
(2013) 10 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2816 of 2013

Deoraj Kumar Tanti

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2014) 1 AJR 592 : (2014) 1 JLJR 66

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant; R. Mukhapadhyay, S.C. II for State and Mr. Abhay Prakash, Advocate for the Respondent No. 5, for the Respondent

Judgement

S. Chandrashekhar, J.—The petitioner has approached this Court for the following relief"s:

(i) An appropriate writ, order or direction commanding upon the respondent authorities particularly respondent Nos. 1, 2, 3 and 4 to show cause as to how and under what authority they have not considered the candidature of the petitioner for appointment to the post of Assistant Professor, Electrical Engineering (now re-designated as Associate Professor) despite the reason the petitioner is declared successful and his name for the purpose of appointment has been recommended by the Jharkhand Public Service Commissioner in its recommendation dated 10.08.2011 and 07.09.2011.

(ii) For issuance of further writ, order or direction commanding upon the respondent authorities particularly respondent Nos. 1, 2, 3 and 4 to immediately and forthwith consider the candidature of the petitioner for the purpose of his appointment to the post of Assistant Professor, Electrical Engineering (now re-designated as Associate Professor).

The brief facts of the case as disclosed in the writ petition are that, the petitioner was initially appointed on the post of Assistant Professor (Electrical Engineering) on 26.02.1993 and since then he has been working at B.I.T. Sindri. An

advertisement was issued on 22.06.2007 inviting applications for appointment on various posts. The petitioner applied for appointment on the post of Assistant Professor (Electrical Engineering). Subsequently after coming into force of All India Council for Technical Education (A.I.C.T.E.) Notification, the post of Assistant Professor was re-designated as Associate Professor. A corrigendum was issued in which, the essential educational qualification for appointment on the post of Assistant Professor was provided as under:

Qualification:

Ph.D. Degree with the first class Degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology.

Experience:

Ph.D. degree with the First class Degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology with 3 years experience in teaching/Industry/Research at the level of Lecturer of equivalent OR First class degree at Master's level in the appropriate branch of Engg. Tech. with 5 years experience in Teaching/Industry/Research at the level of Lecturer or equivalent. Such candidates will be required to obtain Ph.D. Degree within a period of 7 years from the date of appointment as Assistant Professor.

2. It appears that All India Council for Technical Education (A.I.C.T.E.) issued a Notification on 05.03.2010 whereby possessing a Ph.D. degree for appointment on the post of Assistant Professor (re-designated as Associate Professor) was made mandatory. The notification dated 05.03.2010 of the A.I.C.T.E. was adopted by the Government of Jharkhand by Resolution dated 31.03.2012. The name of the petitioner was duly recommended by the Jharkhand Public Service Commission (J.P.S.C.) on 10.08.2011 and 07.09.2011 however, he was not offered appointment on the post of Assistant Professor and therefore, the petitioner has approached this Court by filing the present writ petition.

3. The relevant paragraphs of the counter-affidavit filed by the respondents are as under:

10. That it is humbly stated and submitted that on the basis of this advertisement and the corrigendum issued, a candidate desirous of being appointed on the post of Assistant Professor was required to possess the qualification of Ph.D. with First Class Degree at Bachelor's or Master's level in the appropriate branch under the head of experience it was stated that those candidates with First Class Degree at Master's level in the appropriate branch of engineering with five years experience in teaching could also apply. However, such candidates, if selected would have to complete Ph.D. within seven years.

11. That it is humbly stated and submitted that however, before the appointment for the post of Assistant Professor and Professor could be made the AICTE issued fresh notification vide letter No. F. No. 37-3 Legal/2010 dated 13.03.2010 and a subsequent corrigendum issued on 14.05.2010 bringing about certain changes in

the eligibility criteria for the various posts.

12. That it is humbly stated and submitted that from a kind perusal of Annexure-A Series of this counter-affidavit, it shall appear that the post of lecturers was rechristened as Assistant Professor and accordingly the posts of Assistant Professor was re-christened as Associate Professor.

13. That it is humbly stated and submitted that it shall further appear the liberty allowed to the Assistant Professor (in the changed scenario Associate Professors) to complete Ph.D. degree within seven years of their appointment was done away with meaning thereby that a candidate desirous of being appointed on the post of Associate Professor must possess Ph.D. Degree on the date of his making an application for the said post.

14. That it is humbly stated and submitted that the said notification issued by the AICTE was adopted by the State of Jharkhand vide resolution taken vide memo No. 784 dated 31.03.2012 with effect from 01.01.2006. By the said notification the teaching faculty was extended the benefit of pay revision and their salary was brought at par with the employees of the Central Government. Clause-4 of the letter No. 784 dated 31.03.2012 made it clear that by the said circular all conditions applicable to the employees of the Central Government would be applicable, except the enhancement of age of retirement. It is also relevant to point out that the petitioners have been held entitled to benefit of pay revision from 01.01.2006 and also drawing salary on revised pay scale as per AICTE 6th Pay Rules. On the one hand the petitioner has accepted the revised scale provided in the letter No. 784 dated 31.03.2012 on the other hand they are not ready to accept the changed eligibility criteria provided in the same letter for direct appointment on higher post.

15. That it is humbly stated and submitted that after the adoption of the recommendations of the AICTE the State Government was bound to make appointment in conformity with the recommendations of the AICTE.

16. That it is humbly stated and submitted that since during the pendency of the advertisement had changed rendering the petitioner ineligible for the post of Associate Professor, he could not be appointed on the post of Associate Professor.

4. Heard learned counsel for the parties and perused the documents on record.

5. Mr. Indrajit Sinha, learned counsel appearing for the petitioner has submitted that, since the advertisement was issued on 22.06.2007 and the corrigendum was issued on 28.07.2007 whereunder, possessing Ph.D. degree was not mandatory for appointment on the post of Assistant Professor and since the A.I.C.T.E. notification came into existence on 05.03.2010, which was adopted by the State of Jharkhand on 31.03.2012, the essential qualification which was prescribed in the advertisement for the post of Assistant Professor, cannot be changed and the petitioner cannot be deprived of appointment on the post of Assistant Professor.

The learned counsel appearing for the petitioner has relied on decisions rendered in the case of Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others, and in State of Orissa and Another Vs. Mamata Mohanty,

6. The learned counsel for the State has submitted that, since the A.I.C.T.E. notification was issued on 05.03.2010 whereunder the essential qualification for appointment on the post of Assistant Professor has been prescribed as Ph.D. degree, the petitioner was not offered appointment, as at the time when the appointments were made the petitioner was not possessing the qualification of Ph.D. degree. He has further submitted that A.I.C.T.E. is a statutory body enacted by the Act of Parliament which prescribes standard of teaching and the educational qualification in the technical institutes in the country and, therefore, the direction of A.I.C.T.E. is mandatory while making appointment in the technical institutes.

7. Per-contra, Mr. Abhay Prakash, learned counsel appearing for the J.P.S.C. has contended that the role of Commission is confined only to making recommendations and it was open to the State Government either to accept or reject the recommendations of the Commission. The recommendation in the case of petitioner was made on 10.08.2011 and 07.09.2011 however, it appears that in the light of A.I.C.T.E. notification dated 05.03.2010, the petitioner was not offered appointment on the post of Assistant Professor.

8. A perusal of the advertisement dated 22.06.2007 would disclose the essential educational qualification as under:

Qualification:

Ph.D. Degree with the first class Degree at Bachelor's or Master's level in the appropriate branch of Engineering/Technology.

Experience:

3 years experience in Teaching/Industry/Research at the level of Lecturer or equivalent.

9. A corrigendum was issued on 28.07.2007 in which the basic educational qualification remained the same. The prescription as to experience has been enhanced to 5 years and a liberty was given to the candidates to obtain Ph.D. degree within 7 years.

10. The A.I.C.T.E. notification was issued on 05.03.2010, in which the essential educational qualification of holding of Ph.D. degree for appointment on the post of Assistant Professor has been laid down.

11. It further appears that the State of Jharkhand has adopted the Notification dated 05.03.2010 of A.I.C.T.E. on 31.03.2012 and therefore, I am of the view that the subsequent change in essential educational qualification cannot be made applicable with the retrospective effect, in the case of the petitioner as, the selection process was already initiated and in fact concluded as the name of the

petitioner was recommended by the Commission on 10.08.2011 and 07.09.2011.

12. In Gopal Krushna Rath Vs. M.A.A. Baig (Dead) by Lrs. and Others,

6. When the selection process has actually commenced and the last date for inviting applications is over, any subsequent change in the requirements regarding qualifications by the University Grants Commission will not affect the process of selection which has already commenced. Otherwise it would involve issuing a fresh advertisement with the new qualifications. In the case of P. Mahendran v. State of Karnataka this Court has observed:

5. It is well-settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect.

The Court further observed that:

Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment.

13. In Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, the Hon"ble Supreme Court has observed as under,

24. "In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon, B.S. Yadav and Raman Lal Keshav Lal Soni.

14. In State of Bihar and Others Vs. Mithilesh Kumar, the Hon"ble Supreme Court has observed as under,

19. "Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process

was commenced. The respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the respondent. The question is whether those altered norms will apply to the respondent.

20. The decisions which have been cited on behalf of the respondent have clearly explained the law with regard to the applicability of the rules which are amended and/or altered during the selection process. They all say in one voice that the norms or rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect.

15. Now, advertng to the contention raised by the learned counsel appearing for the respondents, I am of the opinion that it is not open to the State of Jharkhand to contend that the Notification dated 05.03.2010 of A.I.C.T.E. would be applicable in the case of petitioner also, as the said notification has been made applicable with retrospective effect. The State had adopted the above A.I.C.T.E. notification only on 31.03.2012 and the name of the petitioner was duly recommended on 10.08.2011 and 07.09.2011. If the contention of the respondent-State is accepted it would result in invalidating several appointments already made and thus, it may bring in a chaotic situation.

16. In view of the law settled by the Hon''ble Supreme Court and the facts as disclosed in the present writ petition, I am of the view that the claim of the petitioner has been rejected on a ground which cannot sustain the scrutiny of law and therefore, the petitioner is entitled for consideration of his case for appointment on the post of Assistant Professor which has now been re-designated as Associate Professor. The writ petition is allowed in aforesaid terms.