

(2024) 12 JH CK 0037
In the Jharkhand High Court
Case No : W.P. (S) No.6122 Of 2023

Jayant Shekhar

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 10-12-2024

Acts Referred:

Jharkhand State Universities Act, 2000 — Section 9(7)(ii), 9(7)(iii)

Citation : (2024) 12 JH CK 0037

Hon'ble Judges : Dr. S.N. Pathak, J

Bench : Single Bench

Advocate : Saurav Arun, Sharon Kerketta, Pinky Tiwary, Prashant Pallav, Shivani Jaluka, Dr. A.K. Singh, Ayushri, Sanjoy Piprawall, Prince Kumar, Rakesh Ranjan, Jay Prakash

Final Decision : Dismissed

Judgement

Dr. S.N. Pathak, J

1. The petitioner has approached this Court with a prayer for quashing Advt. No. 23/2023 (Annexure-9 to the writ petition) as floated by the respondent-JPSC for appointment of Registrar in Kolhan University.

Further prayer has been made for quashing the letter dated 03.04.2023 (Annexure-6/1 to the writ petition) issued by respondent No. 2 by which the notification dated 21.03.2023 has been cancelled with further direction to the Vice-Chancellor not to take any policy decision.

Petitioner has also prayed for direction upon the respondents to immediately and forthwith allow the petitioner to continue as Registrar, Kolhan University, Chaibasa till the matter is subjudice before this Court.

Facts of the Case

2. Shorn of unnecessary details, the petitioner was appointed on 19.07.2001 as a Lecturer in Computer Science at New Delhi Institute of Information Technology

where he worked till 2007 and thereafter, he was again appointed on 14.03.2007 as Assistant Professor in Swami Vivekanand Subharti University, Meerut and after working for few years he was promoted to the post of Associate Professor and Professor on 01.03.2009 and 27.12.2011 respectively. The petitioner worked there till 25.03.2017 and thereafter, went to South Africa on lien to teach in a University as Professor from 2017 to 2019.

It is the case of petitioner that an Advt. No. 02/2019 was floated by the respondent-JPSC for appointment to the post of Registrar, in Nilamber Pitamber University and in Clause-2 of the said advertisement it has been stated that in terms of the Statute the appointment will be a direct recruitment for a period of 4 years and it may be extended for further 4 years by the order of the Syndicate. The petitioner finding himself eligible in all respects applied and faced interview and thereafter has been selected as Registrar by the respondent-JSPC which will be evident from letter dated 12.09.2019, which is the recommendation of the respondent-JPSC. The Syndicate in its 53rd meeting approved the appointment of petitioner and accepted his joining as Registrar, Nilamber Pitamber University, Medininagar, Palamau which will be evident from letter dated 19.11.2019. On being appointed, the petitioner took charge on 19.11.2019 itself from one Dr. Rakesh Kumar. Thereafter, on 19.09.2020, the State Government transferred the petitioner with the same tenure period and scale as Registrar to the Kolhan University, Chaibasa from Nilamber Pitamber University, Medininagar, Palamau.

3. It is the further case of petitioner that he made a representation before lapsing of his extension period for giving him extension in terms of the Statute as well as in terms of Clause-2 of the JPSC advertisement as contained in Annexure-1 to the writ petition and accordingly, in the meeting of Syndicate held on 03.03.2023, vide Agenda No. 80-07/23, the Syndicate approved the petitioner's extension for further 4 years. On 21.03.2023, in terms of decision taken by the Syndicate and also in the light of Statute, the extension has been granted to the petitioner and notification to that effect was issued and circulated for communication to all the persons concerned. Subsequently, on 03.04.2023, the respondent No. 2 issued a letter to the Vice-Chancellor and stated that the Vice-Chancellor cannot take any decision in the matter of extension of service of Registrar without approval of His Excellency the Governor-cum-Chancellor of the Universities. On the same day, vide notification dated 03.04.2023, the extension granted to the petitioner has been cancelled by respondent No. 2. Thereafter, on 27.04.2023 the petitioner made a representation to the respondent No. 2 for giving extension to his tenure to work as Registrar but the same went in vain.

4. It is the further case of petitioner that the respondent-JPSC came out with Advt. No. 23/2023 but from bare perusal of the said advertisement it is evident that post of Registrar in Kolhan University was not advertised initially. However, later on the advertisement was modified and corrigendum has been issued by adding the post of Registrar, Kolhan University.

Hence, the petitioner has been constrained to knock the door of this Court.

Submissions of the Petitioner

5. Mr. Saurav Arun, learned counsel appearing for the petitioner assiduously urges that the action of the respondent-authorities is illegal, void and without jurisdiction. The respondent-authorities are bound to consider that petitioner was appointed on the basis of direct recruitment for the tenure of four years. Learned counsel further argues that the respondent-authorities are bound to consider the terms and conditions of advertisement as issued by the respondent-JPSC vide Advt. No. 02/2019 read with Clause-2 which clearly stipulates that "the appointment shall be on the basis of direct recruitment for tenure of 4 years which may be extended by the order of Syndicate for further 4 years only" and as such, cancellation of notification of extension of tenure of the petitioner by respondent No. 2 is de hors the rules and Statute. It has been further argued that Syndicate in its meeting recorded under Agenda No. 80-07/23, approved the petitioner's extension for an additional four years. It has been further argued that the Syndicate also consist of nominated member of Chancellor and as such, it can be construed that Syndicate had the approval of the Chancellor and as such, cancellation of notification of extension of tenure of the petitioner by the respondent No. 2 is de hors the Rules. Referring to the 2016 Statutes read with 2023 Statutes, learned counsel tries to impress upon this Court that Syndicate had the Authority to approve extension, which finds support from the Statutes as well as the Advertisement issued by the respondent-JPSC. Learned counsel further argues that as per the Statutes approval of Chancellor was required therefore, the cancellation of the extension is incorrect as Statutes cannot be changed, annulled or modified by the Executive Orders.

6. To strengthen his arguments, learned counsel for the petitioner places heavy reliance on the following judgments:

I) K. Kuppusamy & Anr. Vs. State of T.N. & Ors. [(1998) 8 SCC 469];

II) Kerala Agricultural University & Anr. Vs. T.P. Murali Thavara Panen & Anr. [2024 0 Supreme (SC) 739];

III) Mohinder Singh Gill & Anr. Vs. the Chief Election Commissioner, New Delhi & Ors. [AIR 1978 SC 851];

Submissions of the Respondents

7. Per contra, counter-affidavit has been filed.

8. Learned counsel appearing for the respondent-University by vehemently opposing the contention of learned counsel for the petitioner emphatically argues that Statute dated 28.10.2016 gives power to the Syndicate of the University to take a decision and pass order for the extension of tenure of a serving Registrar for another tenure of 4 years. However, in the instant case the Syndicate of Kolhan University did not take any specific and clear decision on this issue and did not pass an order for the extension of the tenure of the petitioner for another tenure of 4 years. It merely resolved to recommend for appointment of petitioner

for another term of 4 years as Registrar. Obviously there was no clear decision and no order for extension of the term of the petitioner for another tenure of 4 years as Registrar, Kolhan University, Chaibasa. Learned counsel further argues that giving an order with regard to extension of tenure for 4 years is different from making recommendation for Appointment for another term of 4 years. In the instant case there was no such order to that effect. Learned counsel further argues that Vice Chancellor of a University has no such power/ authority to grant extension of terms/ tenure of a serving Registrar. The order of Chancellor of the Universities (Annexure-6 series to the writ petition) are in conformity with the provisions contained under Section 9(7)(II) of the Jharkhand State Universities Act, 2000. Learned counsel also argues that the representation/ appeal filed by the petitioner has been rejected by the Chancellor in exercise of power vested in him under Section 9(7)(II) of the Jharkhand State Universities Act, 2000 and the petitioner has accordingly been relieved in compliance of the order of the His Excellency Governor-cum-Chancellor of the Universities of Jharkhand. Learned counsel further argues that petitioner was found prima facie guilty of having made an unauthorized and wrong payment of Rs.56,90,754/- to a contractor in league with other Officers and Employee of the University. As such, an FIR/ Criminal Case was lodged against him in Mufassil P.S. Chaibasa on 06.04.2024. Learned counsel submits that in view of the facts and circumstances mentioned above, there is no merit in this writ petition and the same is fit to be dismissed.

9. Mr. Prashant Pallav, learned counsel representing the Chancellor argues that order itself is without jurisdiction as Vice Chancellor was not empowered to issue letter of extension. The power was vested with the Syndicate and Syndicate has not issued any notification or order for extension. The recommendation cannot be termed to be a notification for extension. It has been argued that the stand of the petitioner is totally misplaced and misconceived.

Findings of the Court

10. Heard the rival submissions of the parties across the bar.

11. Before delving deep into the matter it would be proper to examine the relevant provisions of Section 9(7)(ii) & (iii) of the Jharkhand State Universities Act, 2000, which reads as under:

"9(7). The Chancellor shall have power to transfer the officers and teachers of the Universities from one University to another or in the same University on the same post or on any other equivalent post; the transferees shall retain their respective seniority.

(ii) The Chancellor shall have the power to issue direction to the Universities in the administrative or academic interest of the Universities which he considers to be necessary. The direction issued by the Chancellor shall be implemented by the Vice— Chancellor, Syndicate, Senate and other bodies of the Universities as the case may be.

(iii) Any person aggrieved by such order of the Chancellor may file representation to the Chancellor, who on consideration of the representation shall have the power to affirm, modify or rescind his earlier order and pass such other order or orders which he may deem fit and proper.”

12. These clauses clearly speak about remedy available to the petitioner which was never exercised by him.

13. From a bare perusal of Annexure A/1 of the supplementary counter-affidavit dated 28.06.2024, it is clear that the said notification was duly cancelled by which the tenure of Prof. Jayant Shekhar, Registrar, Kolhan University granted extension for another four years. The said cancellation was never challenged by the petitioner. It appears that vide notification dated 21.11.2023 petitioner was relieved from the post of Registrar, Kolhan University, Chaibasa w.e.f. 18.11.2023 and also from Annexure-C it transpires that requisition for appointment of Registrar of Kolhan University, Chaibasa was also sent to respondent-JPSC since tenure of the petitioner has come to an end. From perusal of letter dated 21.03.2023 (Annexure-5), it appears that the order was passed eight months prior to his completion of the tenure for extension which itself is a complete proof of malafide action of the University. The very issuance of this letter shows malice.

The Hon'ble Patna High Court in the case of Jagdish Pandey v. University of Bihar, reported in 1964 SCC OnLine Pat 79 has held as under:

“16. Applying this test to the impugned S. 4 in this case. I find that a question had arisen as to the validity of certain appointments made on or after the 27th November, 1961 and before the 1st March, 1962 necessitating this enactment. In view of this contingency, a discretion was given to the University Service Commission to consider any particular case to test its validity and then to make a recommendation to the Chancellor of the University. The Chancellor of the University had, thereafter, to exercise his own discretion, keeping in view the recommendation of the University Service Commission. It is difficult to hold that the purpose of S. 4 was so discriminatory as to deserve condemnation from Courts.”

14. From Statutes, Rules and the legal provisions it appears that petitioner's main contention is the recommendation of the Syndicate. Law is well settled that recommendation cannot be termed to be a notification/ decision of the Syndicate. The decision, if any, has to be notified by the Syndicate and not by the Vice Chancellor. Even rejection order of the Chancellor has not been challenged by the petitioner.

15. As a sequitur to the aforesaid rules, guidelines and judicial pronouncements, no interference is warranted in the instant writ petition and the same is hereby dismissed.