
(2012) 02 JH CK 0064

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6859 of 2004

(Dr.) Ramchandra Prasad

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 02 JH CK 0064

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Nehala Sharmin and Sunita Kumari, for the Appellant; Rajesh Kumar, G.P.-V for the Respondent Nos. 1 and 2 and Mr. I. Sen Choudhary, for the Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar

1. This writ application has been filed for quashing Annexures-9 & 10, whereby the salary of petitioner has been reduced to Junior Scale of Reader. It is stated that on 07.05.1977, the Governing body of Sindri College, Sindri issued an advertisement (Annexure-1) inviting applications from eligible candidates for appointment on the post of Lecturer in Political Science. Petitioner, in pursuance of aforesaid appointment, applied for consideration of his case on the post of Lecturer. Annexure-2 reveals that two posts of Lecturer have been sanctioned in Sindri College, Sindri in the subject of Political Science. It further appears that petitioner appointed on the post of Lecturer in Political Science by the Governing body on 16.09.1977 and he joined on 22.09.1977. It then appears that the appointment of petitioner in the aforesaid College has been concurred by the Bihar University Services Commission, Patna on 11.08.1980. Thereafter, petitioner's services regularized by Annexure-5 as per the provisions of Statute of University dated 18.11.1980. It is further stated that petitioner was promoted on the post of Reader under 10 years Time Bound Promotion Scheme w.e.f.

22.09.1987. Petitioner's promotion on the post of Reader has been confirmed w.e.f. 22.09.1987 vide notification of University dated 26.01.1996. It is worth mentioning that while promoting the petitioner on the post of Reader by Annexure-6, he has been put in the pay scale of Rs. 3700-5700/- because he has been promoted w.e.f. 22.09.1987 i.e. prior to 01.03.1989. It is stated that the aforesaid pay scale is admissible to Senior Reader of University. It further appears that the petitioner again promoted to the post of Professor of University by notification dated 27.11.2002 w.e.f. 15.11.1994 under 16/25 years Scheme.

2. It is submitted that though petitioner has been promoted by Annexure-8 to the post of Professor of the University, he has not been given the pay scale of Professor. It is stated that the Government of Jharkhand has taken a policy decision to implement pay scale fixed by the University Grant Commission (UGC) w.e.f. 13.11.2001. Accordingly, the Government provisionally fixed pay scale of different University Teachers including that of petitioner by Annexure-9. It further appears that the said provisional pay fixed by the Government has been implemented by the University vide Annexure-10. From perusal of the chart attached to Annexure-10, it appears that the petitioner's pay has been fixed in the scale of Rs. 10,000-15200/- taking into account that he has been appointed as Lecturer on 01.01.1981 and as Reader on 01.01.1991.

3. It is submitted that admittedly prior to issuance of Annexure-9 & 10, petitioner was drawing the salary of Senior Reader i.e. in the scale of Rs. 3700-5700/-. Accordingly, it is submitted that without modifying the order, as contained in Annexures-6 & 7, it is not open for the State Government and / or University to reduce the pay scale of petitioner and that too, without giving him any opportunity of hearing. It is submitted that the State Government as well as the University wrongly fixed the pay of the petitioner treating that he has been appointed on 01.01.1981 as Lecturer. It is submitted that there is no basis for coming to such conclusion. Therefore, the aforesaid action of the State Government as well as the University is arbitrary and without any application of mind. Therefore, violative of Article 14 & 16 of the Constitution of India.

4. On the other hand, Sri Rajesh Kumar, G.P.-V and Smt. I. Sen Choudahry, learned counsel for the University submitted that petitioner's services has been regularized under the Statute dated 18.11.1980. It is submitted that from Annexure-5, it is clear that the petitioner's services regularized w.e.f. 01.01.1981. Thus, if his services is counted from 01.01.1981, he is not entitled for promotion under time bound promotion Scheme because he had not completed 10 years continuous service as required for such promotion. Accordingly the State Government and the University revised the dates of appointment and promotion of the petitioner, at the time of fixing of pay scale. Thus, it is submitted that petitioner is entitled to get salary in the pay scale of Rs. 10,000-15200/-. Learned counsel for the respondents, accordingly, submits that there is no illegality in Annexures-9 & 10.

5. Having heard the submission, I have gone through the record of the case. It is

not in dispute that the petitioner has been appointed on 16.09.1977 by the Governing body of Sindri College, Sindri as Lecturer in Political Science on a sanctioned post. It is also not disputed that the Bihar University Services Commission, Patna gave its concurrence on the appointment of petitioner. It is admitted that petitioner's services regularized by the University vide notification dated 14.08.1982 (Annexure-5). It is also admitted that the petitioner was promoted on the post of Reader w.e.f. 22.09.1987 by Annexure-6. The question which required to be decided in this case is whether petitioner is entitled to be promoted on the post of Reader w.e.f. 22.09.1987, as he was confirmed by the University w.e.f. 01.01.1981 ?

6. This bring me to consider the provision of Statute relating to time bound promotion of Lecturer to the post of Reader as approved by the Chancellor on 24.12.1986. Sub Clause (1) of Clause 1 of the aforesaid Statute prescribed eligibility of a Lecturers for their promotion on the post of Reader under time bound Scheme, which runs as follows:-

1. Notwithstanding anything to the contrary as contained in the Statutes, it is hereby provided that :-

(1) A lecturer, serving in a University department or in a degree college managed and maintained by the University shall on the recommendation of the Bihar State University (Constituent Colleges) Service Commission, be promoted on the basis of time bound Scheme, to the post of Reader, subject to the following conditions :-

(a) That, he holds the qualification as prescribed for the post of Lecturer under the Statute enforced at the time of his appointment as lecturer and has fulfilled the conditions, if any attached thereto as laid down in the Statute:

(b) That, he holds substantive appointment on the post of a Lecturer; and

(c) That, he has completed at least ten years of continuous Service as lecturer in one or more Universities:

Provided that the service rendered in a degree college during the period the college was not affiliated in the subject concerned even up to the Intermediate standard, shall not be taken into account for the purpose of this Statutes:

Provided further that the service rendered in more than one University shall be deemed to be continuous if the period elapsed between leaving the service of a University and joining the service of another University does not exceed the normal joining time as prescribed in the service Statute.

[x x x x]

2["Provided that the qualification prescribed for the appointment of Lecturers mentioned above may be relaxed in case of such teachers who were absorbed in the services of the University under the Statutes enforce from time to time and also in case of Demonstrators promoted to the post of Lecturers under the

Statute framed for that purpose.

7. From bare perusal of aforesaid provision, it appears that there are three essentials requirements for promotion on the post of Reader : -

(i) the Lecturer must holds essential qualification prescribed for the post of Lecturer under the Statute;

(ii) he must hold a substantive appointment;

(iii) he must had completed atleast 10 years of continuous service as Lecturer in one or more University.

8. It is not in dispute that the petitioner acquired the minimum qualification on the date of appointment. It is also not in dispute that petitioner's services regularized in the year 1982 by issuance of Annexure-5, thus, on the date of promotion he holds a substantive appointment. According to the petitioner, if period of service rendered by him as temporary lecturer is counted then he had completed 10 years of continuous service. Whereas according to the State and University, the continuous service of 10 years will be counted from date of regularization of petitioner on the post of Lecturer. From perusal of aforesaid Statute, I find substance in the submission of petitioner. If a Lecturer completes 10 years of continuous service, either permanently or temporarily, in my view, is entitled for promotion. Because there is nothing in the Statute from which it can be gathered that requirement of 10 years continuous service is as regular lecturer. Thus, it is not open for the State Government or University to insert some imaginary word (regular before lecturer) in the Statute for denying benefit to the petitioner. The Constitution Bench of the Hon'ble Supreme Court in the case of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, has held that once an incumbent is appointed temporarily to a post, according to Rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. Thus, in view of the aforesaid law laid down by their lordships of Supreme Court, the submission of learned counsels for the respondents has no leg to stand and are liable to be rejected.

9. Since, the petitioner has been appointed on temporary basis after following all the procedures of appointment w.e.f. 22.09.1977, thus, in view of the aforesaid judgment of the Hon'ble Supreme Court, he will be deemed to be in continuous service from 1977 and not from the date of confirmation i.e. 01.01.1981. Accordingly, as per the aforesaid Statute, petitioner had rightly been promoted on the post of Reader under 10 years time bound scheme w.e.f. 22.09.1987, because on that date he already completed 10 years of continuous service on the post of Lecturer.

10. In view of the aforesaid facts and circumstances, the action of respondents in re-fixing the date of appointment of petitioner as Lecturer as well as Reader w.e.f. 01.01.1981 and 01.01.1991 respectively, is wholly arbitrary and without

any basis. It further appears that before doing so, the respondents have not given any opportunity to the petitioner of hearing. Thus, their aforesaid action is illegal being violative of principles of natural justice. Accordingly, I allow this writ application and quash Annexures-9 & 10 and direct the respondents to re-fix the pay scale of petitioner as Professor of the University under the revised pay scale of UGC because petitioner has been promoted to the post of Professor w.e.f. 15.11.1994 by notification dated 27.11.2002 (Annexure-8). Till the fixation of pay of petitioner in the scale of University Professor, he is entitled to get his salary in the pay scale of Rs. 12,000-18,300/- (the scale admissible in the case of Senior Reader) because on the date of implementation of UGC scale, petitioner was getting salary in the scale of Rs. 3700-5700/-.