

(2013) 11 JH CK 0051
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6421 of 2013

Jayanti Dutta

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 JH CK 0051

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Sumeet Gadodia, for the Appellant;

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. The petitioner in the present writ application approached this Court for directing the respondents to forthwith grant approval of the pay scale of her in University Grant Commission revised pay scale in the grade of Lecturer being pay scale of Rs. 8000-13500/-, pursuant to the 5th Pay Revision Committee's Report w.e.f. 1.1.1996. The petitioner also sought a direction upon the respondents to consequently approve and pay the salary to her in the 6th Revised U.G.C. Pay Scale with effect from the date when persons similarly situated to that of the petitioner has been given the benefit of 6th Revised U.G.C. Pay Scale. The petitioner also sought a direction upon the respondents to pay arrears of salary to her according to revised pay scale along with interest @ 18% per annum and not to arbitrarily discriminate her from other similarly situated persons, whose services were absorbed in the same college in which she is working.

2. Learned counsel for the petitioner submits that the present petitioner was appointed as Lecturer in the Department of Philosophy on 4th September, 1985 in P.P.K. College and submitted her joining on 9th September, 1985. The said college was converted into a constituent college of Ranchi University in the year 1986. It is submitted that a committee was constituted, consisting of Vice

Chancellors of different universities to consider the matter relating to regularization of employees working in one or the other respective colleges which were taken over as a constituent college. Pursuant to the recommendation of the Screening Committee, the letters dated 1.2.1988; 18.12.1989 and 24.2.1990 were issued which are contained at Annexure-2. It is submitted that the name of the petitioner transpired in the aforesaid letters and the matter after verification was resolved by the subsequent order contained at Annexure-2 itself dated 24th February, 1990 by which the petitioner was treated to be absorbed in the college in question by a decision of the Human Resources Development Department, Government of erstwhile Bihar in the subject of Philosophy. Learned counsel for the petitioner submits that the issue relating to absorption of various teaching and non-teaching employees however traveled upto Hon'ble Supreme Court in the batch of writ petition, which was decided by the judgment reported in (2005) 9 S.C.C. 129 in the case of State of Bihar & others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh.

3. Learned counsel for the petitioner submits by referring to the observations made at paragraph Nos. 60 to 64 that decision taken earlier vide order dated 1st December, 1988 and 18th December, 1989 were not gone into by one man Justice S.C. Agrawal (Retd. commission) as those employees, who were absorbed by the said orders of the State Government were treated to be validly absorbed through such orders issued in the name of the Governor.

4. However, after the said exercise conducted by one man Justice Agrawal Commission and the judgment passed in the case of State of Bihar (Supra) respective universities have undertaken a fresh exercise to issue orders of absorption of such teaching/non-teaching employees including that of the present petitioner and other similarly situated persons vide notification dated 7th March 2009, whereby 17 such teachers in the same P.P.K. College have been absorbed in the services of the Universities against the subject noted against their names.

5. It is further submitted that where such teachers of different subjects also came before this Court in W.P(S) No. 4833 of 2008, namely Dr. Trilochan Mahto, Dr. (Mrs.) Bandana Kumari and Dr. (Mrs.) Vijay Laxmi, seeking direction upon the Respondents-State for grant of the benefit of U.G.C. Pay Scale in pursuance of 5th Pay Revision. The said writ petition was decided on 7th December, 2011 vide Annexure-7 directing the Principal Secretary, Higher Education, Department of Human Resources Development, Government of Jharkhand, Ranchi, to take a decision in the light of the observations made in the said judgment. Learned counsel for the petitioner submits that thereafter in contempt a decision taken by the Principal Secretary, Higher Education, Department of Human Resources Development to refer the matter to the University for further verification was however quashed vide judgment dated 8th March, 2013 passed in Contempt Case (Civil) No. 370 of 2012 with a direction to take a decision afresh by the concerned respondent. It is submitted by the petitioner at paragraph Nos. 29 and

30 that the case of the present petitioner is exactly applicable to the cases of other teaching employees who are covered under the same observation, notification contained at Annexure-3 dated 7th March, 2009. It is submitted by the learned counsel for the petitioner that the same orders dated 18th December, 1989 and 24th February, 1990 have also been evidenced in the judgment passed by learned Single Judge in the cases of other co-similarly situated person in W.P. (S) N. 4833 of 2008. Leaned counsel for the petitioner submits that in such circumstances there is no reason for the Respondents-State to withhold a decision in the matter of grant of the benefit of 5th pay revision as per the University Grant Commission recommendation in the appropriate scale. It is further submitted that the petitioner is further entitled to the benefit of 6th Revised U.G.C. Pay Scale at parity with other similarly situated persons.

6. Leaned counsel for the petitioner submits that in such circumstances, the respondent No. 2, Director, Higher Education, Human Resources Development Department be directed to take an appropriate decision after taking into account all necessary attended facts and the relevant notification as referred to hereinabove including the judgment relied upon by the petitioner.

7. Leaned counsel for the Respondents State submits that the writ petition has been filed only about a month and no counter affidavit has been filed in the matter.

8. Learned counsel for the University submits that at this stage the grievance of the petitioner is to be confined to the grant of 5th Pay Revision as recommended by U.G.C. since in the case of the petitioner the same is still under consideration before the respondents-authorities. It is only after the grant of 5th Pay Revision that upon recommendation of the University, pay fixation under the revised 6th Pay Scale can be done by the Respondents-State.

9. After hearing learned counsel for the parties, it appears that the matter relating to consideration of grant of revised 5th Pay revision as recommended by U.G.C. is to be considered at the level of the respondent department at the first instance after taking into account all relevant facts and circumstances, the recommendation made by the University, as also the orders of absorption of the petitioner including the judgment relied upon by the petitioner.

10. In such circumstances, the writ petition is being disposed of without making any comments upon the claim of the petitioner with a liberty to the petitioner to approach the respondent No. 2, Director, Higher Education, Human Resources Development Department with a fresh representation through proper Channel together with all supporting facts and documents, notification and judgment on which she seeks to rely within a period of 3 weeks. On receipt of such representation the respondent No. 2, Director, Higher Education, Human Resources Development Department shall consider the same in accordance with law and after due verification of the records of the petitioner take an informed decision by passing a reasoned and speaking order within a period of 12 weeks

thereafter, which shall also be communicated to him. Needless to say that if the respondent No. 2 finds the claim of the petitioner to be genuine and legally admissible for such grant of revised Vth U.G.C. Pay Scale consequent upon her absorption, funds for such payment of arrears of salary as also the current salary under the Vth revised pay scale shall be released in favour of the University for onward payment to the petitioner within a period of 12 weeks thereafter. After the decision to be taken by the respondent No. 2, it would be open to the petitioner to approach the concerned respondent University and the State authorities for grant of any further revision under the VIth U.G.C. pay scale which may be considered in accordance with law. Accordingly, the writ application is disposed of in the aforesaid term.