
(2018) 01 JH CK 0088

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 436 Of 2009

Nilam Pandey

APPELLANT

Vs

State Of Jharkhand and Ors

RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

Jharkhand University Act, 2000 — Section 35

Citation : (2018) 01 JH CK 0088

Hon'ble Judges : Aparesh Kumar Singh, J;B.B. Mangalmurti, J

Bench : Division Bench

Advocate : Mahesh Tewari, Pankaj Kumar Dubey

Final Decision : Dismissed

Judgement

1. Appellant is the writ-petitioner aggrieved by the judgment dated 22nd August, 2008 passed by the learned Single Judge in W.P.(S) No. 1235 of 2003 wherein the learned Writ Court disposed of the writ petition with certain directions inter alia as follows:-

"17. Regard being had to the facts and circumstances of the case, it is directed,

1. that Vice-Chancellor of the University shall reconsider the representation of the petitioner in respect of her claim that her services were regularly engaged up to December, 2001 and if the petitioner is able to satisfy on this issue, then to make arrangement for payment of such remuneration to her for the entire period for which she had actually worked, at the rate originally agreed upon.

2. It appears that since after 1996, no initiative was taken by the concerned university to identify the vacant sanctioned post in the various faculties for its constituent colleges. If that be so, the respondent State and the concerned University should take prompt initiative to identify the vacant posts and to fill up the vacancy by way of regular appointment in accordance with the provisions under the University Act and the relevant statutes and complete the process within a period of six months from this date of order.

3. that, following the direction as contained in the judgment of the Supreme Court in the Civil Writ Petition Nos. 86961 and 982 of 1989, the respondents may consider relaxation of maximum age in respect of ad-hoc teachers whose services were continuously engaged for several years and may give preference to such teachers who have put in more than 10 years of teaching experience."

2. As per the case of the writ-petitioner she was engaged as a Lecturer of Botany in Shree Shree Laxmi Narayan Trust Mahila Maha Vidyalaya, Dhanbad (hereinafter referred to as SSLNT College) by the then Principal for taking classes of Post Graduates students of Botany vide letter dated 14th December, 1985. According to her the Post Graduate Department of Botany continued for three years till 1987 and thereafter she was engaged to take classes for Intermediate and Under Graduate (Honours course) in Botany in the said college. After the demise of the Head of the Department of Botany in the year 1985, she was continued on ad-hoc basis against regular/permanent sanctioned post of Lecturer of Botany in the said college and also received a certificate of appreciation on 13th March, 1996 by the Principal for her excellent performance. Her case was recommended for regularisation by the successor Principal as well as the Head of the Department of Botany. Since her date of engagement till 1991 she has been paid Rs. 400/- per month and later from 1992 to 1996 remuneration at the rate of Rs. 20/- per lecture. However, in spite of continuous engagement till May, 2001, payment of remuneration was stopped since 1997. She was stopped from marking her attendance and continued till May, 2001. Petitioner approached this Court in W.P.(S) No. 6030 of 2001 with a prayer to direct the respondent-authorities to regularise her services which was dismissed by the Writ Court. However, in L.P.A. No. 54 of 2002 the learned Division Bench by order dated 18th June, 2002 upheld the observations of the learned Single Judge under which the College/University were directed to consider the case of the petitioner and to allow her an opportunity of being heard on her plea of regularisation. Her representation thereafter has been disposed of by Acting Vice-Chancellor rejecting her claim by impugned order dated 5th October, 2002 (Annexure-19 to the writ petition). In this background, the present writ petition was filed inter alia seeking quashing of the order dated 5th October, 2002; for regularisation of her service on the vacant sanctioned post of Lecturer in Botany in SSLNT College; for direction to make payment of her salary since 1997 at par with regular Lecturer till the date she worked; to pay arrears of difference of salary at par with other regular Lecturers of the college as per the UGC pay scale from the date of her joining i.e., 14th December, 1985; to allow her to take classes of Botany as a regular Lecturer and for payment of all admitted consequential dues alongwith interest at the bank rate. According to the writ-petitioner engagement on ad-hoc basis over such a period of time gave her right to be regularised as a permanent teacher of the college against the sanctioned post in the Department of Botany. However, no valid appointment letter was issued by the competent authority though she was allowed to take PGT classes for a limited period of two years. Thereafter, she continued to work as Lecturer in under graduate (honours

course) of the college as PG course was closed. The respondent-University and the Directorate of Higher Education both filed their counter affidavits in the writ proceedings inter alia taking the following plea:-

(i) the impugned order was passed after giving adequate opportunity of hearing to the petitioner.

(ii) petitioner refused to put her signature on the proceedings when she appeared before the Vice-Chancellor on 29th August, 2002.

(iii) She was not appointed against any vacant sanctioned post and was engaged to take classes by the Principal of the College without following the process of appointment as per the University Act and Statutes.

(iv) She was never paid any salary rather remuneration was paid on the basis of number of lectures given as per the contract of appointment on purely local basis without any approval of the University.

(v) The State or the University never engaged the petitioner's services.

(vi) Though advertisement for appointment of Lecturer in the Department of Botany in the constituent colleges of Bihar was issued by the University Service (Constituent College) Commission on 23rd November, 1993 and subsequently on 18th December, 1995 and combined interview was held in February, 1996 in which the petitioner also appeared but she could not succeed in the selection test.

(vii) Since the SSLNT is constituent college of University, the University alone is the competent authority to make any appointment on the recommendation of the Commission.

(viii) As per the provisions of Section 35 of the University Act once a post is sanctioned by the State Government and recruitment exercise undertaken through the Commission only, appointment is to be made by the University of any candidate as per merit. Neither the Principal of the College nor the University can give appointment to any candidate to such post in any college. The Principal of the College has no jurisdiction to appoint or engage a person as a Lecturer in the college.

3. Based on this contention the respondents opposed the plea of the petitioner of regularisation or permanence in service. The learned Single Judge took note of the stand of the parties and came to the opinion that ad-hoc employees cannot claim any right for their regularisation in service in view of the recent judgment rendered by the Apex Court in the case of Secretary, State of Karnataka and others vs. Uma Devi reported in (2006) 4 SCC 01. It also took note of the observations made by the Division Bench in L.P.A. No. 54 of 2002 that the University Act does not empower Principal to appoint any teacher, though it has become common practice that even in constituent colleges appointments were made on ad-hoc basis by the Vice-Chancellor/Principal without any advertisement or sanction by the State Government. The learned Single Judge

further observed that even as per the case of the petitioner she was engaged by local arrangement by the then Principal of the College to tide over the crisis due to lack of teachers in the Department of Botany in the college. It was therefore an exclusive contract between the Principal and the petitioner made without the approval of the University and without any funds made available by the University for payment of remuneration to such ad-hoc teachers. Learned Writ Court was therefore of the view that such engagement is illegal and cannot be regularised merely on the ground of length of period of such engagement. The petitioner could not claim legitimate expectation of being regularised in future on the basis of her continuous engagement. She cannot either take the plea of equal pay for equal work and claim parity with regular employees. In this background however, the learned Single Judge was pleased to direct the Vice-Chancellor of the University to reconsider her representation and to further identify the vacant sanctioned post in various faculties of the constituent colleges and fill them up by way of regular appointment within a stipulated period and also consider relaxation of maximum age limit in respect of ad-hoc teachers in the light of the judgment rendered by the Apex Court in Civil Writ Petition No. 86961 and 982 of 1989.

4. The appellant while assailing the impugned direction has urged that learned Single Judge has failed to consider that her engagement was against a sanctioned post after being found eligible and that she had continued without any hindrance for more than 15 years. Therefore, the petitioner had a legitimate expectation to be regularised in service and receive all salary and emoluments at par with regular teachers. She also contended that the learned Single Judge failed to take into account her regular service till 2001 though remuneration was paid till 1996 only.

5. We have considered the grounds urged by the appellant in detail in the light of the factual matrix of the case and the relevant provisions of the University Act and the Statutes. From the face of the narrative recorded above, it is abundantly clear that at no point of time the writ-petitioner was appointed in a regular manner on a sanctioned post in the College in question as a Lecturer in the subject of the Botany upon recommendation of the University Service (Constituent Colleges) Commission after creation of such post by the State Government. Her engagement since 1985 was purely ad-hoc in nature and admittedly by way of a local arrangement by the Principal of the College. It is also apparent that she had failed in selection process undertaken through the University Service Commission after having faced the interview in February, 1996. Therefore, petitioner could not have claimed regularisation in service in teeth of the specific provisions of the University Act and the Statute made thereunder and the ratio rendered by the Apex Court in the case of Uma Devi (supra). However in spite of absence of any legal enforceable right in her favour, the learned Single Judge was inclined to direct the Vice-Chancellor of the University to reconsider her representation in the light of the fact that she had been engaged from time to time till December, 2001. Further, the learned Single

Judge also felt the necessity of regular appointment on the part of the University by identifying vacant sanctioned post in the constituent college to be filled up within a stipulated period.

6. On consideration of entire gamut of facts and the position in law, we don't find any error in the impugned order passed by the learned Single Judge. The appellant should have been satisfied with the directions issued. The appeal being devoid of merit is accordingly dismissed.