
(2019) 08 JH CK 0072
In the Jharkhand High Court
Case No : Writ Petition (S) No.4471 Of 2014

Basudeo Gope

APPELLANT

Vs

Vinoba Bhawe University And Ors

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Citation : (2019) 08 JH CK 0072

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anil Kumar Sinha, Raunak Sahay, Navin Kumar Singh, Indrani Sen Choudhary

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Anil Kumar Sinha, the learned Senior counsel appearing for the petitioner and Mrs. Indrani Sen Choudhary, the learned counsel appearing on behalf of the respondent-Vinoba Bhawe University.

2. The petitioner has preferred this writ petition for promotion from the post of Clerk to the post of Head-Clerk with effect from 02.01.2001. Further prayer is made to grant promotion to the petitioner on the post of Head-Clerk and pay the arrears of salary meant for the post of Head-Clerk with effect from 02.01.2001. The petitioner was appointed on the post of Clerk (Grade-III post) on 10.07.1983 by the Governing Body of the college, namely, Markham College of Commerce, Hazaribagh.

3. Mr. Anil Kumar Sinha, the learned Senior counsel appearing for the petitioner submits that the petitioner was appointed on the sanctioned post and, accordingly, the petitioner submitted his joining on 12.08.1983. The said college became constituent college of the University with effect from 31.10.1986. In the meantime, several disputes arise out of the take-over by the University and the colleges were made constituent colleges and several teaching and non-teaching

staffs entered into litigation which gone up to the Supreme Court and finally the Hon'ble Supreme Court appointed Justice Agrawal Committee and the Justice Agrawal Committee has submitted the report and after the submission of the report, the Annexure-1 dated 16.09.2005 has been issued by the Vice-Chancellor of the University wherein the name of the petitioner finds figure at sl.no.13 and the service of the petitioner has been absorbed in the said college with effect from 12.08.1983. Thereafter, the petitioner worked continuously on the post of Clerk. By letter dated 21.12.2007 the Vice-Chancellor directed the Principals of different colleges to send the name of the persons who needs to be promoted to the post of Head-Clerk from the post of Clerk. Pursuant to that, by letter dated 09.02.2008 the Seniority-List of Grade-III staff was recommended by the Principal to the Registrar of Vinoba Bhave University in which the name of the petitioner finds figure at sl.no.2 in the Seniority-List. The Principal of the college by letter dated 09.02.2008 addressed to the Registrar, Vinoba Bhave University requested the Registrar of the University to approve the name of the petitioner for promotion to the post of Head-Clerk and subsequently, by letter dated 22.11.2010, 05.05.2011 and 11.04.2012 a request by the Principal for approval of promotion to the petitioner to the post of Head-Clerk was made. The document contained in Annexure-7 to the writ petition suggest that the post of Head-Clerk in that college has already been sanctioned with effect from August, 1982. The petitioner had also filed representation by Annexure-8 for promotion to the post of Head-Clerk. Mr. Anil Kumar Sinha, the learned Senior counsel appearing for the petitioner submits that the petitioner has already been absorbed in the year 1983 and that too by the order of the Hon'ble Supreme Court in view of the Justice Agrawal Committee's report. It is an admitted position that the University on its own wisdom has started the process for promotion to the post of HeadClerk and thereafter the Principal of the concerned college has went on requesting the University to grant approval for promotion to this petitioner to the post of Head-Clerk. He submits that in the meantime, the petitioner retired on 30.06.2017 and the petitioner has already approached before this Court in the year 2014. He further submits that for the laches on the part of the University, the petitioner cannot be allowed to suffer. He submits that it is an admitted position that the petitioner was absorbed and was working on a sanctioned post and the post of Head-Clerk was also sanctioned and was kept vacant for years together. He submits that since the petitioner has already retired, the petitioner's right with monetary benefits with regard to notional promotion cannot be denied. He further submits that the petitioner was working on the post of Head-Clerk in the In-Charge capacity with effect from 02.01.2001. To buttress his arguments, he relied in the case of "Dr. Sachita Kumar Sinha vs. The State of Bihar and Ors." reported in 1995 (1) PLJR 362. Paragraph nos. 10, 11 and 12 of the said judgment are reproduced herein below:

"10. This Court also feels that there does not exist any valid reason for denying the petitioner the salary attached to the posts of Additional director of Secondary Education and Director of Secondary Education when he has satisfactorily

discharged his duties attached to those posts.

11. In coming to the aforesaid conclusion this Court is reminded of the ratio flowing from the two decisions of the Supreme Court in the case of central Inland Water Transport Corporation Limited v Brojo Noh Ganguly reported in AIR 1986 SC page 1571, which was affirmed in the case of Delhi transport Corporation V/s. D T. C. Mazdoor Congress reported in AIR 1991 SC page 101. In both the cases the Hon ble Supreme Court has held that when an employee is asked by the employer to work against a post on certain terms, the employee concerned by reason of the un-equal bargaining position cannot object to the terms and conditions of service. In fact the employees are bound to accept whatever terms were offered to them. Keeping those principles in mind I am unable to sustain the objection raised by the learned counsel for the respondents that as the petitioner did not raise any objection to the terms of his appointment as additional Director and Director of Secondary Education, he is unable to agitate his present grievance before this Court.

12. There is also another aspect of matter inasmuch as the Supreme court has repeatedly asked the State to act as a model employer. In a welfare State where the Government is one of laws and not of men, the role of a model employer of the State is not at all compatible with its action in the present case, namely, getting the work for higher posts discharged by the petitioner and at the time of making payment trying to defeat the claim of the petitioner by raising all sorts of, if I may say so, without any disrespect, specious"

4. Per contra, Mrs. Indrani Sen Choudhary, the learned counsel appearing on behalf of Vinoba Bhave University submits that it is in the domain of the University to appoint the teaching and nonteaching staff. She further submits that the Principal had allowed him to work on the post of Head-Clerk, which has not been approved. She further submits that in the year 2017, further applications were invited for promotion in which the petitioner did not apply.

5. Having heard the learned counsels for the parties, this Court finds that the petitioner was absorbed pursuant to the order of the Hon'ble Supreme Court on the basis of Justice Agrawal Committee Report. The petitioner was working on the sanctioned post. It is also an admitted position that the petitioner was also working on the post of Head-Clerk with effect from 02.01.2001. The procedure for fulfilment of the post of Head-Clerk was initiated at the wisdom of the University itself and the Principal of the college went on requesting the University to grant approval for appointment of the petitioner on the post of Head-Clerk and for the laches on the part of the University, the petitioner cannot be allowed to suffer and, in view of the judgment rendered in the case of "Dr. Sachita Kumar Sinha" (supra) the writ petition succeeds. Since the petitioner has already retired with effect from 30.06.2017, the petitioner will be entitled for notional promotion with effect from 02.01.2001 on the post on which the petitioner was working as Head-Clerk.

6. The concerned authority shall pass an order in this regard as early as possible, but not later than 12 weeks from the date of receipt/ production of a copy of this order. The University will take all steps so that the fruit of this order may come to the petitioner at the earliest.

7. The writ petition stands allowed and disposed of.

8. I.A. No.1461 of 2017 is also disposed of.