
(2003) 07 JH CK 0041
In the Jharkhand High Court
Case No : CWJC No. 1266 of 1998 (R)

Bijay Kumar Sharma and Others	Vs	APPELLANT
Ranchi University and Others		RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2004) 2 JCR 127

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : N.N. Tiwari, for the Appellant; A.K. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. N.N. Tiwari, learned counsel for the petitioners and Mr. A.K. Mehta, learned counsel appearing on behalf of the respondents.

2. In this writ application, the petitioners have prayed for quashing the office order of the Ranchi University issued under Memo No. B/968-971, dated 9.3.1995 by the Registrar of the said University as contained at Annexure-7 whereby and whereunder the scale of the petitioners which they were drawing for the last so many months was reduced and down graded without giving any opportunity of hearing and without any notice. The petitioners have further prayed that the respondents be directed to make payment of the revised scale of pay to which the petitioners were entitled and which they were drawing prior to passing of the impugned office order. The petitioners have also made a prayer for payment of arrears of the difference of salary which was stopped all of a sudden from November, 1994 together with interest.

3. The case of the petitioners is that they are all non-teaching staff of the Ranchi Women's College and are holding Class-III sanctioned post of Assistants. According to the petitioners, earlier there were two types of post of Assistants namely Lower Division Assistant and Upper Division Assistant which led to an

anomalous situation in relation to the pay scales etc. Consequently, on 27.01.1982, the Government of Bihar, Department of Education issued a letter under Memo No.--91, dated 27.1.1982 addressed to all Vice Chancellors of the State of Bihar except the Patna University wherein while referring to an earlier letter of the Department of Education dated 29.9.1980, it was informed that the State Government had decided to give a unified scale of pay to the Upper Division and Lower Division posts and this decision which the State Government had taken in relation to Patna University should be deemed to apply to other Universities also.

4. Subsequently, by letter dated 5.8.1989, issued under Memo No. 1173, the Department of Human Resources Development, Government of Bihar again wrote a letter to the Vice Chancellors of all the Universities of the State of Bihar except Patna University wherein while referring to the subject of unification of scales of pay of the upper and lower grades of Class-III employees, it was intimated that on the basis of an agreement reached between the University and the College Karamchari Sangh on 26.4.1989, it had been decided that approval in relation to the subject matter of the letter dated 17.8.1985 and 19.8.1985 would soon be issued. So far as the letter dated 19.8.1985 was concerned, Clause A thereof was quoted at paragraph-2 and it was stated that the merger of pay scales of employees in Class-III posts of the University and Colleges would be made applicable with effect from 1.4.1981 in the same manner as was made applicable to the Secretarial Staff and the upper and lower grade employees working in the regional offices. It was, however, decided that on the basis of such merger, the employees would not be entitled to any arrears of pay at all. Finally, while referring to the letter dated 27.1.1982, it was stipulated that all employees working in the Universities of the State who were either in the higher grade or the lower grade would have a unified pay scale as per letter dated 27.1.1982 and the same would be made applicable to the constituent colleges of the Universities also. At paragraph--4 of the same letter, it was indicated that such unified scales would be made applicable with effect from 1.7.1981 but no arrears would be payable.

5. It appears that pursuant to the aforementioned two letters of the appropriate department of the Government of Bihar, the Registrar, Ranchi University issued office order on 25.4.1990 which was issued under Memo No. RU-VC/4120-21 (Annexure-3). In that office order, the Registrar refers to the letter of the Government dated 5.10.1989 (Annexure-2 above) and states that all higher and lower Assistants/Clerks should have unified pay scales of Rs. 785-1210 with effect from 1.7.1981 and accordingly, it was decided that pay scales etc would be given with effect from 1.2.1990 without the benefit of arrears of pay etc. In the same office order, it is evident that all the Principals were directed/requested to prepare salary bills in order to give effect to the aforementioned decision of fixation of salary in the scale of Rs. 785-1210 and to send the same for approval by 15.5.1990. Thereafter, the Principal, Ranchi Women's College, Ranchi issued the Notification "dated 3.8.1990 (An-nexure-4) by which 27 Class-III employees

were enlisted and given unified scale of Rs. 785-1210 with effect from 1.7.1981.

6. After the aforementioned development took place i.e. after issuance of Annexure-4 enlisting the petitioners in the unified scale Indicated above, all petitioners started receiving the said scale of pay including the substituted/ revised scale thereof which was either applicable to Graduate Non-Teaching Staff or Non-Graduate Teaching Staff and they received the same up to October, 1994.

7. Therefore, from November, 1994. the scale that they were getting was stopped all of a sudden and subsequently i.e. four months thereafter, they suddenly received the impugned office order dated 9.3.1995. The petitioners have stated that pursuant to Annexures 1 to 3, action was taken by the Principal, Ranchi Women's College, Ranchi vide Annexure--4 and thereafter, they started receiving, salary on and from July, 1990 and they continued to receive the same till October, 1994 (i.e. about 52 months).

8. Mr. N.N. Tiwari, learned counsel for the petitioners has submitted that pursuant to valid orders and decisions taken by the Government, the respondents complied and paid them salary strictly as per the said decisions. According to Mr. Tiwari, the Government's decisions and the consequential actions of bringing them under a unified scale of pay conferred them with a vested right and that right accrued to them on the basis of Annexures-1 to 4. That right was also allowed to be exercised for 52 months. That being the position, a subsequent office order which was issued on 13.4.1991 (Annexure-5) splitting the 3rd and 4th Grade employees and allotting different designations to them, could not take away their accrued and vested right and that too with a retrospective effect. He further argued that Annexure- 5 cannot be made applicable to the extent that it causes prejudice to the petitioners and that its applicability should not be used in such a manner that it has the effect of retrospectively snatching away accrued and/or vested rights of the petitioners. In support of the aforementioned contention, Mr. N.N. Tiwari relies upon the case of Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, . He refers to paragraph 14 thereof which reads thus :

"14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or in constitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the Court of Law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.

9. Upon perusal of the aforementioned Judgment of the Hon''ble Supreme Court of India, it is apparent that the Hon''ble Apex Court had the occasion to also consider the Judgment delivered in the case of P.D. Aggarwal and Others Vs. State of U.P. and Others, and at paragraph-13 the effect of retrospective legislation on vested rights which was considered in P.D. Agarwal's case was

quoted and the same is being reproduced herein :

"It has been urged that Government has the power to amend rules retrospectively and such rules are quite valid. Several decisions have been cited of this Court at the bar. Undoubtedly, the Government has got the power under proviso to Article 309 of the Constitution to make rules and amend the rules giving retrospective effect. Nevertheless, such retrospective amendments cannot take away the vested rights and the amendments must be reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution.....As has been stated hereinbefore, the Assistant Engineers who have already become members of the Service on being appointed substantive-ly against temporary posts have already acquired the benefit of 1936 Rules for having their seniority computed from the date of their becoming member of the service. 1969 and 1971. Amended Rules take away this right of these temporary Assistant Engineers by expressly providing that those Assistant Engineers who are selected and appointed in permanent vacancies against 50 per cent quota provided by Rule 6 of the Amended 1969 Rules will only be considered for the purpose of computation of seniority from the date of their appointment against permanent vacancies. Therefore the temporary Assistant Engineers who are not only deprived of the right that accrued to them in the matter of determination of their seniority but they are driven to a very peculiar position inasmuch as they are to wait until they are selected and appointed against permanent vacancies in the quota set up for this purpose by the amended Rule 6..... These amendments are not only disadvantageous to the future recruits against temporary vacancies but they were made applicable retrospectively from 1.3.1962 even to existing officers recruited against temporary vacancies through Public Service Commission. As has been stated hereinbefore that the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution.

10. To the extent that some regulations or law take away retrospectively rights accrued to teachers and to the extent that such Rules or Regulations require such teachers to restore monetary benefits received, such eligibility/regulation has also been held to be in violation of Articles 14 and 16 of the Constitution of India in the case of P. Tulsi Das and Others Vs. Govt. of A.P. and Others, where their Lordships have held that rights acquired by employees are legally protected rights and cannot be withdrawn even by the Legislature with retrospective effect.

11. Mr. A.K. Mehta, learned counsel for the respondents, on the other hand has very vehemently argued that the text/content of Annexure-4 is itself such that it is a pointer to the fact that whatever was done by the Principal, Ranchi Women's College was merely a provisional order of designation subject to approval by the Ranchi University. He further submits that under the provisions of Section 10(6) of the Bihar State Universities Act (now adopted by the State of Jharkhand), it is

only the Vice Chancellor who has the power to make appointments to posts within sanctioned grades and scales of pay and within the sanctioned strength of ministerial staff and the Principal had no authority to issue the office order dated 3.8.1990 (i.e. Annexure-4) because that was contrary to the provisions of Section 10(6) of the aforementioned Act.

12. The aforementioned submission of Mr. Mehta is rejected at the threshold because by Annexure-4, the Principal did not make any appointments or created any unified cadre suo-motu. All that she did was that she carried out the directives of the University itself which was given/made by Annexure -3 i.e. the office order of the Registrar, Ranchi University dated 25.4.1990 which was issued pursuant to the direction of the Vice Chancellor of the University. That being the position, the argument in relation to Section 10(6) to the effect that Principal, Ranchi Women's College acted contrary to Section 10(6) of the Act is misconceived.

13. The other argument of Mr. A.K. Mehta is to the effect that Annexure-D series show that at least the petitioner Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11 and 12 were all given different designations by the University on different dates (such as Store Keeper, Routine Clerk, Correspondence Clerk, Sorter, Typist and so on and so forth) and therefore, these were substantive designations. Moreover, Annexure -5 is a directive of the Government by which such designation were made applicable in relation to non-teaching staff of the Universities, Colleges and Constituent Units of the University. Therefore, according to him, Annexure 7 (i.e. the Order impugned) is in consonance with and in line with the directives of the State Government dated 13.4.1991 as contained at Annexure - 9. This argument also does not appeal to this Court for the same reason stated above. From the record, it is apparent that the Government directive is dated 13.4.1991 whereas the petitioners had been brought under the unified scale by order dated 3.8.1990 which was passed pursuant to the direction of the Vice Chancellor which has been brought on record vide Annexure-3 and which is dated 25.4.1990. Following the Judgment of the Hon'ble Supreme Court of India, it is held that a subsequent resolution of the Government cannot be allowed to take away accrued and/vested right as the petitioners were brought under the unified scale from July, 1990 pursuant to Annexures 1 to 4.

14. The third and last argument of Mr. Mehta is with reference to Annexures A and B of the Counter Affidavit. Annexure-A is a letter dated 30.1.1992 issued by the Vice Chancellor, Ranchi University deprecating at paragraph-2 therein the action of some of the Principals in making appointments and promotions of Class -III/IV employees in anticipation of approval of the Vice Chancellor. Paragraph -2 of the said letter reads as thus :

"2. Some Principals have made appointments and promotions of Class-III/IV employees in anticipation of the approval of the Vice Chancellor. The Vice Chancellor has decided not to give any post- facto approval of the appointments and promotions made by the Principals. Therefore, the Principals are instructed

to terminate all appointments and promotions made by them for which they do not have written approval from the Vice Chancellor."

15. The other letter is issued by the Registrar, Ranchi University dated 13.5.1993 and which is contained at Annexure-B. This is also a letter which refers to Annexure-A and says that all unauthorised appointments/promotion made by the Principal of the Constituent Colleges, which are not approved by the University, stands rejected in view of the letter of the Vice Chancellor dated 30.1.1992. (i.e., Annexure-A). For the same reason again, these two documents cannot frustrate the acquired legal rights of the petitioners. These documents have been issued on 30th Jan. 1992 and 13th May, 1993 whereas the petitioner's rights were conferred upon them and they were vested with an accrued right on and from the date of issuance of Annexure -4 which has already been held to be a valid order because it was passed pursuant to the direction of the Vice Chancellor. Their rights became vested also from the date they started receiving salary in the unified scale i.e., on and from July, 1990. Such vested right could not have been frustrated by a subsequent direction of the University.

16. Lastly, it would be relevant to mention that in an identical case, another Hon'ble Single Judge of this Court has already dealt with the issue and has passed a judgment on 2.7.1996 in CWJC No. 3585 of 1995 (R). In that case, after setting aside the impugned order by which the scale of the petitioners had been down graded, this Court directed the respondents to fix the scale of pay of those petitioners working on the post of Assistant/Head Assistant/Accountant and who were graduates in the scale of 1,500-2,750 as per letter dated 13.4.1991 i.e. Annexure-5 herein and to provide them with such benefits including arrears of salary, if any. It was further observed that if any of the petitioners working against any post were found to be not a Graduate, then in that case, provisional scale was ordered to be fixed in the lower revised scale of Rs. 1,400-2,300/- and the arrears of salary, to that effect were to be provided by the respondents. Following the same analogy, the same directions are also deemed to have been issued in this case also.

17. Mr. A.K. Mehta however submitted that in that case no Counter Affidavit was filed and the Writ Petition was disposed off on the basis of pleadings made in that Writ Application. Such submission of Mr. Mehta is not acceptable because from the perusal of the order itself, it would be evident that Hon'ble Judge had granted time to them to file Counter Affidavit and yet no Counter Affidavit was filed either by the University or by the State. Moreover, if the university was aggrieved, they could have filed an appeal against the said order. But they did not take recourse of either of the two procedures and accordingly, that decision has also become final.

18. So far as the prayer made in the amendment application which has been filed vide I.A. No. 449 of 2003, this Court is not inclined to grant any relief in so far as that Amendment Application is concerned because that would amount to enlarging the scope of this Writ Application. If the petitioner No. 12 has any

grievance, he is at liberty to challenge the same through an appropriate proceeding before an appropriate forum.

19. For the foregoing reasons therefore, this Writ Application is allowed and the impugned order in so far as it relates to down grading the petitioners and reducing their pay scales and also in so far as it relates to pay fixation and down grading their designations are held to be unconstitutional, and accordingly set aside.

20. As a result of passing of this Judgment, all consequential benefits shall ensure to the benefit of the petitioners and the University shall take action in releasing the arrears etc. within a period of two months from the date of receiving a copy of this judgment.

With the aforesaid observations and directions, this Writ Petition is allowed. There shall however be no order as to costs.