

(2009) 05 JH CK 0025
In the Jharkhand High Court

Rajeshwar Pd. Verma and Others

APPELLANT

Vs

Vinoba Bhave University and Others

RESPONDENT

Date of Decision : 22-05-2009

Acts Referred:

Jharkhand State Universities Act, 2000 — Section 22, 22(2)

Citation : (2009) 05 JH CK 0025

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Since the issues involved in all these writ petitions are common, they are heard together and with the consent of the counsel for the parties, are being disposed of by this order at the stage of admission itself.

2. Challenge in these writ petitions is to the order dated 29.11.2007 passed by the respondent Vinoba Bhave University, Hazaribagh whereby the claim of the petitioners for payment of their annual increment from 11.1996 till the date of their respective retirement, has been rejected.

3. Petitioners were appointed as Lecturers in various Faculties in different Constituent Colleges, of the Ranchi University. They were confirmed on the posts of Lecturers and were later promoted to the posts of Readers with effect from the dates notified for them separately. Such promotion was confirmed by order of the Vice Chancellor of the Ranchi University. Subsequently, they were promoted to the post of University Professor with effect from the dates notified.

4. The colleges in which the petitioners were employed, came subsequently within the jurisdiction of Vinoba Bhave University, Hazaribagh. The petitioners continued teaching in their respective departments of the concerned colleges. All the petitioners, except Sri Purushottam Dubey, (petitioner in WPS No. 1477 of 2008) who retired from service on 31.1.2003, the rest of the petitioners had retired from service in between January, 1998 to October, 2000.

5. The case of the petitioners is that they were promoted to the post of University Professors under the 16/25 years promotion scheme sponsored by the State Government and approved by the Chancellor. The pay scales of the University teachers were fixed in accordance with the UGC pay scale. The revision in the pay scales was made by the UGC by way of a package scheme. The scheme was implemented by the State of Jharkhand and notified accordingly on 13.11.2001 under which the revised pay scales of teachers was fixed. The pay scales of the petitioners were fixed in the scale of Rs. 16,400-22,000/-as applicable to the University Professors. The revised pay scales were made effective notionally from 1.1.1996.

6. The grievance of the petitioners is that though their pay scales were revised in consonance with the UGC pay scales, but they were not given the annual increment of Rs. 450/-as laid down in the Statutes of the University. As such, the last pay which was paid to the petitioners at the time of their retirement, was fixed at a lesser amount than what was due and this had its adverse effect on the fixation of their pension at a lesser amount.

7. The petitioners being aggrieved, had collectively filed their representation before the Registrar of the respondent University, but when no response was forthcoming, the petitioner Mantu Banerjee(WPS No. 2856 of 2007) filed a writ petition before this Court for issuance of a direction to the University to pay him the annual increment. The writ petition was disposed of by this Court with a direction to the Registrar of the University to consider the representation of the petitioner and to pass an appropriate reasoned order in accordance with law. The petitioners accordingly filed their respective representations before the Registrar (respondent No. 2) who, after considering the same, rejected their prayer by the impugned order on the ground that since the petitioners did not possess Ph. D decrees, as indicated in the notification dated 13.11.2001, which was mandatory for the movement to the post of Reader and above, they were not entitled for the annual increment after 1.1.1996.

8. Sri Rajendra Prasad, learned Counsel for the petitioners, has assailed the impugned order on the ground that the same is arbitrary and not in consonance with law. It is argued that the service condition of the petitioners were guided by the Jharkhand Universities Act, 2000. Part II of the Statute of the University Act lays down the general service conditions of employees including the teachers of the Universities as approved by the Chancellor of the University on 20.11.1980.

Learned Counsel explains that as per Section 22 of the Statute, an increment shall ordinarily be drawn by the University servant as a matter of course, unless it is withheld by the authority empowered to appoint him, as a measure of punishment. The Statute also prescribes the circumstances and conditions on which service counts for increment in pay scale.

9. Learned Counsel adds further that the petitioners who, during the tenure of their service, were promoted to the post of University Professor, did qualify as

per the prescribed conditions on which their service counted, for increment in the pay scale. It is further pointed out that while fixing the salary of the University teachers in accordance with UGC pay scales, no distinction was made between the teachers who possessed Ph. D Degrees and those who did not possess. The right to annual increment has been created by the statute itself, which according to the learned Counsel for the petitioners, cannot be curtailed under the garb of Executive Instructions. Even otherwise, such executive instructions being introduced on 13.11.2001 by the Government notification, it would operate prospectively and not retrospectively and cannot be applicable to those who retired prior to 13.11.2001. It is further submitted that the annual increments after 1.1.1996 has been paid to teachers in other Universities including the Ranchi University as also in the Sidhu Kanu University, Dumka, in the State of Jharkhand, irrespective of their possessing or not possessing the Ph.D degree and there could be no reason why such benefit should not be extended to the petitioners under the Vinoba Bhave University, which is also one of the universities in the State of Jharkhand.

10. The respondents in their counter affidavit have denied and disputed the entire claim of the petitioners. Explaining the stand taken by the respondents, Sri S. Chaudhary, learned Counsel for the respondents, would justify the impugned order of the respondent No. 2 by submitting that admittedly the State Government had implemented the new Career Advancement Scheme package of the UGC in respect of University Teachers and had revised the pay scales of the University Teachers in accordance with the revised UGC pay scales as declared and notified by the notification dated 13.11.2001. However, as declared in Clause 12 of the aforesaid notification, revised pay scales were made applicable with a condition that those teachers who did not acquire the eligibility for promotion to the posts of Readers and above as per the new Career Advancement Scheme of UGC package accepted by the Government, shall not be entitled to annual increment in their salary. It is explained that as per the Career Advancement Scheme of UGC package, for movement into the grade of Reader and above, minimum eligibility criteria is Ph.D. degree. Those without Ph.D. degree can go up to the post of Lecturer (selection grade) only. Learned Counsel explains further that the petitioners had accepted replacement scale w.e.f. 1.1.1996 with the condition laid down in Clause 12 of the notification dated 13.11.2001. Having accepted the replacement scale along with the condition stipulated in the notification, the petitioners who did not possess Ph.D. degree cannot claim annual increment after 1.1.1996 .

11. Referring to sub Clause (2) of Section 22 of the University Statute, learned Counsel would explain that where Efficiency Bar is prescribed in the pay scale, increment next above the Efficiency Bar shall not be given to the University servants, without specific sanction of the authority empowered to appoint him. Learned Counsel explains that the condition under Clause 12 of the Notification dated 13.11.2001 was only a reiteration of the existing statute and it does not thereby deprive any benefit to the University Teachers to which they were not

otherwise entitled.

12. A further stand taken by the University is that even otherwise, since the claim of the petitioners is for monetary benefits prior to the date of bifurcation of the erstwhile State of Bihar, and even as indicated in the notification dated 13.11.2001, the demand for such benefit could be made by the petitioners only against the State of Bihar.

13. From the rival submissions the facts which emerge are : That the petitioners were promoted to the posts of University Professors under 16/25 years promotion scheme. Apparently, the Efficiency Bar was not made applicable to them at the time of their promotion from the post of Lecturer to the post of Reader and later, from the post of Reader to the post of University Professors. Such promotion was obviously granted without making a distinction as to whether the promotees possessed Ph.D. Degree or not .

14. The scale of pay for the petitioners was fixed in the revised pay scale of University Professors in consonance with the revision of the pay scales made by UGC.

15 As indicated in the impugned order of the Registrar of the respondent University (annexure 2), the refusal of the petitioners' claim for annual increments appears to have been made on the ground that under the new Career Advancement Scheme (Annexure 1) of the UGC Package, as accepted by the Government of Jharkhand, a condition corresponding to the eligibility criteria for promotion was laid down in the following terms :

For movement into the grades of Reader and above, minimum eligibility criteria would be Ph.D. Those without Ph.D degree can go up to the post of lecturer (selection grade).

16. The eligibility criteria does not specifically lead to the inference that it also creates an efficiency bar and a restriction to the grant of annual increment. Such inference cannot be drawn unless appropriately interpreted under the Statute through the prescribed procedure and not by an Executive Instruction.

17. Learned Counsel for the respondent would refer to sub Clause (2) of Clause 22 of the Statute, which lays down an efficiency bar in the following terms :

where efficiency bar is prescribed in a pay scale, increment next above the bar shall not be given to university servants without specific sanction of the authority empowered to appoint him.

18. In the revised pay scale notified on 13.11.2001, and applicable from 1.1.1996, there appears no efficiency bar stipulated in terms of the provisions of sub section (2) of Section 22 of the University Statute.

The condition in Clause 12 of the notification though emphasizes the eligibility criteria, it is in respect of movement of teachers from grade of Reader and above. The petitioners were already granted promotion to the post of University

Professor, without insisting upon the condition that they should possess Ph.D. degree. Under such circumstances, in absence of efficiency bar in respect of teachers prior to the notification dated 13.11.2001, petitioners who had attained the status of University Professor would be entitled to annual increment under the provision of Section 22(1) of the statute which reads as under :

Section : 22(1) An increment shall ordinarily be drawn by a University Servant as a matter of course, unless it is withheld, by the authority empowered to appoint him, as a measure of punishment.

19. The petitioner had admittedly qualified themselves for annual increments in terms of the conditions laid down u/s 22(3) of the Statute. The benefit of such right cannot be denied to the petitioners by creating, as would appear, a new efficiency bar for them. Even otherwise, if such an efficiency bar is sought to be created by notification dated 13.11.2001, it would operate prospectively and not retrospectively. All the petitioners, except the petitioner Purushottam Dubey, had retired prior to 13.11.2001. They cannot therefore be denied rightful claim for annual increment on the ground that they accepted the notification dated 13.11.2001 of replacement scale together with the condition laid down in Clause 12 thereof.

20. In the light of the above discussions, the impugned order dated 29.11.2007 of the Registrar of the Vinobha Bhave University cannot be sustained and a right which had accrued to the petitioners under the provisions of the Statute, cannot be withdrawn or curtailed by the notification/circular issued by the concerned department of the State Government.

21. Referring to the controversy as to who should bear the liability to pay arrears of annual increment to the petitioners, it has been brought to the notice of this Court that even though such claim of arrears relates to the period prior to the date of bifurcation of the erstwhile State of Bihar, the financial liability as per the agreement dated 30.9.2001 entered into by and between the Government of the two States, has to be borne by the State of Jharkhand. This issue has also been settled by a Division Bench of this Court in the case of Dr. Upendra Kishore Bakshi v. the State of Jharkhand and Ors. vide WP (S) No. 2859 of 2004 in which it was decided that since the Institution in question is in the State of Jharkhand and in accordance with the agreement dated 30.9.2001, as admitted by the learned Counsel for the State, the entire claim has to be paid by the State of Jharkhand alone.

Accordingly, these writ petitions are allowed. The respondent University is directed to assess the amount of arrears which accrued to the petitioners in respect of annual increments, calculated from the dates it fell due in respect of each of the petitioners and put up a claim for allotment of funds before the State Government within a month from the date of receipt/production of a copy of this order. The State Government shall, within two months from the date of receipt of the requisition from the University, release the fund to enable the University to

pay the amount payable to the petitioners.

Let a copy of this order be given to the learned Counsel for the respondents.