

(2008) 08 JH CK 0060
In the Jharkhand High Court

Dr. Nilam Pandey @ Nilam Choubey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Citation : (2008) 4 JCR 448

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application has been made for issuance of an appropriate writ for following relief(s).

1. For quashing the order dated 5.10.2002 (Annexure-19) whereby and whereunder the Acting Vice-Chancellor-cum-Registrar, Binova Bhawe University, Hazaribagh has disposed of the representation of the petitioner.
2. For directing the respondents to regularise the service of the petitioner against the vacant sanctioned post of Lecturer in Botany in Shree Shree Laxmi Narayan Trust Mahila Maha Vidyalaya, Dhanbad (hereinafter referred to as SSLNT College) (Respondent No. 6).
3. For directing the respondents to make payment forthwith the petitioner's salary from 1997 onwards till date the petitioner had worked as lecturer of Botany in the said SSLNT College, at par with regular lecturer.
4. For directing the respondents to pay the arrears of difference of salary to the petitioner at par with other regular lecturers of the said college and also in the same terms and conditions of emoluments as admittedly payable against present UGC Pay Scale from the date of joining i.e. 14.12.1985.
5. For directing the respondents to allow the petitioner to take classes of Botany as regular lecturer in the said SSLNT College as the respondents were engaging her.

6. For payment of all other payable admitted consequential dues and payments against the regular pay scale of the lecturer.

7. For payment of interest at the then Bank rate on the aforementioned amount for making delay in payment of the aforesaid salary of the petitioner.

2. The case of the petitioner is that the petitioner was engaged as a lecturer of Botany in SSLNT College by the then Principal for taking classes of Post Graduate Students of Botany vide letter dated 14.12.2005. The Post Graduate Department of Botany, which was started in the year 1985 had continued for three years till 1987 and thereafter, the petitioner's services were engaged as lecturer for Intermediate and Under Graduate (Honours) students in Botany in the said college.

After the demise of the then Head of Department of Botany in the said SSLNT College in the year 1995, the petitioner's services continued to be taken on ad-hoc basis against the regular/permanent sanctioned post of Lecturer of Botany in the said college and she was given a certificate of appreciation on 13.3.1996 by the Principal of the college for her excellent performance.

The successor Principal as well as Head of Department of Botany of the said college had also recommended for regularisation of the petitioner's services.

From the date of her engagement on 14.12.1985 till 1991 the petitioner was being paid Rs. 400/- per month regularly and later from 1992 to 1996, remuneration paid to the petitioner was at @ Rs. 20/- per lecture. However, in spite of taking services of the petitioner continuously till May 2001. payment of remuneration which she was entitled to, was stopped since 1997. Furthermore, the petitioner was also stopped from marking her attendance, although she was regularly taking the Botany classes in the said college and therefore, she used to mark her attendance from the year 2000 in the staff register and this practice had continued till May 2001.

3. When her repeated requests (an-nexure-12 series) and representations failed to yield any response, the petitioner filed a writ petition before this Court vide W.P. (S) No. 6030 of 2001 with a prayer for directing the respondent authorities for regularisation of her services against vacant sanctioned post of lecturer of Botany in the said college, on the ground that she has been continuously rendering her services in the said college for the past 16 years as lecturer of Botany and possesses requisite qualification including PhD Decree.

4. Though writ petition was dismissed by a single Bench of this Court, the Division Bench vide order dated 18.6.2002. while disposing of the appeal being LPA No. 54 of 2002 filed against the order of the learned single Judge, had upheld the observation of the learned single Judge under which the College/ University or the University Service Commission were directed to consider the case of the petitioner and to allow her an opportunity of being heard on her representation for regularization of her services.

Pursuant to the order of the Division Bench, the petitioner filed her representation afresh before the respondents. The representation was disposed of by the impugned order of the Acting Vice-Chancellor rejecting the claim of the petitioner.

5. The grievance of the petitioner is that in spite of the specific direction of the Division Bench of this Court in LPA No. 54 of 2002, directing the respondents to consider the petitioner's representation in the light of the grounds stated, her representation was disposed of even without giving her any opportunity of being heard. Her further grievance is that despite having taken the services of the petitioner till 2001, the respondents illegally stopped payment of her remuneration to her since 1997 on some plea or the other, while on the other hand, generating a hope and legitimate expectation that her services would be regularised in due course.

6. In addition to the above stated order of the Division Bench of this Court in LPA No. 54 of 2002 the petitioner refers also to and relies upon the judgment of the Supreme Court passed in the case of Ranchi University Ad-hoc persons Association and Ors. v. State of Bihar and Ors. (Civil Writ Petition Nos. 86961 and 982 of 1989) in which the Apex Court had given certain directions to be followed by the State of Bihar and the University Service Commission in the matter of appointment of lecturers and a direction was also issued to the respondent University to allow all ad-hoc teachers who were in service as on February 10, 1989 to continue till the selection of the candidates for appointment to the post of Lecturer in the regular manner is made by the University Service Commission and to pay them in terms" agreed upon for the period they actually worked.

7. Shri Mahesh Tiwari, learned Counsel for the petitioner, submits that admittedly, there are three sanctioned posts of lecturer in the Department of Botany in the SSLNT College, Dhanbad and against one of them, services of the petitioner used to be engaged continuously. It is further argued the engagement of the petitioner as a lecturer in the said college was made by the then Principal who had authority to appoint ad-hoc lecturer and the fact that she had worked as ad-hoc lecturer against a sanctioned post, gives the petitioner a right to be regularised as a permanent teacher of the college against sanctioned post in the Department of Botany. Learned Counsel argues further that the stand taken by the respondents that the petitioner was not given any valid appointment letter, nor was she formally appointed as lecturer by any competent authority and that, she was allowed by the then Principal to take the PGT classes in Botany for a limited period only since PG Courses were closed after two years, cannot be accepted in view of the fact that undeniably, the petitioner was appointed as ad-hoc teacher by the then Principal and she used to be paid remuneration in terms agreed upon and even after the closure of the PG Courses, the petitioner continued to work as lecturer in under graduate (honours) of the college. It is further argued that in view of the fact that the petitioner had rendered

continuous service for more than 16 years and does possess all the requisite qualification for her appointment as lecturer of the college, her regularisation in service cannot be denied to her in view of the guidelines as laid down by the Supreme Court in the case of *Secretary, State of Karnataka and Ors. v. Uma Devi* reported in (2006) 4 SCC 01.

8. A counter-affidavit has been filed on behalf of the respondent Vice-Chancellor and Registrar of Binova Bhawe University (respondents 4 and 5) and also by the respondent State of Jharkhand through Secretary, Higher Education, Government of Jharkhand and the Service Commission, Government of Jharkhand. The stand taken by the respondents is as follows:

(i) That, in compliance with the order of the Division Bench passed in LPA No. 54 of 2002, the representation of the petitioner was duly considered by the Acting Vice-Chancellor and it was disposed of by the impugned order after giving adequate opportunity of hearing to the petitioner.

(ii) That, though the petitioner has appeared before the Vice-Chancellor on 29.8.2002 and summary of her statement was recorded though she had refused to put her signature thereon.

(iii) That, the petitioner was not appointed against any vacant sanctioned post and she was engaged to take classes by the Principal of the College and such engagement was without following the process of appointment as required under the Bihar State University Act and Statutes.

(iv) That, the petitioner was never paid any salary. Rather, she was given remuneration on the basis of number of lectures engaged by her as per the contract of appointment, which was made purely on local basis without the approval, at any point of time, of the university.

(v) That, the State or the University had never engaged the petitioner's services, nor had agreed to pay any remuneration to her and therefore, the petitioner's prayer for a direction to the respondents to pay her salary, both arrears and current at par with regular lecturer, is misconceived.

(vi) That, though advertisement for appointment of lecturer in the Department of Botany in the constituent colleges of Bihar was issued by the University Service (Constituent College) Commission on 23.11.1993 and subsequently, on 18.12.1995 and combined interview was held in the month of February 1996 in which the petitioner had also appeared but she could not succeed in the selection test.

(vii) That, SSLNT College is a constituent college of the university and, Department of Botany is affiliated Department by the State Government. As such, for the purpose of appointment of lecturer against the sanctioned post, it is the university alone which is the competent authority and such appointment can be made only on the basis of recommendation of the University Service (Constituent College) Commission.

(viii) That, the proposal for requirement of teaching hand is sent by the College to the University and the University on examining the necessity, sends the proposal for sanction of post to the State Government u/s 35 of the University Act. On sanction of such post made by the State Government, an advertisement is issued by the Commission, and on the basis of selection made and the recommendation of the commission, the University issues letters of appointment to the candidates in the order of merit. Thus, neither the principal of the college nor even the university can give appointment to any candidate to any post in any college. The Principal of the constituent college has no jurisdiction to appoint or engage any person as a lecturer in his college.

(ix) That, the engagement of the petitioner by the principal of the college was therefore totally against the directive of the State Government. Furthermore, since the PGT teaching of Botany were closed after two years, the continuance of the petitioner as a lecturer on ad-hoc basis has no justification.

(x) That, the claim of the petitioner that her services continued to be taken on ad-hoc basis till the May 2001, is totally wrong and misleading as would be evident from the affidavit filed by the Principal of the college in LPA No. 54 of 2002 wherein it was categorically stated that the petitioner was engaged in the college till October 1996 only and she was paid conveyance allowance and thereafter, she was never engaged as a lecturer in the college.

9. Mrs. I. Sen Choudhary, learned Counsel for the respondents vehemently argues that the claim of the petitioner is thoroughly misconceived and the petitioner cannot take advantage of directions contained in the judgment of the Supreme Court in SLP No. 11078 of 1989 and Civil Writ Petition Nos. 86961 and 982 of 1989, firstly because, the petitioner in the aforesaid cases was the Ranchi University Ad-hoc Persons Association and Ors. and therefore, the judgment was not applicable to the ad-hoc teachers. Even otherwise, the Supreme Court has in several cases, deprecated the practice of appointment of ad-hoc teachers, which used to be made in utter violation of the provisions of University Act and Statutes. Referring to the judgment of the Supreme Court in Uma Devi's case (supra), learned Counsel submits that it is well settled principle of law that persons engaged on ad-hoc basis cannot claim any right for regularisation of their services. This principal is applicable more so when the initial engagement itself is questionable. The principal of reasonable expectation of regularisation as mentioned in aforesaid case is not applicable in the instant case.

10. The facts which surfaces from the submissions made on behalf of the petitioner and oh behalf of the respondent university are:

1. Admittedly, the petitioner's engagement was on ad-hoc basis made by the Principal of the College. Such engagement was not made with the approval of the university, nor did the university allot any fund for payment of remuneration of persons engaged on such ad-hoc basis.

2. Engagement of the petitioner was admittedly on contractual basis on payment

of remuneration at stipulated rate per lecture.

3. The petitioner's services continued to be taken till 1996, as admitted by the respondents, though it is the petitioner's claim that her services continued to be taken on the same terms till the year 2001.

4. The issue relating to regularisation of services of ad-hoc teachers was earlier raised before this Court in W.P.(S) No. 6030 of 2001 which was dismissed by the Single Judge vide order dated 20.12.2001, though by giving certain direction to the respondent university and the University Service Commission to advertise the vacant posts of teachers for regular appointment. The Division Bench vide LPA No. 54 of 2002 while upholding the order of the Single Bench, had disposed of the appeal by giving certain direction to the respondent university to consider the petitioner's representation in the light of the grounds advanced by her and to dispose of the same by a reasoned speaking order after giving the petitioner an opportunity of being heard.

11. In the earlier writ application also, the grievance of the ad-hoc teachers of the Ranchi University was the same. Some of them were appointed against sanctioned post, while others were appointed even without sanctioned posts and they were paid fixed sum as salary and not in regular pay scale. Despite their having served as ad-hoc teachers for a considerable number of years, they were sought to be disengaged or terminated and their claim for regularisation of their services were being denied to them. While dismissing the claim of such ad-hoc teachers for their regularisation, the High Court in LPA No. 54 of 2002. recorded its observations in the following terms.

The laws of the University do not give any power to the Principal to appoint any teacher. They cannot even appoint grade IV employee. But it has become very common practice in the constituent colleges of the Ranchi University that the Vice Chancellors/Principles so on appointments, teachers on ad-hoc basis. It appears that not only those posts were not advertised, those posts were not even sanctioned by the State Government. Consequently, the salary of those ad-hoc teachers has been paid and is being paid from out of different funds of the University, namely, Provident Fund, development fund, building fund, etc. The result is that all the Universities are in acute financial difficulty.

Nothing was shown to us either by the counsel appearing on behalf of the University or on behalf of the Chancellor that there was any provision in law, which enjoins the University to appoint as ad-hoc teachers and allow them as permanent teachers. The Act of the University provides for appointment of teachers after due Advertisement against sanctioned posts under the recommendations of the University Service Commission. Admittedly, none of the ad-hoc teachers were so appointed.

The University shall take immediate steps for advertising the sanctioned posts of teachers lying vacant so that it may be filled up without delay on the recommendations of the University Service Commission.

12. The Supreme Court in the Civil Writ Petition Nos. 86961 and 982 of 1989 while upholding the judgment of the Division Bench and the observation recorded therein, had directed the University Service Commission to fill up the vacant post available for direct recruitment within a period of four months from the date of order after issuing the necessary advertisements and with further direction to relax the maximum age in respect of the ad-hoc teachers. A further direction was made by the Supreme Court therein to the respondent University to allow the ad-hoc teachers who were in service as on February 1989 to continue in service till the regular appointments are made to the vacant post both, in the sanctioned and non-sanctioned post.

13. It is thus well settled that ad-hoc employees cannot claim any right for their regularisation in service. This view has been declared even in the recent judgment of the Supreme Court in Uma Devi's case (supra). The petitioner cannot take any benefit of the observations continued in Uma Devi's case (supra) on the plea that she had continuously worked as ad-hoc teacher and therefore, respondents should consider her claim for regularisation in service. Special procedure has been laid down under the University Act for appointment of lecturers and such appointment can be made only on the recommendation of the University Service Commission. Therefore, notwithstanding the period of service rendered by the petitioner as ad-hoc teacher, her appointment can be made only after she undergoes the selection process prescribed under the University Act.

In the case of the petitioner and other ad-hoc teachers similarly situated, this issue is no more *res integra* in view of the judgment passed by the Supreme Court in the aforementioned Civil Writ Petition Nos. 86961 and 982 of 1989.

14. Furthermore, admittedly, the petitioner's engagement was made by the Principal of the college by way of local arrangement presumably to tide over the crisis due to lack of teachers in the Department of Botany in the college. It was therefore an exclusive contract between the Principal and the petitioner, which was made even without the approval of the University and without any funds made available by the University for payment of remuneration to such ad-hoc teachers. The petitioner's engagement by the Principal of the college does not appear to be under any authority vested with him. The respondent university can rightly argue that such engagement being against the provisions of the University Act and the relevant Statute, was illegal and the same cannot be regularised merely on the ground of length of period of such engagement.

The petitioner is expected to be aware of the fact that her engagement as made by the principal, was on purely local level and she was not offered any appointment to the post of lecturer in the college by regular process. She cannot therefore claim that her continuous engagement for more than 16 years, had given rise to legitimate expectation of being regularised in future. The petitioner cannot take the plea of equal pay for equal work and claim pay parity with regular appointees since under the terms of contract between her and the

principal, she had agreed to render her services to the college at the contractual rate and nothing more.

The fact that the petitioner had applied for and had appeared at the interview and other tests conducted by the University Service Commission for appointment of lecturer in the Department of Botany, amply demonstrates that the petitioner was aware that she had to go through the process of selection as prescribed under the University Act and Statutes.

The petitioner's prayer for regularisation of her services against the vacant sanctioned post of lecturer of Botany in the SSLNT College, Dhanbad and to pay her salary at par with the regular teachers for the period she had worked and for directing the respondents to allow her to take classes of Botany as a regular teacher in the said college, cannot be allowed and is therefore rejected.

15. As regards the petitioner's claim that she was allowed to and had continued to render her services even till the year 2001, as per the direction of the Supreme Court in the Civil Writ Petitions wherein the University was directed to allow the ad-hoc teachers who were in service as on February 10, 1989 to continue in service till the date of regular appointment, the same has been denied by the respondents. The respondents have admitted that service of the petitioner was engaged till 1996 and not thereafter. This stand has been taken by the respondents on the basis of the affidavit filed by the principal of the college in LPA No. 54 of 2002. The petitioner on the other hand relies upon the attendance register (Annexure-12 series) in support of her claim that she had continued to render her services up to the year 2001.

In the impugned order, it appears that though, the Acting Vice-Chancellor of the University had considered the fact that the petitioner was appointed by the Principal of the college in December 1985 to be engaged to take classes in P.G. Department of Botany, her services were engaged in the under graduate classes till 1996 only whereafter she was stopped to do so by the Principal of the college. It appears that while recording the observation that the petitioner's services were engaged only till 1996, the Vice-Chancellor did not take into consideration the stand taken by the petitioner that her services used to be engaged for under graduate students till the year 2001 and that, she used to mark her regular attendance as indicated in annexure-12 series.

16. The petitioner's specific contention is that the post of lecturer in the Department of Botany in the SSLNT College, Dhanbad is still vacant and no initiative has been taken by the University to fill up the post by way of regular appointment. In the counter-affidavit, it has not been denied that the post of lecturer in the Department of Botany is vacant in the aforesaid college.

17. Regard being had to the facts and circumstances of the case, it is directed,

1. that Vice-Chancellor of the University shall reconsider the representation of the petitioner in respect of her claim that her services were regularly engaged up

to December 2001 and if the petitioner is able to satisfy on this issue, then to make arrangement for payment of such remuneration to her for the entire period for which she had actually worked, at the rate originally agreed upon.

2. It appears that since after 1996, no initiative was taken by the concerned university to identify the vacant sanctioned post in the various faculties for its constituent colleges. If that be so, the respondent State and the concerned University should take prompt initiative to identify the vacant posts and to fill up the vacancy by way of regular appointment in accordance with the provisions under the University Act and the relevant statutes and complete the process within a period of six months from this date of order.

3. That, following the direction as contained in the judgment of the Supreme Court in the Civil Writ Petition Nos. 86961 and 982 of 1989, the respondents may consider relaxation of maximum age in respect of ad-hoc teachers whose services were continuously engaged for several years and may give preference to such teachers who have put in more than 10 years of teaching experience.

With the aforesaid observations and directions, this writ application is disposed of.