degree, maximum period has been provided for submission of the thesis, in the same way minimum period has also been provided before which thesis cannot be submitted. In other words, no one can submit thesis within few days from the date of registration. Naturally, between the date of registration and submission of the thesis, a student acquires the experience of doing research work and the teacher or guide acquires the experience of guiding research. Whether the student has

actually done something towards achievement of their goal during this period can be assessed from the publication of research paper and other material and that research work and publication of a standard and contribution to knowledge will be the experience of a teacher towards guiding research.

.....

So, on the basis of the discussions made above, I hold that the expression “experience of guiding research at doctoral level” cannot be interpreted as the date of registration of the students for Ph.D. Degree under a teacher and also it cannot be said that on the date of registration a teacher acquires sufficient experience of guiding research at doctoral level and fulfils the qualification as laid down in the U.G.C. Regulation for promotion to the post of University Professor. The expression “experience of guiding research at doctoral level” means the experience acquired by the teacher or guide during the intervening period i.e., from the date of registration upto the conclusion of the research. So while recommending for promotion, the date of registration should not be mechanically taken as a cut date for promotion. The screening committee of the University should examine the eligibility, suitability and fitness of a teacher on the basis of gained experience of guiding research during length of time supported by actual research work done by the student, and publication of standard research papers and other materials which may really be considered as contribution to the knowledge. This may or may not be upto award of Ph.D. Degree but there must be consideration work done during the considerable span of time towards achieving the goal under the same guide.”

- f. It is apparent that the Hon’ble Chancellor has held that the candidate cannot be said to be experienced of guiding a research student right from the date of registration of research student and it is for the screening committee to examine on the basis of gained experience of guiding research during length of time supported by actual research work done by the student, and publication of standard research papers and other materials which may really be considered as contribution to the knowledge **and this may or may not be upto award of Ph.D Degree but there must be considerable work done during the considerable span of time towards achieving the goal under the same guide.**

- g. Thus, even the aforesaid order passed by the The Hon'ble Chancellor, State of Bihar does not say that the eligibility criteria require actual award of Ph.D. by the student of the teacher claiming promotion to the post of professor but it says that there must be considerable work done during the considerable span of time. However, the order passed by the Hon'ble Chancellor, State of Bihar does not specify the length of period of work done or about the extent of progress of work by the Ph.D. student.
- h. Otherwise also the order dated 04.04.2005 passed by the Hon'ble Chancellor, State of Bihar has been passed after creation of State of Jharkhand and has no bearing on the State of Jharkhand.

35. In the instant case, the record shows that the writ petitioner completed 16 years as lecturer/reader only on 09.03.1988 and admittedly she was not entitled to claim promotion to the post of professor prior to 09.03.1988. The petitioner was guiding a Ph.D. student in research right from the year 1987 and accordingly, on the date the petitioner completed 16 years as lecturer on 09.03.1988 and also on the cut-off date i.e 22.09.1995 the petitioner had certainly gained "experience of guiding research at doctoral level" and apparently there has been considerable progress in work of the research student of the writ petitioner. Even as per the order of the Hon'ble Chancellor, State of Bihar, Ph.D. need not have been conferred on the student of the lecturer/reader seeking promotion to the post of Professor. Thus, this Court is of the considered view that the writ petitioner had the required "experience of guiding research at doctoral level" as on the cut-off date i.e., 22.09.1995, though the concerned research student did not complete and received Ph.D. degree within the stipulated time frame. Accordingly, it is held that the writ petitioner was in possession of requisite qualification for time bound promotion as on the cut-off date i.e., 22.09.1995 with regards to experience of guiding research at doctorate level. So far as the other

requisite qualifications are concerned, it is not in dispute that the writ petitioner duly satisfied the same.

36. As a cumulative effect of the aforesaid findings, there is no merit in this review petition filed by JPSC, which is accordingly dismissed.

37. Pending interlocutory application, if any, is closed.

(Anubha Rawat Choudhary, J.)

Mukul