

(2020) 01 JH CK 0222
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2890 Of 2018

Binod Kant Tiwari	Vs	APPELLANT
State Of Jharkhand And Ors		RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Bihar State Universities Act, 1976 — Section 4, 14
Jharkhand State University Act, 2000 — Section 4(14)
Constitution Of India, 1950 — Article 23

Citation : (2020) 01 JH CK 0222

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Shresth Gautam, L.C.N. Shahdeo, Rajesh Kr. Singh, Amit Kr. Sinha

Final Decision : Allowed

Judgement

1. Heard counsel for the parties.
2. The present writ petition has been filed for quashing the order dated 25.04.2018 passed by the Registrar, Ranchi University (respondent no.4) whereby claim of the petitioner has been rejected and for direction upon the respondents to absorb him against R-1 post identified by the Justice Agarwal Commission w.e.f. the date of sanction of post i.e. 30.04.1986 in the department of Geography at P.P.K. College, Bundu, and further for grant of benefits of pay revision etc.
3. As per the claim of the petitioner, the petitioner was appointed as Lecturer in the department of Geography, P.P.K. College, Bundu, Ranchi on 22.03.1986. He has submitted his joining on 01.04.1986. As per decision of the State Government, various affiliated universities have been taken over on various date in the year 1986. The present college has been taken over w.e.f.

23.10.1986. It further appears that the service of the petitioner has been terminated in the year 1992 but the order of termination has been recalled vide order dated 07.11.1998 and continuity in the service has been maintained.

4. As per above direction, the petitioner has resumed his duty as per decision of Syndicate w.e.f. 09.11.1998. On 01.12.2008 an additional post has been sanctioned which was earlier recommended w.e.f. 30.04.1996. The petitioner has claimed that this post has been sanctioned in the year 2008 was a recommended post. It further appears that vide order dated 7th November, 1998 (Annexure-4), the services of the petitioner has been absorbed under Section 4/14 of the Bihar State Universities Act, 1976 subject to approval of the State Government.

5. It further appears that again the service of the petitioner has been absorbed w.e.f. 09.05.1988 vide notification dated 05.08.2005 (Annexure-8) subject to approval of the State Government. It has further been stipulated that if a candidate has any objection regarding the date of absorption, he can raise objection. It appears that the objection has been raised by the petitioner claiming his date of absorption w.e.f. 01.04.1986 instead of 09.05.1988 which has been shown as date of absorption in the notification dated 05.08.2005.

6. In spite of his absorption, salary of the petitioner has not been released, and as such, he approached this Court by filing a writ petition being W.P.(S) No.7059 of 2006 which has been disposed of vide order dated 30.10.2007. The relevant portion of said order is quoted hereinbelow:-

“This shows that decision has been taken regarding regularization of the services of the petitioners though provisionally in terms of

provisions as contained in Section 4(14) of the Jharkhand State University Act, 2000 and that decision was made subject to approval of the

State Government though as per the judgment of the Hon’ble Supreme Court and also as per the stands of the State Government, final

decision in the matter of regularization is to be taken by the University authorities. I need not to go into that controversy as the matter

involved in the writ petition is limited to the point of payment of the salary. It is evidently clear that services of the petitioners have

provisionally been regularized and the University is even taking services of the

petitioners and some of the other similarly situated teachers

whose services were also regularized provisionally under Annexure 4, as per the case of the petitioners, have been getting their salaries, the

petitioners are also entitled to the relief as claimed for.

Accordingly, the respondent-University is directed to make payment of the arrears of salary as well as current salary of the petitioners till

final decision is taken in the matter of regularization of the services of the petitioners by the competent authority.

With the aforesaid observation/direction, this writ petition is disposed of.â??

7. It has been submitted that in spite of above order, the salary of the petitioner has not been released. The petitioner again approached this Court by

filing another writ petition being W.P.(S) No.3287 of 2016 which has been disposed of vide order dated 10.03.2017 in following terms:-

â??5. Four weeksâ?? time for filing the counter-affidavit was granted to the respondent-University vide order dated 10.01.2017, however,

a counter-affidavit has not been filed by the respondent-University. Considering the nature of grievance raised by the petitioner in the

present proceeding I am not inclined to grant further time for filing counter-affidavit in the matter.

6. Accordingly, the respondent no.-4 is directed to take necessary steps for a decision by the competent authority/Syndicate on the objection

dated 03.09.2005 of the petitioner.

7. The writ-petition stands allowed in the aforesaid terms and to the aforesaid extent.â??

8. Even after the above order, no action has been taken. Then the petitioner again approached this Court by filing a contempt petition being Contempt

Case (Cvl.) No.414 of 2017. During pendency of the contempt petition, salary has been released, but decision has not been taken as per the direction

of this Court, and as such, giving further time the contempt petition has been disposed of vide order dated 19.02.2018.

Subsequently, the impugned order dated 25.04.2018 has been passed by the Registrar, Ranchi University (respondent no.-04). It appears that the

reasoned order has been passed on 25.04.2018 in compliance of order of this Court which has been impugned in the present petition.

9. On specific query being asked from the counsel for the respondent-University,

it has been submitted that the impugned order has been passed by the Registrar, Ranchi University (respondent no.04) and the matter has not been referred to the Syndicate which is the competent authority. The earlier two orders (supra) indicates that direction has been issued to the Syndicate or to the competent authority to pass a reasoned order. The order of absorption has been passed by the Syndicate which could have been reviewed or changed by the same authority or by the superior authority not by the Registrar. The order of Registrar is wholly without jurisdiction and cannot be sustained. Further, it is contradiction of the earlier orders of this Court as noted above.

10. Accordingly, the impugned order dated 25.04.2018 passed by the Registrar, Ranchi University (respondent no.4), is hereby, quashed the matter is remitted back to the concerned authority to pass appropriate order in accordance with the earlier direction of this Court.

11. The learned counsel for the petitioner has submitted that there is a valid order of absorption by competent authority and as such he has worked with the University. Referring to the Article 23 of the Constitution of India, it has been submitted that once the work has been taken by otherwise competent authority, they are duty bound to release the salary, otherwise it will amount to â??begaarâ?? and this attitude by the State or extended arms of the State is not acceptable to our legal system, which is controlled by the Constitution.

12. Be as it may, the authority is directed to take decision regarding payment of salary also as it appears that the petitioner has worked in pursuance of the order of absorption passed by the Syndicate . The University should verify whether the petitioner has actually worked or not for period for which the salary has not been paid i.e. July, 2019 onwards.

13. With the above observations and directions, the present writ petition stands allowed.

It is expected that University will place the matter before the Syndicate and appropriate decision will be taken within four months from the date of receipt/production of a copy of this order.

Pending I.A., if any, also stands disposed of.