

(2009) 10 JH CK 0008
In the Jharkhand High Court

Dr. Ganesh Prasad Sharma	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Citation : (2009) 10 JH CK 0008

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—I.A. No. 3190 of 2008 has been filed by the petitioner, praying for allowing him to carry out certain amendments in the original writ application.

Shri Sohail Anwer, learned senior counsel for the petitioner, would explain that the petitioner in the writ application has prayed for a direction upon the respondents to pay him the Reader's salary in the UGC scale of pay with effect from 1.1.1996 and also to pay the arrears and current salary in the aforesaid scale and further, to consider his case for promotion on the post of University Professor under the relevant Statute.

Learned Counsel explains that in the counter-affidavit, the respondent-University has stated that since the petitioner's appointment to the post of Lecturer itself was not regularized, as such his case for promotion to the post of University Professor, cannot be taken up.

Learned Counsel explains that the petitioner was appointed as a Lecturer in the Department of Commerce in Sindri College, Sindri on 11.9.1978 at a time when the college was affiliated to the Ranchi University, later the college became a constituent unit of the Ranchi University in the year 1980 and pursuant to the college having attained such status, the University Service Commission, Patna had granted temporary concurrence to the petitioner on his post. The petitioner thereafter, was promoted to the post of Reader initially on temporary basis, but later, such promotion was regularized on the recommendation of the Bihar State

University Service Commission with effect from 19.8.1990. Under such circumstances, the petitioner is entitled to all the benefits of the post as a regular employee and if the respondents have not yet regularized his service, the respondent cannot possibly take a technical plea for denying the benefits of the UGC scale of pay to the petitioner and for refusing to grant him promotion to the higher post. Learned Counsel adds further that in the light of the aforesaid facts, the petitioner needs to add a further prayer to para-1 of this writ application to the effect that the respondents be directed to regularize the services of the petitioner with effect from the date of temporary concurrence on the post of Lecturer with effect from 19.8.1980.

Counsel for the respondents is present. No rejoinder has been filed to the interlocutory application.

I am satisfied that the proposed amendment would not alter or materially change the nature of relief originally claimed in the writ application. Accordingly, prayer for amendment is allowed. LA No. 3190 of 2008 shall form part of the original writ application.

W.P. (S) No. 986 of 2005

Heard counsel for the parties in the writ petition.

Prayer in this writ application is for a direction upon the respondents to pay the Reader's salary to the petitioner in the UGC scale of pay with effect from 1.1.1996 and also to pay him the arrears as well as current salary in the aforesaid scale and further, to consider his case for promotion to the post of University Professor under the relevant Statute.

A further prayer by way of amendment to the writ application has been added for issuance of a direction upon the respondents to consider the petitioner's case for his regularization / absorption in service.

2. As explained by the learned Counsel for the petitioner, it appears that the petitioner was admittedly appointed as a Temporary Lecturer in the Department of Commerce, Sindri College, Sindri, which at the relevant time, was an affiliated college of the Ranchi University and subsequently it gained the status of being a constituent college of the Ranchi University sometimes in the year 1980. Consequent upon the grant of the status of constituent college, the then Bihar Service Commission had accorded concurrence to the appointment of the petitioner to the post of Lecturer, albeit, for a temporary period. Subsequently, the college became a constituent college of the Binoba Bhave University.

3. It also appears from the pleadings and from the annexures to the writ petition, that concurrence on the post of Lecturer was given simultaneously not only to the petitioner, but also to three other Lecturers similarly posted, including one Lalit Kumar Verma. It also appears that Lalit Kumar Verma whose services was engaged along with two other Lecturers including the petitioner, under the Binoba Bhave University, had moved this Court by virtue of a writ application for

issuance of a direction to the University for considering his case for his regularization in service. The writ application was disposed of with a direction to the Vice-Chancellor, Binoba Bhave University to consider the case of the writ petitioner for his regularization / absorption in service. Pursuant to the aforesaid order of this Court, the University considered and recommended the case of the writ petitioner namely, Lalit Kumar Verma, for his regularization / absorption and forwarded such recommendation to the Chancellor. The recommendation having been approved by the Chancellor, the services of Lalit Kumar Verma came to be regularized and since the date after his regularization, he has been enjoying the benefit and privilege of the regularly appointed Lecturer.

4. From the counter-affidavit of the respondents, it appears that a definite stand has been taken by the respondent University that petitioner's prayer for payment of salary in the UGC scale of pay as also the prayer for his promotion to the post of University Professor, cannot be tenable in view of the fact that his services have till date, remained temporary and never regularized. It has been pointed out in the counter-affidavit that though, the Bihar State University Act had incorporated in the Statute certain guidelines for absorption of the purely temporary Lecturers in the regular service of the university and such incorporation in the Statute were carried out as many as on two occasions with a stipulation that such temporary Lecturers who were inducted in service prior to 28.2.1982, may be regularized / absorbed in service, but the petitioner was never regularized under either of the aforementioned Statutes.

5. Counsel for the respondent University would explain that since the petitioner was at the relevant time under the Ranchi University, it was for the Ranchi University to explain the reason as to why the case of the petitioner was not taken up by them for his absorption / regularization in terms of the Statute.

6. Be that as it may, it appears from the comparative chart (Annexure-A to the counter-affidavit) indicating therein a statement of service of the petitioner and that of his colleague Lalit Kumar Verma and the only point of difference between the two is that Lalit Kumar Verma had joined on the post of Lecturer about three months earlier to the petitioner. It also appears from the aforesaid chart that the petitioner and Lalit Kumar Verma were accordingly promoted to the post of Lecturer on ad-hoc basis sometimes in the year 1988. Such ad-hoc promotion was subsequently confirmed pursuant to the recommendation of the then Bihar State University (Constituent College) Service Commission, Patna in the year 1990. The comparative chart also indicates that it was only after the order passed in the writ application filed by Lalit Kumar Verma-for his confirmation / absorption in service and for fixation of his pay in the revised UGC pay scale, that the recommendation was made in his favour by the Binoba Bhave University and upon the approval of the recommendation, he was granted the status of confirmation in service as a regular teacher.

7. It is apparent from the comparative chart as also from the admitted facts, that the benefits of the Statute were not extended to the petitioner for the reasons

which the respondents have not yet been able to explain. It also appears that it was only pursuant to the order passed by this Court in the identical case that the benefit of confirmation / absorption was extended to the petitioner's colleague. There is therefore, no reason as to why the petitioner should be deprived of the benefit of his absorption / confirmation / regularization in service in the same manner as was extended to his colleague Lalit Kumar Verma, particularly in view of the fact that the petitioner had admittedly rendered continuous service ever since the date of his appointment way back in 11.9.1978 initially on the post of Lecturer and now in the post of Reader.

8. In the aforesaid facts and circumstances, this writ application is disposed of with a direction to the Vice-Chancellor, Binoba Bhave University, Hazaribagh (Respondent No. 3) to consider the possible recommendation of the petitioner's case his regularization / absorption / confirmation, to the Chancellor of the University, in accordance with the Rules of Statute. In the event such recommendation is made and approval of the Chancellor is obtained, such approval shall be promptly notified. It would follow that upon the petitioner's being absorbed / regularized in service, the entire consequential benefits thereof including the payment of salary in the UGC scale of pay from the appropriate date, shall be extended to him. The entire exercise must be completed within a period of four months from the date of receipt / production of a copy of this order.

Let a copy of this order be given to the counsel for the respondents.