

(2010) 11 JH CK 0007

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 576 of 2003

Ranchi University, Vice Chancellor and Registrar, both Ranchi University

APPELLANT

Vs

Bijay Kumar Sharma and Others

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Bihar State Universities Act, 1976 — Section 10
Constitution of India, 1950 — Article 14

Citation : (2011) 1 JLJR 238

Hon'ble Judges : Bhagwati Prasad, C.J.;J.C.S. Rawat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This Letters Patent Appeal has been preferred against the judgment and order dated 10.7.2003 passed by a learned Single Judge in CWJC 1266 of 1998 by which the writ petition filed by the Respondent No. 1 to 12 have been allowed and quashed the impugned order bearing Memo No. B/968-971 dated 9.3.1995 by which the scaled of pay fixed by the Principal, Ranchi Women's College was reduced by the University.

2. It is admitted to the parties that on 27.1.1982 the erstwhile State of Bihar issued a letter addressed to all the Vice Chancellors of the State Universities of the State of Bihar, except the Patna University, where in it was communicated that the State Government had decided to give uniform pay scales to the Upper Division and Lower Division Assistants/Clerks working in the University within the State of Bihar and the decision which the State Government had taken in relation to the Patna University vide Letter dated 28.7.1981 shall be deemed to apply to the other Universities also. The State Government vide letter dated 5.10.1989 wrote to all the Vice Chancellors of all the Universities of the State of Bihar that the uniform pay scales of the employees of Upper Division & Lower Division Assistants/Clerks posted in the Colleges under the Universities situated in Bihar

would be made applicable with effect from 1.4.1981 in the same manner as made applicable to the secretarial staff and Upper Division and Lower Division Assistants/Clerks of Class HI working in the Regional Offices and it was further indicated that the employees would not be entitled to any arrears of pay at all. Consequently, the Registrar of the Ranchi University on 25.4.1990 (annexure 3) issued an order to give effect to the Government Order. All the Principals of the constituent colleges were directed to prepare salaries accordingly in order to give effect to the pay fixation as fixed by the State Government Pursuant to the above direction, the Principal of the Ranchi Women's College issued notification dated 3.8.1990 (annexure 4) by which the Respondents/writ Petitioners were granted pay scales of Upper Division/Lower Division Assistants/Clerks. Annexure 4 to the writ petition indicates that the fixation of pay of the writ Petitioners was provisional, and was subject to the approval of the University. Thereafter, the employees were paid salaries according to the provisional fixation of pay by the Principal of the College. By the impugned order, the University did not approve the proposal of the Principal fixing the pay scales of the Respondents and the payment of their salary was made in accordance with the directions made by the University. Admittedly, the Respondents 1 to 12 were appointed, promoted and regularized as Typist, Store Keeper, Routine Clerks, Correspondence Clerks, Sorters which were the sanctioned posts in the Ranchi Women's College. Feeling aggrieved by the order of the University not approving the pay scales recommended by the Principal, Ranchi Women's College and reducing their pay scales as indicated in the order of the Ranchi Universities dated 9.3.1995, the Respondents preferred a writ petition before the learned Single Judge.

3. After hearing the learned Counsel for the parties, the learned Single Judge allowed the writ petition and the impugned order dated 9.3.1995 passed by the University was quashed. The Respondents/writ Petitioners were found entitled to get the pay scales of Upper Division - Lower Division Assistants/Clerks.

4. We have heard learned Counsel for the parties and have perused the records.

5. Learned Counsel for the Appellant University contended that the Respondents 1 to 12 have been appointed to the sanctioned posts of Routine Clerk/Typist, Store Clerk, Correspondence Clerk And Sorter and not on the posts of Lower Division/Upper Division Assistants/Clerks. The Respondents were neither promoted or appointed against the posts of Lower Division or Upper Division Assistants/Clerks. The State Government order dated 5.10.1989 has only allowed merger of pay scales of the Upper Division Assistant and Lower Division Assistant/Clerk and the Ranchi University also adopted the aforesaid Government order. The Principal of the Ranchi Women's College, Ranchi, by the order (annexure 4 to the writ petition), issued a provisional order fixing the pay scales of Respondents 1 to 12 re-designating them as Upper Division - Lower Division Assistants/Clerks, though the order passed clearly spelt out that it was subject to the approval of the University and in case the university did not approve the designations and the pay scales of the Respondents, they would be reverted to

the existing pay scales. The Principal is not competent to re-designate or grant pay scale of the new post under the Universities Act. The "Vice Chancellor is competent to promote a Class HI employee and place him against a pay scale.

6. Learned Counsel appearing on behalf of the Respondents contended that the Respondents come within the category of Lower Division and Upper Division Assistants. He further contended that the Respondents are ministerial employees of class III in the University and the University had been paying the pay scale of the Upper Division/Lower Division Assistants/Clerks of revised pay scales of Rs. 1500-2750/- to those who were holding Graduation degree or Rs. 1400-2300/- to those who were not holding the graduation degree.

7. It is apparent from the perusal of the record that Respondents 1 to 12 were appointed/promoted/regularized as Typist/Store keeper/Routine Clerk, Correspondence Clerk and Sorter against the posts sanctioned by the State Government at the Ranchi Women's College, Ranchi. Respondents 1 to 12 had never been appointed/promoted or regularized as Lower Division Upper Division Assistants/Clerks. Government orders dated 27.1.1982 and 5.10.1989 as contained in annexures 1 and 2 to the writ petition clearly provides that the Government had decided that uniform pay scales equivalent to Lower Division-Upper Division Assistants/Clerks working in the State Government would be provided to Lower Division-Upper Division Assistants/Clerks working in the universities or in the Constituent Colleges of the Universities. Pursuant to the said order Ranchi University issued letters/order to the concerned Principals of the Colleges working under the University. The University had to fix and to make the payment to class HI employees working in the constituent colleges of the university the pay scale(s) which is prescribed in the Government Order dated 13.4.1991 (Annexure 4) against the sanctioned and designated posts which the employees were holding at the relevant time. Annexure 5 to the writ petition clearly indicates that the Lower Division and Upper Division Assistants/Clerks were in the pay scale of Rs. 785-1210/- (Rs. 1500-2700 revised pay scale in the 5th Pay Commission) which was applicable to those Upper Division - Lower Division Assistants/Clerks who had obtained degree of graduation. The other Upper Division -Lower Division Assistants /Clerks who did not possess degree of graduation were receiving the pay scale of Rs. 680-965/- Rs. 1400-2300 revised in 5th Pay Commission). The Government order dated 13.4.1991 (Annexure 5 to the writ petition) clearly indicates the different pay scales of the store keeper, routine clerk, correspondence clerk, sorter, typist. The pay scales for the aforesaid posts in the 5th pay Commission were : Store-keeper Rs. 1200-1800, Typist : Rs. 1200-1800, Routine Clerk : Rs. 975-1540, Shorter : Rs. 1200-1800 and correspondence Clerk Rs. 1200-1800. It also indicates that different : sanctioned posts, are available in the constituent colleges of the University. The above document, the other documents filed along with the writ petition, and the counter affidavit filed by the University clearly reveals that the pay scales of the Upper Division Lower Division Assistants/Clerks are different from those of the other categories of Class HI employees. Consequent upon the Circular issued by

the Ranchi University pursuant to the Government Order, Principal of the Ranchi Women's College, Ranchi issued notification dated 3.8.1990 re-designating the posts of persons working in Class III as Assistants who had already been working as class III employees with different nomenclature and designations. It is also apparent from perusal of Annexure 4 to the writ petition that Class III employees whose pay scales have been fixed as Upper Division and Lower Division Assistant/Clerks were holding different nomenclatures and the Principal re-designated them as Lower Division - Upper Division Assistants/Clerks. The said notification (Annexure 4) clearly indicates that the pay fixation/re-designation in regard to Respondents 1 to 12 was made provisionally and it was, in fact, subject to the approval of the University. The Vice Chancellor is only competent authority to appoint or promote a class DVIV employee u/s 10 of the Bihar Universities Act. The writ Petitioners were not holding the posts which they had been given by the Principal. Thus, the University was competent not to approve the re-designation and fixation of pay made in respect of the writ Petitioners by the Principal. The University in exercise of its power/jurisdiction passed the impugned order re-fixing the pay scales according to the posts legally held by them. The said order of fixation of the pay scales was provisional. So, it cannot be said that the Petitioners had any vested right accrued by virtue of the order of the Principal (Annexure-4 to the writ petition).

8. Learned Counsel appearing on behalf of the Respondents 1 to 12 further submitted that by virtue of Annexure 4 to the writ petition, they have acquired a vested right to continue on the post of Lower Division -Upper Division Assistants/Clerks and their right cannot be snatched by the University by the impugned order retrospectively. Learned Counsel for the Appellant University refuted the contention.

9. It is a well settled proposition of law that if appointment/promotion/re-designation is made in contravention of the Act or the rules, such appointment would be non-est in the eyes of law. In the instant case, the Principal of the College was not competent to re-designate or promote Class III employees working in different capacity on sanctioned posts. The Vice Chancellor was competent within the provisions of the Bihar State Universities Act. The Principal re-designated the Respondents No. 1 to 12 and fixed their pay scales illegally and arbitrarily in utter violation of the statutory provisions. Such re-designation/appointment/promotion is void ab initio. Apart from this, the Principal had made provisional order re-designating them and fixing their pay scales as Upper Division - Lower Division Assistants/Clerks and it was subject to the approval of the University, which has not approved the proposal. Thus, no right, much less any legal right had accrued to the writ Petitioners and there is no question of taking away vested right from them, Learned Single Judge erred in holding that they have acquired vested right by virtue of the notification (annexure 4) issued by the Principal.

10. Learned Counsel for the writ Petitioners further submitted that the Registrar,

Ranchi University issued notification (annexure 10 to the writ petition) to the Principal of the Ranchi Women's College, Ranchi on 22.2.1997 where by two of the employees namely Rajendra Mahato and Ram Sundar Sahu of the Ranchi Women's College holding Class HI posts of Assistants have been allowed revised pay scales of Upper Division - Lower Division Assistants/Clerks. Learned Counsel for the University refuted the contention and contended that the Respondents 1 to 12 are not similarly situated like Rajendra Mahato and Ram Sundar Sahu. Rajendra Mahato had been working as Cashier which is equivalent to Accountant and he has rightly been placed in the said pay scale. If any mistake had been committed that can be rectified at any time and time Respondents No. 1 to 12 cannot claim that they have been discriminated. It is a settled principle of law that if any act has been made without following the procedure laid down, such illegal act cannot be made a practice to perpetuate further illegality.

11. The Supreme Court in the case of State of U.P. Vs. Neeraj Awasthi and Others, held as follows:

75. The fact that all appointments have been made without following the procedure, or services of some persons appointed have been regularized in the past, in our opinion, cannot be said to be a normal mode which must receive the seal of the court Past practice is not always the best practice. If illegality has been committed in the past, it is beyond comprehension as to how such illegality can be allowed to perpetuate. The State and the Board were bound to take steps in accordance with law. Even in this behalf Article 14 of the Constitution will have no application. Article 14 has a positive concept No equality can be claimed in illegality is now well settled. (See State of AP v. S.B.P.V. Chalapathi Rao 1995 (1) SCC 724 SCC para 8; Jalandhar Improvement Trust Vs. Sampuran Singh, and State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, .

12. Learned Counsel for the Respondents 1 to 12 further contended that before giving effect to the impugned order (annexure 7 to the writ petition), the order of curtailment and reduction of pay scale of the writ Petitioners, they were not afforded opportunity of hearing. The learned Counsel for the university refuted the contention and contended that re-designation and fixation of pay scale made by the college was in utter violation of the Government order (annexure 2 and 3 to the writ petition). Thus, the Principal of the Ranchi Women's College issued annexure 4 with regard to re-designation and re-fixation of the pay of the Respondents in violation of the order. Hence, the order passed by the Principal of the College was ab initio void. Annexure 4 to the writ petition reveals that no final re-designation and fixation of pay was made and it was provisional and subject to approval of the University. As such, there is no question of affording any opportunity of hearing before passing of the impugned order Annexure 7 to the writ petition. Principles of natural justice are not rigid or immutable. Hence, they cannot be imprisoned in a strait jacket. They must confine to the exigency of situation. They must be confined within their limits and cannot be allowed to run wild. The principle of natural justice, it is trite, is no unruly horse. When facts

are admitted, an enquiry would be an empty formality. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be applied in a vacuum without reference to the relevant "acts and circumstances of the case.

13. In view of the above facts and circumstances of the case and the proposition of law, we do not find any force in the contention of the learned Counsel for the Respondents. The learned single Judge (sic) in allowing the claim of the writ Petitioners. Accordingly, this appeal is allowed and the order dated 10.7.2003 passed by the learned Single Judge in CWJC No 1266 of 1998 is hereby set aside. Consequently, the writ petition is dismissed. No order as to costs.