

(2003) 08 JH CK 0025
In the Jharkhand High Court
Case No : L.P.A. No. 31 of 2003

Sidhu Kanhu University and Another	Vs	APPELLANT
Prof. Raghu Nath Ray and Others		RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Bihar State Universities Act, 1976 — Section 58(10)

Citation : (2004) 1 JCR 613

Hon'ble Judges : Vikramaditya Prasad, J; Gurusharan Sharma, J

Bench : Division Bench

Advocate : Sohail Anwar and Rajesh Kumar, for the Appellant; Anjani Kumar Verma, for the Respondent

Judgement

1. This appeal has been filed by the Sidhu Kanhu University and its Registrar against the order dated 10.12.2002, passed by the learned Single Judge, in WP (S) No. 5450 of 2002, whereby the University was directed to fix and pay the pension amount of the eight writ petitioners in accordance with the Statue, taking into consideration the last pay drawn by them, without giving effect to the provisions of Section 58(10) of the Bihar State Universities Act, 1976 (hereinafter referred to as "the Act")

2. Admittedly all the writ petitioners, who are respondents 1 to 8 in this appeal were working as Reader in different Colleges of the University. All of them were promoted to the post of University Professor provisionally by the Screening Committee on temporary basis, subject to the recommendation of the Bihar State Universities (Constituent Colleges Service Commission) (for short "Commission"). In this regard notifications dated 1.9.1987, 11.5.1988 and 18.2.1989 were Issued giving them such provisional promotion with retrospective effect from the year 1985-86. It was made clear therein that their temporary promotion shall cease to be effective immediately in the event of non-receipt of the recommendation of the Commission.

3. The Commission did not take up the matter and the aforesaid communication

of the University remained pending there. However, from the respective dates of provisional promotions, the respondents 1 to 8 started getting salary in the scale of pay of the University Professor and all of them retired from University service in between 1.12.1993 to 30.6.1999. Their pension was fixed on the basis of last pay drawn by them on the respective dates of their retirement. However, their pension amount was reduced with retrospective effect. Those eight persons together filed WP (S) No. 5450 of 2002 in this Court for a direction on the University to pay them the retiral benefits and other dues on the basis of last pay drawn by them. Learned Single Judge by impugned order disposed of the petition with the aforesaid directions.

4. Reference may be made to Section 58(10) of the Act as incorporated by Act 17 of 1993. The Section reads as under :

"Notwithstanding anything to the contrary contained in this Act or Statute. Rules or Regulations thereunder promotion given on temporary basis to the post of Reader or Professor or Officer of the University shall not be valid for a period exceeding six months, unless recommended by the Bihar State University (Constituent Colleges) Service Commission."

5. Learned Single Judge held that Section 58(10) had no application to the promotion given to the writ petitioner long before the said section was brought on the Statute Book by amendment dated 22.8.1993. As the amended provisions had no retrospective operation as indicated by the Apex Court in *Patna University and Ors. v. Awadh Kishore Prasad Yadav and Ors.* 1994 (2) SCC 250, hence, promotions given to the writ petitioners were not affected by Section 58(10) of Act.

6. It appears that respondents 1 to 8 were given provisional promotion to the rank of the University Professor under the Statute by the aforesaid notifications. Those notifications were never withdrawn at any stage by the University or by the Commission but in the notifications giving provisional promotions, it was indicated that if the Commission does not approve the provisional promotion, the same will cease to be effective immediately. The cases of provisional promotion were to be considered by the Commission necessarily and promptly so that unsuitable teachers do not hold the posts as University Professors so long even on provisional basis.

7. It was unfortunate that cases of the respondents 1 to 8, who got provisional promotion were not taken for consideration by the Commission for years and they by virtue of provisional promotion continued to hold superior post without their merits being properly assessed by the Commission for approval or disapproval. As a matter of fact, all the respondents 1 to 8 were given provisional promotion with retrospective effect, but their cases were not considered by the Commission for years and they continued to enjoy provisional promotion for a number of years till their retirement. In order to put an end to the continuance of temporary promotion in the post in respect of which approval of Commission was

necessary, Sub-section (10) was added to Section 58 of the Act by the Bihar State Universities (Amendment) Act, 1993. This sub-section made it abundantly clear that "promotion given on temporary basis shall not be valid for a period exceeding six months unless recommended by the Commission."

8. The Apex Court in *Dr. B.P. Yadav and Another Vs. Dr. Ratneshwar Prasad Singh and Others*, , considering a similar case where provisional promotion was given to the post of University Professor, subject to recommendation of the Commission long before the Sub-section (10) of Section 58 was brought on Statute, but the Commission did not consider its approval or disapproval for years, observed as under:

"In the case of appellant, the College Service Commission had not given approval within the time-frame indicated in Section 58(10) of the Act hence, the provisional promotion must be held to have ceased to be operative under the said Amendment Act, which was published in the Bihar Gazette on 25.8.1993.....Admittedly both the appellants were given temporary promotions under the time-frame promotion scheme with express stipulation that in the event of non-approval of their promotions by the College Service Commission, their promotions would cease to be operative with immediate effect."

9. The Apex Court thereafter held that the appellants having ceased to be Professors consequent upon the enforcement of Section 58(10) of the Bihar Universities Act, the question of approval of provisional promotion did not arise. Therefore, decision of approval of provisional promotion purported to have been subsequently made by the College Service Commission when in law, the appellants ceased to be Professors even on provisional basis, is of no consequence and such approval therefore stands annulled.

10. Applying the ration of *Dr. B.P. Vadav and another* (supra) we hold that the provisional promotion given to the respondents 1 to 8 having been not approved by the Commission within the time-frame indicated in Section 58(10) of the Act ceased to be operative thereunder after expiry of six months from 25.8.1993, when the said amended Act was published in the official Gazette and was made effective. Consequently, their pension has to be fixed on their last pay drawn in the scale of pay of Reader.

11. However, so far as the question of recovery of excess amount paid to them on the basis of pay scale of University Professor is concerned, we are of the view that payments were paid without any misrepresentation made by the respondents 1 to 8 and as such applying the ratio of the decision of the Apex Court in *Sahib Ram v. State of Haryana* and *Ors.* 1995 (1) SCC 18, learned Single Judge rightly directed the University not to make any recovery from the retiral benefits of the respondents 1 to 8. The impugned order of the learned Single Judge directing the University to fix and pay their pension in accordance with Statute taking into consideration the last pay drawn by them without

applying Section 58(10) of the Bihar State Universities Act, 1976 in their cases is set aside and the University is directed to fix their pension on the basis of pay scale of the Reader.

12. This Appeal is disposed of accordingly.