

(2002) 04 JH CK 0037
In the Jharkhand High Court
Case No : CWJC No. 9193 of 2000

Ashok Kumar Mishra and Others

APPELLANT

Vs

The Sidhu Kanhu University, Dumka and Others

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Citation : (2002) 04 JH CK 0037

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, for the Appellant; M.S. Anwar, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The writ petition has been preferred by seven petitioners against the order contained in letter No. SKU/G/917, dated 25.9.197 and letter No. SKU/G/1033, dated 19.11.1997 whereby and whereunder the respondent-Sidhu Kanhu University, Dumka (University for short) terminated the services of petitioners.

2. The petitioners have also challenged the consequential orders issued by the Principal. A.S. College, Deoghar as contained in Annexure 9 series.

3. As the case can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one.

4. The A.S. College, Deoghar (College for short) was made a constituent unit under the then Bhagalpur University in the year 1980. In spite of the same, the Principal of the College made appointments of number of teachers including the petitioners in between 1984 1987. The question of legality and propriety of appointment of similarly situated teachers was taken up by the University and matter moved upto the Patna High Court. The Court observed that the law of the Universities has not given any power to Principal to appoint any teacher. There was no provision made for ad hoc appointment and the Court directed the University to take immediate step for advertising the sanctioned posts of teachers lying vacant to fill up without any delay on the recommendation of the

Universities Service Commission.

5. The order of the Patna High Court was challenged before the Supreme Court by Ranchi University Ad hoc Teachers Association and Ors. v. State of Bihar and Ors., in SLP (Civil) No. 11078/89. Certain ad hoc teachers also preferred writ petition under Article 32 of the Constitution in CWP No. 65/961 and 982 of 1989. All the aforesaid cases were heard by the Supreme Court which disposed of the cases on 6.12.1989. Taking into consideration the facts and circumstances, the following directions were given :--

"Taking all these facts and circumstances into consideration we make the following directions :

(i) The University Service Commission shall advertise the posts available for direct recruitment within four months.

(ii) The Government shall consider the work load in each University and sanction such additional posts that may be required, within the said period. Such additional posts shall also be filled regularly either by direct recruitment or by promotion as per rules find not by ad hoc appointment.

(iii) The University/Government shall relax the maximum age prescribed for direct recruitment of teachers to the extent of service rendered by persons as ad hoc teachers.

(iv) All the ad hoc teachers in service on February 10, 1989 against sanctioned posts shall continue till selection is made by the University Service Commission and they shall be paid in terms agreed for the period in which they actually worked.

(v) Other ad hoc teachers who have worked till that day must also be paid.

(vi) The payment shall be made within one month.

With these directions, the SLP and writ petitions are disposed of.

In the circumstances of the case, we make no order as to costs."

6. The innocent error in paragraph (iv) of the order aforesaid was modified and the words "against sanctioned posts" in Clause (iv) of the order was deleted.

7. The petitioners and other ad hoc teachers whose services were terminated they were reinstated as per order of the Supreme Court to continue till the regular appointment is made against the posts and thereafter the Bhagalpur University vide letter No. B/4931-5005, dated 15.9.1990 reinstated the petitioners. The College issued consequential reinstatement order on 18.9.1990 and petitioners continued to function.

8. Subsequently, certain regular appointments were made vide Notification No. 20/96 dated 9.11.1996 by the Sidhu Kanhu University, Dumka. Certain posts of the College were also filled up on regular basis. Giving reference of such order of

appointment vide Notification No. 20/96, the University vide letter dated 26.9.1997 asked the College to terminate the services of all ad hoc teachers without ascertaining as to whether all the posts have been filled up on regular basis or not. The Principal of the College issued consequential termination order on 20.11.1997 (vide Annexure 9 series).

9. The petitioners represented against the order of termination on 9.12.1997 and 17.4.1999. It was pointed out that though regular appointments were made in the College against one or other post but the posts against which the petitioners were working, were neither advertised, nor filled up on regular basis. In this background, the petitioners informed that as per the order of the Supreme Court, they should continue to function till regular appointment is made against their posts.

10. The University did not choose to give any reply. Some others, who were similarly situated like petitioners, they challenged their termination order before the Patna High Court in CWJC No. 10128/97 on the ground that no recommendation was made against the posts occupied by them. The said writ petition was allowed by the Patna High Court being CWJC No. 3916/2000.

11. The respondents were allowed time on 15-9,2000 to file counter affidavit. The respondents were also allowed time on 13.3.2002 to state as to whether the posts against which the petitioners were functioning were advertised for regular appointment or not. No counter affidavit has been tiled denying the averment made by the petitioners.

12. In the facts and circumstances, as the posts against which the petitioners were functioning were not filled up by regular appointment as per the decision of the Supreme Court in the case of Ranchi University Ad hoc Teachers Association (supra), the petitioner should have been allowed to continue till selection is made by the University Service Commission.

13. The impugned order contained in letter dated 25.9.1997 (Annexure 7) and letter dated 19.11.1997 (Annexure 8) having passed in violation of the order of the Supreme Court, those two orders and the consequential orders as contained in Annexure 9 series are set aside so far it relates to the petitioners.

14. The respondents will allow the petitioners to function till selection is made to fill up the posts against which the petitioners are functioning as per the direction of the Supreme Court as referred above.

15. However, in the facts and circumstances, the petitioners having moved after some delay, they will not be entitled for salary of the intervening period.

16. The writ petition stands disposed of, with the aforesaid observations.