

(2013) 01 JH CK 0018
In the Jharkhand High Court
Case No : Writ Petition No. 5457 of 2004

Krishna Kumar Khaware

APPELLANT

Vs

Acharya Vinoba Bhave University and Others

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Bihar State Universities Act, 1976 — Section 35

Citation : (2013) 1 AJR 790 : (2013) 2 JLJR 625

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Manish Kumar, for the Appellant; I. Sen Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. This writ petitioner has approached this Court in the present writ petition in the year 2004 for directing the respondents to pay salary to the petitioner which, according to him, has not been paid from April, 1981 till date in spite of the fact as alleged by the petitioner that he is working as class-III employee in the Balanand Sanskrit Mahavidyalaya, Deoghar on the post of Library Assistant continuously.

2. The petitioner had earlier approached Patna High Court in CWJC No. 2867 of 2000 (P) also for the same and similar relief for payment of salary from April, 1981. It is the case of the petitioner that he was appointed on the post of Library Assistant in the year 1981 by the Governing Body of the college, which be-came constituent in the year 1982 and as per submission of the counsel for the petitioner, employees appointed by the managing committee on the sanctioned post shall be taken in the University service. That writ petition was dismissed vide order dated 19th August, 2002 on the ground that this Court has no jurisdiction to entertain this writ petition as the University in question was situated at Darbhanga within the State of Bihar and the college, in which the petitioner is alleged to have been working, also comes within the said University,

by giving liberty to the petitioner to approach the Patna High Court. The petitioner has relied upon an office order as contained in Annexure-5 dated 1st September, 1998 under the signature of the Registrar, according to which the services of the petitioner were to be adjusted on the sanctioned vacant post of Library Assistant with effect from 1st April, 1998.

3. The respondent Acharya Vinoba Bhave University has appeared and filed their counter-affidavit in which the said college now falls. The respondent categorically stated that the letter No. S. U.-32/99-3743/R.S. dated 10.8.1999 was sent from the Governor, Secretariat to the Vice-Chancellor, K.S.D.S. University, Darbhanga categorically indicating therein that there is no reason to grant the scale and salary of the Library Assistant to the petitioner. This was again communicated vide letter dated 5th November, 1999, Annexure-B, and the petitioner has moved this Court after lapse of five years after communicating the said letter to the petitioner and the said letter is not challenged in the present writ petition. It is the categorical statement of the Acharya Vinoba Bhave University that after bifurcation of the State and transfer of the said Balananda Sanskrit College, Deoghar to the present Acharya Vinoba Bhave University, the name of the petitioner also does not figure in the list of the employees of the said Balanand Sanskrit College, Deoghar. It is the further case of the respondents that the claim of the petitioner is wholly untenable as he was not appointed on any vacant sanctioned post and the governing body was not competent to make appointment against such post after more than six months. Counsel for the respondents also submitted that his earlier writ petition was also not entertained by this Court and the same has attained finality.

4. Learned counsel for the petitioner has also produced a letter dated 18th June, 2010 issued by the Registrar of the K.S.D.S. University, Darbhanga addressed to the Principal Secretary, Hon"ble Chancellor which however itself indicates that the University has made it clear that the petitioner was never made any payment of salary by the said University. The said letter dated 1st April, 1998 (Annexure-5) said to be issued by the Registrar of the said University has been treated to be non est, in view of the letter of the Chancellor Secretariat dated 1st November, 2009 as the said letter was issued in contravention of Section 35 of the Bihar Universities Act, 1976.

5. From the aforesaid facts, therefore, it appears that the petitioner's claim for payment of salary since April. 1981 to the post of Library Assistant in Balanand Sanskrit College, Deoghar is not sustainable on any legal basis as the petitioner had never been appointed on any vacant sanctioned post in the said college as claimed by him. The said letter of the Chancellor communicated to him vide Annexure-A to the counter-affidavit of the University dated 10th August, 1999, communicated in September, 1999 itself has not been also challenged by the petitioner either in the present writ petition. Therefore, it appears that the instant matter is not based upon legal and factually sustainable rights claiming direction upon the respondents to pay salary to him from April, 1981 itself on the

post of Library Assistant, as claimed by the petitioner. I find no merit in this writ petition, which is accordingly dismissed.