
(2015) 02 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition(S) No. 6957 of 2013

Satya Narayan Tiwari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Citation : (2015) 02 JH CK 0005

Hon'ble Judges : Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; Prashant Kumar Singh, Advocates for the Respondent

Judgement

Sujit Narayan Prasad, J.—The petitioner has approached this Court to grant the benefits of revision in pay scale in terms of the recommendation of the 5th pay revision committee implemented w.e.f. 1.1.1996 and recommendation of 6th pay revision committee implemented w.e.f. 1.1.2006.

2. The submission has been made on behalf of the petitioner that the petitioner has been appointed as Lecturer in Hindi in Mandar College, Mandar, District Ranchi and joined the post on 18.1.1983 which was approved by the Secretary of the College. Thereafter, a decision was taken for taking over all the affiliated colleges in the year 1986 by the respective Universities. The Government took decision to convert forty affiliated colleges into constituent colleges and in this regard formal resolutions were passed. For that purpose, a three-member committee was constituted for the purpose of making investigation for submitting necessary information in the prescribed proforma showing separately names of teaching and non-teaching employees working on the sanctioned post which was recommended by the University for sanction by the State Government. The committee has submitted its report on 1.2.1988 in which the petitioner name appears at serial No. 2 in the Hindi Department at Mandar College, Mandar under Ranchi University.

3. Learned counsel for the petitioner has submitted that subsequently one man Enquiry Commission of Justice S.C. Agrawal, retired Judge of Hon''ble Supreme Court was constituted by Hon''ble Supreme Court vide order dated 12.10.2001 passed in Civil Appeal No. 6098/1997 to submit a report in this regard, who has also submitted a report in terms of Section 4(1)(14) of the Jharkhand Universities Act and a notification was issued on 9.6.2005 by the Ranchi University by which the service of the petitioner was absorbed w.e.f. 9.5.1988 in which the name of the petitioner finds place at serial No. 11.

4. Further submission has been made that absorption of the petitioner was made in the Hindi Department of the said college. The petitioner became entitled to get the benefit of 5th and 6th pay revision but he is not getting the same without any rhyme or reason.

5. Further submission has been made on behalf of the petitioner that in a similar case preferred by Dr. Trilochan Mahto and Ors. being Cont.Case (Civil) No. 370/2012 decided by this Court on 8th March, 2013 wherein in paragraph-3 the following direction has been passed which is being quoted herein below:-

3) Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that the concerned respondent authority has not properly appreciated the judgment rendered by this Court in earlier W.P. (S) No. 4833 of 2008 dated 7th December, 2011 especially paragraphs 6 and 7 thereof and has also failed to appreciate the ratio of descendent of the decision rendered by the Hon''ble Supreme Court in State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, especially paragraphs 54, 60, 61, 62 and 64 thereof. In this judgment, categorically the powers of the respondents University has been mentioned in paragraph 54 that in the matter of absorption of staff of such institution/College proposed to be taken over would be within sole power and jurisdiction of the University under Section 4(1)(14) of the Act, 2000. It has also been held by the Hon''ble Supreme Court in paragraph 54 of the said judgment that on the matter of absorption of staff of taken over institutions, Section 35 (requiring prior sanction or approval of the State Government for creation of post and appointment), would not be a constraint on the power of the University. Thus, it appears that wider power with the State Government under Section 35 of the Act, 2000 in ordinary circumstances when increasing the sanctioned strength is to be made by the University, but, when the University is taking over the management of any College and thereby if it absorbs any staff under Section 4(1)(14), thereafter the Government cannot exercise power under Section 35 of the Act denying the absorption or questioning absorption of staff of "takenover college". This aspect of the matter has not been properly appreciated while passing the impugned order at Annexure 6 and, hence, the order passed by the respondents State authority at Annexure-6 dated 30th March, 2012 is hereby quashed and set aside and the matter is remanded for passing order afresh by the concerned respondent keeping in mind the aforesaid aspect of the matter. This decision will be taken regarding approval of

revised Pay U.G.C. Scale within eight weeks from the date of receipt of a copy of this order." 6. In terms of the said order, the State of Jharkhand through H.R.D. Department has passed an order on 8.5.2013 whereby and whereunder the order has been passed that in terms of the order passed by the Hon"ble High Court, no decision with respect to absorption has to be taken by the department, only decision has to be taken for provisional pay fixation which has been finalised by the University which is to be approved by the State Government. Accordingly, the State Government has sanctioned the proposal of the University regarding fixation of provisional pay scale. A direction has been issued to the University to proceed the fixation of pay scale.

7. The submission of the petitioner is that cause of the petitioner is also similar to the co-employees of the Cont. Case (Civil) No. 370/2012. It has been submitted on behalf of the petitioner that the order under Section 4(1)(14) of the Jharkhand State Universities Act, 2000 was passed on 9.6.2005 and petitioner was allowed to be shown as absorbed vide notification No. 500 dated 7.3.2009 as would be evident from Annexure-9 to the writ petition.

8. Now the grievance of the petitioner is that the University has already taken a decision by fixing the pay scale of the petitioner provisionally way back in the month of August, 2009, but till date no decision has been taken in this regard while the petitioner has repeatedly made representations and one of the representations has also annexed as Annexure-17 to the writ petition.

9. Learned counsel for the State has not filed any counter affidavit, although the instant writ petition has been filed in November, 2013. However, submission has been made on behalf of the State as well as on behalf of the University that appropriate direction can be given to the competent authority who will take a decision in accordance with law.

10. In that view of the matter, this writ petition is disposed of directing the Secretary, Human Resources Development Department, Government of Jharkhand to treat this writ petition as representation and take a decision in accordance with law within a period of eight weeks from the date of receipt/production of a copy of this order.

11. While taking such decision the Secretary will take into consideration the order of absorption passed in favour of the petitioner on 9.6.2005 (Annexure-7 to the writ petition), the order dated 22.8.2009 by which the pay scale of the petitioner has been fixed provisionally as also the order passed by this Court in Cont. Case (Civil) No. 370/2012, decision taken with respect to the petitioners of Cont. Case (Civil) No. 370/2012 and the order as contained in Annexure-15 dated 8.5.2013.

12. It is expected from the Secretary to refer the decision taken by him before the Ranchi University within four weeks from the date of decision. Ranchi University shall take necessary action so that the required monetary benefits shall be released in favour of the petitioner in view of the said decision within

further period of four weeks from the date of communication of such decision of the Secretary, Human Resources Development Department, Government of Jharkhand.

13. In the meanwhile, Ranchi University, Ranchi shall also take endeavour for fixing the pay scale on the basis of recommendation of 6th Pay Revision Committee since it has been informed that recommendation of 6th Pay Revision Committee has already been implemented.

14. If the concerned respondents shall come to the conclusion that the petitioner is not entitled to get the aforesaid benefits, the same shall be communicated to the petitioner by passing a reasoned order within the aforesaid period.