
(2013) 08 JH CK 0066

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5038 of 2011

Ramagaya Pandey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-08-2013

Acts Referred:

Citation : (2013) 4 AJR 410

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajiv Ranjan and Mr. Shreshtha Gautam, for the Appellant; Nehala Sharmin, JC to Sr. SC-II for the State, Mr. Anoop Kr. Mehta and Mr. Amit Kr. Sinha, Advocates for the University, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The simple grievance in the present writ application raised by the petitioner is that the respondent State and the University have refused to grant annual increments due to him on the revised UGC scale on the ground that he does not hold the Ph. D Degree.

2. According to the petitioner, he had been promoted to the post of Reader under the time bound scheme by a notification dated 21st November 1998 with effect from 01st February 1985. He was in the pre-revised pay scale of Rs. 12,000-18,300, which has of course now been revised to Rs. 37,400-67,000, but the annual increments on the revised scale are being denied. The basis for denial of such increments are the resolution/letter dated 13th November 2001 issued by the Directorate of Higher Education, Human Resources Development Department, Government of Jharkhand, which is annexed as Annexure-B to the counter affidavit. The said letter has been issued by the respondent Department on acceptance of the UGC package for revision of the pay scales, minimum qualification for appointment, other service conditions of University and College Teachers as a measure for the improvement as well as maintenance of standards in higher education. The said package is annexed as Annexure-A to the counter

affidavit. In Clause-7(A)(ii) of the said UGC Package (Annexure-A), a condition has been laid down that for movement into grades of Readers and above, the minimum eligibility criteria would be Ph. D. Those without Ph. D can go up to the level of Lecturer (Selection Grade). The State Respondents relied upon the said condition which has also been incorporated at Para-12 of the resolution/letter dated 13th November 2001. The present petitioner has been granted the UGC scale which has been implemented with effect from 01st January 1996 in the scale of 12,000-18,300, thereafter revised to 37,400-67,000. The present petitioner is said to have retired on 31st July 2012 on the post of Reader from Jagannathpur College under Ranchi University.

3. Counsel for the petitioner submits that such a ground cannot be made to deny the annual increments due on the revised UGC scale to the petitioner who has been serving as a Reader with effect from 01st February 1985 by virtue of Notification of the University issued on 21st November 1998. He further submits that the University Statute known as General Conditions of Service of Employees of the Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila & K.S.D. Sanskrit Universities, which was approved by the Chancellor on 20th September 1980 vide letter No. BSU-36/80-5270 GS(1) dated 18th November 1980, lays down that 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. He submits that the similar issue was under consideration earlier before the learned Single Judge of this Court in the case of Rajeshwar Pd. Verma, etc. versus Vinoba Bhave University & Ors in which reliance upon the same notification dated 13th November 2001 to deny the annual increments was placed which was disapproved by this Court in its judgment dated 22nd May 2009 reported in [2009 (3) JCR 666 (jhr)]. He also submits that the similar view has been reiterated in the judgment dated 04th July 2013 rendered by another Single Bench of this Court in WPS No. 3632/2011 in the case of V.N. Jha @ Viveka Nand Jha & Ors versus State of Jharkhand & Ors. Learned counsel for the petitioner submits that these arguments were made before the learned Single Judge. While quashing the notification, learned Single Judge observed that imposing such a condition to withhold the annual increments is arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

4. Learned counsel for the respondent State however, submits that in the said judgment dated 04th July 2013, the UGC Scheme was not on record, which however has been brought on record in the present case. Therefore, it is the argument of the respondent State that the notification of 13th November 2001 is in the light of the UGC recommendation which has been accepted by the State Government. The rational for incorporating that condition is to ensure improvement in the standards in Higher Education by insisting upon obtaining Doctorate Degree for the post of Reader and above to eligible incumbents.

5. Counsel for the University is in sync what the State counsel has argued.

6. I have heard counsel for the parties. The question which have been raised by

the petitioner, have been referred to in the opening paragraph of this order as to whether the petitioner can be denied the annual increments in the revised UGC Scale on the ground that he has not obtained Ph. D Degree? In the present case, the petitioner has been promoted as a Reader with effect from 01st February 1985 by virtue of notification 21st November 1998. Therefore, he was granted promotion to the post of Reader from the date anterior to the implementation of the UGC recommendation and he has been drawing the revised UGC Scale made effective from 01st January 1996 and thereafter, from 01st January 2006. Clause-7(A)(ii) of the scheme which has been relied upon by the counsel for the respondent State and has been brought on record, clearly lays down a condition under Career Advancement Scheme, that for movement into grades of Reader and above, the minimum eligibility criteria would be Ph. D. Those without Ph. D can go up to the level of Lecturer (Selection Grade). However, the said scheme in absence of any condition imposed therein to make it retrospectively applicable, obviously appears to be prospective.

7. In the present case, as indicated herein above, the petitioner has already moved into the grade of Reader and has been enjoying the said scale. Therefore, the respondents are not justified in withholding the annual increments to the present petitioner by relying upon the notification of 13th November 2001. The judgment which have been relied upon by the petitioner in the case of V.N. Jha and others (Supra), also do come to his support where such issue has been discussed at some length. Relevant paragraphs 10 to 18 are being reproduced as they also throw light on the legal issue raised in the present writ application.

10. Having heard learned counsel for the parties and considered the facts and materials on record, I find that it is an admitted fact that all the petitioners, after acquiring eligibility under the Time Bound Promotion Scheme, were given promotion to the post of Reader. It is also not in dispute that the petitioners were given the prescribed pay scale of Reader, including replacement scale of 5th Pay Revision. They were given annual increments all along without any demur. The petitioners were also given replacement pay scale of 6th Pay Revision.

11. But by Clause-12(iii), they have been denied their increment.

12. The increment is payable to the employees under the provisions of Article 22 of the Statutes, framed under the provisions of Bihar State Universities Act and approved by the Chancellor.

13. According to the said Article, increment is payable to the University servant as a matter of course, unless it is withheld by the authority empowered to appoint him, as a measure of punishment.

14. Article 22(1) of the Statutes reads thus:

22. (1) 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.....

15. On plain reading of the said provision, it is clear that the increment is payable to an employee of the University as a matter of course and the same can be withheld only as a measure of punishment.

16. The said statutory provision has not been amended so far. The impugned resolution dated 20th November, 2010 issued by the Department of Human Resources Development has no overriding effect over the said provision of Article 22 of the Statutes. The said condition has been laid down without any legislative approval.

17. The impugned resolution is said to have been issued in terms of the UGC Scheme. The respondents have not brought any resolution of the UGC on record imposing such condition for payment of annual increment.

18. Since the petitioners are entitled to get annual increment under the provisions of Article 22 of the Statutes, the said Clause-12(iii), imposing a condition contrary to the said provision, is wholly arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

In these circumstances therefore, the action of the respondents to deny the annual increments to the petitioner with effect from 01st January 2006 cannot be saved. Respondents are therefore directed to release the increments to the petitioner with effect from 01st January 2006 and pay arrears of difference of pay within eight weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed in the aforesaid terms.