

**(2012) 01 JH CK 0055**  
**In the Jharkhand High Court**  
**Case No : L.P.A No. 583 of 2009**

Dr. Anant Kumar Akhouri

APPELLANT

Vs

The Vice Chancellor, Ranchi University, Ranchi and Others

RESPONDENT

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**Date of Decision :** 06-01-2012

**Acts Referred:**

**Citation :** (2012) 2 JCR 153 : (2013) 3 JLJR 538

**Hon'ble Judges :** Prakash Tatia, J;P.P. Bhatt, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

1. This letters patent appeal is against the order dated 1.12.2009, whereby learned Single Judge observed that since the Committee was considering the matter obviously about the substantive date of appointment of writ petitioner, the Committee might consider the decision rendered in the case of Dr. (Mrs) Rafat Ara Vs. Ranchi University & Ors. (2009 (1) JCR 380) for the purpose of examining continuous service. Learned Single Judge further observed that the decision cited by the State delivered in the case of B.R. Ambedkar Teachers' Association and Others Vs. The State of Bihar and Others, would not be relevant. However, It has also been observed by the learned Single Judge that observation made in the order would not be binding upon the Committee which might take independent decision subject to the condition that all possible efforts should be made to ascertain the correct and complete relevant facts before taking the decision and the Committee would take its reasoned decision in respect of the petitioner, if not all other persons, within two months from the date of presentation of the certified copy of that order. The said decision was directed to be forwarded to the State Government by the Committee which would take the consequent decision thereafter.

2. The contention of the learned counsel for the appellant is that instead of waiting for the decision of the Committee, learned Single Judge should have allowed the writ petition of the writ petitioner by declaring the initial date of

appointment of the writ petitioner, as the issue was not open after the decision rendered in the case of Dr. (Mrs) Rafat Ara Vs. Ranchi University & Ors. (2009 (1) JCR 380). It is also submitted that the petitioner-appellant was initially appointed on a vacant post in the constituent college of the University and was appointed on 23rd February, 1978 and there he rendered services and after taking into account his past services rendered in the constituent college, he was absorbed in the University. However, while absorbing his initial date of appointment has been declared to be 1st January, 1981, which could not have been done and the past service of the writ petitioner could not have been discarded in this way.

3. Learned counsel appearing for the respondent-State, University and Jharkhand Public Service Commission submitted that subsequent to the decision of the learned Single Judge, vide order dated 1.12.2009, the Committee considered the case of the writ petitioner and reached to the conclusion that his substantive date of appointment be considered to be 1.1.1981 and not from any earlier date. The Committee opined that in view of the statutory provision applicable to the appointment, no appointment of an employee could have been continued beyond six month period, who has been given appointment without recommendation of the Public Service Commission. It is also submitted that for the purpose of absorption, the petitioner-appellant is also given benefit of 24 month past service and that benefit is limited only for the purpose of absorption.

4. Learned counsel for the State drew our attention to the Division Bench Judgment of Patna High Court dealing with the same issue, which has been delivered in LPA No. 1495/2001 (Dr. Kishore Kumar & Ano. Vs. The State of Bihar & Ors. and connected matters), uncertified copy of that order has been placed on record along with the supplementary counter affidavit, wherein it has been held that past service benefit to the Lecturer can be given only if the service rendered was legal service, meaning thereby service has been rendered after obtaining appointment according to rules and statutes of the University. Against the said Division Bench, S.L.P No.24570/2008 was preferred which was decided, vide order dated 20.10.2008, uncertified copy of which has been placed on record along with the supplementary counter affidavit, which we have

perused.

5. It would be appropriate to recapitulate the facts of the case that the petitioner-appellant was given appointment on the post of temporary Lecturer in the constituent college, i.e, Simdega College, Simdega, from 23rd February, 1978. Under the "statute regarding regularization of the services of purely temporary lecturers as approved by the Chancellor", petitioner's service was regularized. As it has been provided in the said decision taken by the University with the approval of the Chancellor that temporary lecturers who have completed service of 24 months, their services would be regularized, the petitioner's service was regularized and according to the petitioner, he was given all the benefits of a regular lecturer from the time of regularization of his service by the University

itself. However, when the petitioner was due for promotion, his candidature for promotion was rejected on the ground that as his initial date of appointment was 1.1.1981, he had not completed requisite period of 16 year service. The petitioner's contention, as stated above, is that his service was legal and continuous before he was absorbed in service by the University by taking his service from College to University. The contention of the learned counsel for the respondents cannot be accepted and it cannot be held that service of the petitioner by virtue of his initial appointment made with effect from 23.2.1978 was not legal or it could come to an end automatically after expiry of period of six months, as if it would have been the condition, the respondents themselves could not have taken any decision to absorb the writ petitioner in service of the University under the scheme of absorption referred above, which provides for absorption of temporary lecturers on completion of 24 month service. Otherwise also, the service was offered to the writ petitioner under the statutory provision of the Statute and thereafter continued and once it has been accepted to be a legal service and one benefit of regularization was given to the writ petitioner by absorption by counting it to be a legal, at this belated stage with the passage of more than 16 years, the University and the State cannot say that the service rendered by the writ petitioner after six months of his appointment from the initial date of appointment was illegal or cannot be counted for counting the length of service.

6. The judgment of the learned Single Judge of this Court rendered in the case of Dr. (Mrs) Rafat Ara Vs. Ranchi University & Ors. (2009 (1) JCR 380) considered this of this matter in detail and ratio of that decision is also in favour of the writ petitioner. The writ petitioner also submitted that for the purpose of appointment on the post of temporary lecturer, recommendation of the Public Service Commission was not required, which is clear from the Bihar State University (Constituent Colleges) Service Commission, 1987, wherein section 11 rules out the necessity of obtaining recommendation of the Public Service Commission, if the appointment is given on the sanctioned post for six months. Therefore, in this case it is fully proved that the writ petitioner was given appointment against sanctioned post and his appointment though was for six months was extended and continued for more then two years and accepted to be legal and valid for all purposes at the time of absorbing the writ petitioner. Hon"ble Supreme Court in the case of The The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, held that at the time of considering the question of seniority, period of initial appointment, if not made according to rules, the appointee then continued in service uninterruptedly until regularization of service, the period of officiating service shall be counted. At the cost of repetition, it may be said that the petitioner's service was not found or declared illegal after six month of his appointment after 23.2.1978, but it has been accepted to be legal service. Therefore, the judgment relied by the counsel appearing for the State delivered in the case of LPA No. 1495/2001 (Dr. Kishore Kumar & Ano. Vs. The State of Bihar & Ors.) and S.L.P No.24570/2008 decided

on 20.10.2008, in fact, favours the writ petitioner and not the respondents, wherein also it has been observed that legal service of the temporary employees is required to be counted and the Hon"ble Supreme Court in the order dated 20.10.2008 clearly held that where service is regularized and held to be legal, such issue cannot be reopened.

7. In view of the discussion made above, we do not find any force in the submission of the learned counsel for the State that clause 4 of the Statute provides that how increment will be admissible to the absorbed employee. That clause might have application to the limited extent for grant of increment but so far as initial date of appointment is concerned, that is required to be taken from the initial date of appointment of the petitioner. In view of the above reasons, we are of the considered opinion that there was no need for the learned Single Judge to wait for the decision of the Committee and the decision, if any, taken by the Committee, which, according to the learned counsel for the petitioner, has been taken ignoring the decision given in the case of Dr. (Mrs) Rafat Ara Vs. Ranchi University & Ors. (2009 (1) JCR 380) will not render this L.P.A futile and the petitioner was entitled to the full relief in the writ petition. Therefore, this L.P.A is allowed and it is made clear that initial date of appointment of writ petitioner be 23..2.1978 and the respondents may proceed accordingly.

8. Learned counsel for the respondent-University submitted that Screening Committee took the decision, the record of which has been called and shown to us and indicates that Screen Committee has rejected the candidature of the writ petitioner on the ground of non-completion of 16 year service at the relevant time. That decision of the Committee, in view of the aforesaid judgment, cannot remain in force and the petitioner"s case is required to be reconsidered by accepting his initial date of appointment to be 23.2.1978.