

(2019) 07 JH CK 0203

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2840 Of 2010, 3549 Of 2011

Man Mohan Jha And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 JH CK 0203

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rajiv Ranjan, Afaque Ahmed, R.K Shahi, Dr. Ashok Kumar Singh, I. Sen Choudary

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

The issues involved in both the writ petitions are being same, they have been heard together and are being disposed of by a common order.

The petitioners have preferred these writ petitions for direction to the respondents for fixation of pay of the scale of the petitioners in compliance of the decision of the Government of Bihar Vide Memo No. 454 in the pay scale of Rs. 2,200-4,000 under the 4th Pay Revision Recommendation under the U.G.C regulation which were already decided by the Government of Bihar to be implemented w.e.f 1.1.1986. The prayer is made for quashing the annexure-9 issued by the Government of Jharkhand for implementation of the Vth Pay Revision Recommendation.

It is contended that the petitioners have been appointed during the periods 1978 and 1985-89 to the post of College Librarian and physical Training Instructor having the requisite qualification for the posts. The petitioners were appointed by the Governing Body of the College at that time and those colleges are now Constituent College and the appointment of the petitioners have been approved. Mr. Rajiv Ranjan learned counsel for the petitioner submits that the petitioners

possesses all the requisite qualification for the posts of College Librarian and College Physical Training Instructor. He further submits that all the universities and colleges teaching and non-teaching staffs are under the efforts of standardization of Higher Education, various notification, various circulars and regulations have been issued by the University Grants Commission from time to time describing minimum qualification for a particular post as well as the required pay scale to be granted to such posts. It is further contended that while considering the fourth pay revision, the regulations under the directions of the Ministry of Human Resources Development, Government of India, U.G.C came out with a regulation of the revision of pay scale of teachers in universities and colleges and also prescribed other measures for the maintenance of standard of higher education. The Government of India issued statutory directions under the U.G.C Act to the U.G.C for up gradation in salary and scales of Librarian and instructor of Physical Education by letter dated 15th December, 1982 which forms part of the 4th Pay Revision Recommendation of the U.G.C which was made effective w.e.f 1.1.1986. The regulation has been annexed as annexure-1 to the writ petition. It is further contended that under the above regulations prescribing the minimum qualification for the Librarian and Physical Education Instructor was prescribed as follows:-

Designation

Pay Scale Recommended

Educational qualification

Assistant Librarian/College Librarian

700-1600

First or second class BA/B.Sc/B.Com Degree plus a first or second class M. Lib.Sc. Degree

Instructor of Physical Education

700-1600

Post Graduate Diploma or certificate or a degree in Physical education.

It is further submitted that under the 3rd Pay Revision, the Government of Bihar had already recommended and was paying to the Assistant Librarian, College Librarian/Physical Training instructor the higher Training Instructor the higher pay scale of Rs. 8000-13,600/- instead of Rs. 7,000-16,000/- prescribed under U.G.C Regulations. After recommendations by U.G.C under the 4th Pay Commission which was made effective from 1.1.1986. The Government of Bihar vide letter no. 454 dated 29th May, 1992, the government took a decision that all the Assistant Librarian/College Librarian and the physical Training Instructor in college would be given the U.G.C Pay scales provided that they possesses the requisite qualification under the U.G.C Recommendations under the 4th Pay Revision. It is further stated that in the decision of the Government , reference of the letter of

the Government of India dated 22.7.1988 forming Appendix- II of the direction of the Government of India and the qualification prescribed in letter dated 15.2.1982, Appendix-I of the direction, was accepted as the criteria for grant of U.G.C pay scale. The learned counsel for the petitioner submits that the petitioners possesses requisite qualification as prescribed in the 4th Pay Revision Recommendation by the U.G.C and they are fully covered under letter no. 454 dated 29.5.1992 of the Government of Bihar. Mr. Rajiv Ranjan, the learned counsel for the petitioner submits that the aforesaid letter of the Government of Bihar is consisting of the decision of the Government to implement and enforce UGC pay scale for the College Librarian and College Physical Training Instructor and in compliance of the directions of the Government of Bihar addressed to all the Vice Chancellors of the various Universities, Director(Higher Education), Government of Bihar, issued directions to all the Universities requesting them to furnish particulars of the Assistant Librarian/College Librarian/Physical Training Instructors functioning in the college for the purpose of pay fixation and for grant of U.G.C scale of them. Various Universities prepared the particulars of the Assistant Librarian/College Physical Training Instructor under the University and sent the same for pay fixation and for grant of pay scales respectively for payment of UGC pay Scale. It appears that there was enormous delay in the pay fixation by the respective universities and even in Bihar , as late as in 2004 and 2009, pay fixation orders for Assistant Librarian/College Physical Training instructors, has been sent for approval of the pay scale. It is further stated that Ranchi University was bifurcated resulting in Vinoba university came and Nilambar Pitambar university also created and no such efforts of pay fixation of Assistant Librarian and Physical Training Instructor was made by these Universities and it remained pending since 1.1.1986. He has drawn the attention of this court to the annexure-5 to the writ petition. He further submits that Government of Bihar has already implemented UGC Pay Scale and granted the pay scale of Rs. 8000-13,500/- . He further submits that so far as the Ranchi University and Vinoba university are concerned, they have not forwarded the name of the persons who are to be provided the university scale and in the meantime, the State of Jharkhand was bifurcated and created out of State of Bihar and since no step was undertaken by the Government of Jharkhand, the old scale continued to be paid to the Assistant Librarian/College Physical Training Instructor. The crux of the argument of Mr. Rajiv Ranjan is that since the year 1992 itself, Government of Bihar took a decision to implement with respect to the Librarian but as the Vinoba university and Nilambar Pitambar university have not forwarded it at that time that is why the matter is still pending. He further submits that by way of annexure 9 Government of Jharkhand has put rider that revised pay scale accepted w.e.f 1.1.1986 will be applicable only to those officers who are appointed after the amendment of university Act on 1.5.2004.

He further submits that in the U.G.C Regulation there is no such rider to the effect that the persons, who are appointed by JPSC can only be provided that pay scale. He further submits that so far as Librarians are concerned, they are

also teachers as this issues is set at rest by various decisions of the various Court and to substantiate this argument he has relied the decision in the case of Krishan Gopal and Anr Versus Union of India and ors reported in 2012(130) DRJ 170 (DB) in which it has been held that the post of Librarian is equivalent to the teacher,.

Mr. Afaqu Ahmed the learned counsel for the petitioner in W.P(S) No. 2840 of 2010 submits that so far as this petitioner is concerned, he has already been provided that scale and he has been paid the same up to February, 1999 and thereafter all of a sudden that pay scale has been stopped and he was being paid reduced pay scale. He further submits that the petitioner was appointed in the year 1976. He has drawn the attention to the statutes regarding qualification, pay scale etc of the University librarian, Deputy Librarian, Assistant Librarian and College Librarian and C(2) of which is reflected here under. :-

(c) Assistant Librarian or College Librarian

Qualification: Good academic record with at least a high second class Master's degree in a subject other than library science and

(ii) A first or high second class Master's degree in Library Science.

(2) The existing incumbents of posts noted above, who hold the qualifications as prescribed by the University before this Statute came into force(i.e before 15th July, 1986) shall be deemed to be qualified for the posts they are holding.

Mr. Rajiv Ranjan further argued that after creation of the State of Jharkhand as he has been instructed that the very few appointments have been taken place through JPSC, rather the petitioners have been working on that post from very early date.

So far as the petitioner in WPS no. 2840 of 2010 is concerned, he was working since 1976 and the petitioners in WPS No. 3549 of 2011 are working since 1978 and 1985-1989 and on this extent he submits that there is no appointment through JPSC and maximum number of librarians are appointee of 1976 and 1985-89.

On the other hand, Dr. Ashok Kumar Singh learned counsel for the Sidhu Kanhu Murmu University vehemently argued in W.P(S) No. 2840 of 2010) that the petitioner is not working on the sanctioned post and that is why he is not entitled for the U G.C scale. He further submits that taking into account the regulation of the UGC, Government of Jharkhand came forward with annexure-9 wherein there is a condition precedent that the persons, who are appointed through J.P.S.C can only be extended U.G.C Scale. He further submits that the petitioners have already-retired in the year 2010 and thereafter they have come before this court.

Mrs. Indrani Sen Choudhary learned counsel for the Vinoba Bhave University in W.P(S) N. 3549 of 2011 supported the arguments of Mr. Singh and submits that the petitioners are having not required qualification and that is why they are not

entitled for the said scale. Referring to the para-18 of the counter affidavit, she further submits that the petitioners are being paid the scale of pay of Rs. 9300-34800 + Grade pay 4200 which are being paid..This is not in dispute that the petitioner are being paid this pay scale. They have admitted that they have received this pay scale but they are demanding the pay scale of Rs. 8000-13500/- and 15600-39100/- respectively w.e.f 1.1.1996.

Mr R.K. Shahi, the learned counsel for the State submits that statutes have been framed and qualification and criteria have been prescribed therein and the petitioners are not fulfilling the criteria that is why the petitioners are not entitled for the said scale.

At this Stage Mr. Afaq Ahmed, the learned counsel for the petitioner in WP(S) NO. 2840 of 2010 submits that the petitioner Man Mohan Jha earlier moved before this Court by way of filing writ petition being W.P(S) No. 2391 of 2008 which was disposed of on 4.11.2009 with the direction to the university to decide the said representation in accordance with law expeditiously ,preferably within four months from the date of receipt of this order. He further submits that inspite of the order passed by this court, university has not passed any order as yet and the matter is still pending.

Having heard the learned counsel for the parties, this court finds that in the university regulation there is no rider that the persons, who have been appointed through JPSC, can only be provided that scale and the Government of Bihar has already taken a decision in the year 1992 to implement that decision and pursuant to that, all the universities were asked to send proposal but due to bifurcation of the State of Bihar, the State Universities, who are under the purview of the State of Jharkhand, have not sent the proposal that is why the matter is still pending. This court also finds that there is force in the arguments of the learned counsel for the petitioners that the petitioners are having required qualification which is apparent from the statute regarding qualification pay scale etc .The post of the librarian is treated as post of the teacher is already decided in various cases and the learned counsel for the petitioners referred one of the judgment which is taken note of in this order. Bihar Government has already taken a resolution to implement the UGC Scale. Due to non action of the University in the State of Jharkhand the petitioners have been deprived of the pay sale provided by the UGC in the 4th Pay Revision and consequently after revision of the pay scale.

As a cumulative effect of the all facts and looking to records this court feels that in this regard decision needs to be taken by the concerned authority at the first instance taking into account the observation made herein above. Accordingly, State-respondents are directed to take decision and pass an appropriate order/ speaking order in the light of the observation made herein above. Some of the petitioners have already retired and some are still in job and as such it is desirable that decision in this regard be taken an early date and accordingly authority shall take decision within eight weeks from the date of the receipt/

production of a copy of this order.

It is made clear that this court is not quashing the annexure-9 at present as the matter is being remitted back to the authorities to take decision in the light of the observation made in this order.

These writ petitions stand disposed of.