
(2011) 04 JH CK 0060
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6215 of 2007

Sri Dr. Naresh Prasad

APPELLANT

Vs

Birsa Agriculture University and Another

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Jharkhand Agricultural Universities Act, 2000 — Section 20, 20(5), 22(5)

Citation : (2011) 3 JCR 4

Hon'ble Judges : J.C.S. Rawat, J

Bench : Single Bench

Judgement

J.C.S. Rawat, J.—This Writ Petition has been filed by the Petitioner for seeking following reliefs:

- a) For an appropriate writ in the nature of mandamus commanding upon the Respondents particularly Respondent No. 2 to sent to this Hon'ble Court all the records appertaining to the order D.O. No. F-4-249/82/BAU(V.C.)1471/Kanke dated 28.3.07 wherein the office order No. 606 dated 12.2.05 had been withdrawn where the Petitioner under the Carrier Advancement Scheme Phase-I and II had been given the pay scale of Rs. 3,000-5000/- from 1.1.1986 in place of 1.1.91 and in the scale of Rs. 3700-5700 on and from 22.4.93 in place of 1.2.96 vide memo No. 606 dated 12.2.05; and
- b) Further be place to quash/set-aside the vide office order No. 1471/Kanke dated 28.3.2007 as being completely illegal, unjustified and arbitrarily; and
- c) For a further direction upon the Respondents not be deduct any amount/ amounts from the salary of the Petitioner under the grab of excessive payment that have been made to him in pursuance to letter No. 606 dated 12.2.05; and
- d) For a further direction upon the Respondents to allow the Petitioner to continue in his service at his present post without any harassing and humiliating him under the grab of the letter No. 1471 dated 28.3.07; and

e) For any other appropriate writ/order/direction as your Lordships may deem fit and proper for doing conscionable justice to the Petitioner in the facts and circumstances of the present case.

2. The brief facts of the case is that the Respondent Vice Chancellor taking into all the aspects of the Petitioner's past services on and from October 15, 1975 and thereupon, the Petitioner was made entitled for the Career Advancement Scheme hereinafter referred as (CAS) Phase-I promotion in the pay scale of Rs. 3,000-5000/- from 1.1.1986 and in the CAS Phase-II promotion in the pay scale of Rs. 3700-5700/- on and from 22.4.93. Thereafter, without taking the facts of the past services of the Petitioner into consideration, the Vice Chancellor shifted the date of CAS Scheme by passing an order on 12.2.2005 withdrawing the promotion and benefits given to the Petitioner under Phase-I Scheme wherein the pay scale of Rs. 3000-5000/- had been granted on and from 1.1.86 in place of 1.2.91 and promotional benefits under CAS Phase-2 in the pay scale of Rs. 3700-5700 had been granted on and from 22.4.1993 in place of 1.2.96. The order which was passed by the Vice Chancellor in the year 2005 (Annexure-5 to the writ petition) was reviewed to its original position.

3. The case was contested by the Respondents mainly on the ground that the Petitioner is not entitled to get the CAS as he is claiming. The Vice Chancellor reviewed earlier order passed in 2005 and restored the position for which the Petitioner was entitled prior to the passing of the order. It was further alleged that the Petitioner has not exhausted the appellate remedy prescribed under the Statute so the Writ Petition is not maintainable as other alternative efficacious relief is available. The Respondents have further stated that the Petitioner has preferred a representation to the Vice Chancellor which is pending before him and the Vice Chancellor should be asked to dispose of the said representation till that time the writ petition is not maintainable.

4. I have heard the learned Counsel for the parties and perused the record. Learned Counsel appearing for the Petitioner contended that the impugned order dated 28.3.2007 passed by the Respondents without affording any opportunity to the Petitioner and the Petitioner was never heard before passing the said impugned order. The Respondents cannot withdraw a vested right which has already been conferred upon the Petitioner by way of promotion from a particular date and the Respondents also cannot shift the date without giving a proper opportunity of hearing to the Petitioner.

5. Learned Counsel appearing for the Respondents refuted the contention and contended that the Petitioner has not exhausted the right of appeal as provided u/s 22(5) of Jharkhand Agriculture University Act, 2000, so the Petitioner cannot approach the Court under Article 226 as he has other efficacious alternative remedy available under the Statute. Learned Counsel for the Petitioner further refuted the contention of the learned Counsel of the State and contended that there is no direct provision regarding the appeal against the impugned order in the statute and he further contended that Section 20(5) of the said Act does not

confer any appellate jurisdiction upon the Chancellor. He further relied upon the decision given by this Court in L.P.A. No. 72 of 2007 in Kapildeo Prasad Singh v. State of Jharkhand and Ors.

6. I have heard the learned Counsel for the parties and gone through the record. Section 20(5) reads as under:

20(5) The Chancellor, may by an order in writing annul any proceeding of the officer or authority of a University which is not in conformity with this Act, the Statute or the Regulation:

Provided that before making any such order he shall call upon the officer or authority concerned to show cause why such an order should not be annulled and if any cause is shown within the time specified by him in this behalf, he shall consider the same.

It only provides that the Chancellor can annul any proceedings of the officer or authority of a University which is not in conformity with the Act, the Statute or the Regulation nowhere it is provided that the aggrieved party has a right to prefer an appeal under the said Act. This Court in L.P.A. No. 72 of 2007 Kapildeo Prasad Singh (supra) has held that there is no direct provision regarding statutory remedy by way of appeal. As a matter of fact, Section 20 of the Act does not confer the appellate jurisdiction and the petition cannot be thrown out on the said ground that the alternative efficacious remedy is available to the Petitioner. In view of the above, the contention of the learned Counsel for the Petitioner that he should have approached the Chancellor and should have preferred the appeal is not tenable.

7. Whereas the representation to Vice Chancellor is concerned, there is no statutory provision to give any representation to the Respondent--Vice Chancellor to review its earlier order. Thus, there is no statutory remedy by way of a representation and as such the writ petition is maintainable. It cannot be concluded that the petition is not maintainable on the ground that the Petitioner's representation is pending before the Vice Chancellor.

8. Now, it has to be seen whether the Petitioner had been afforded a proper opportunity or not. From perusal of the record, it is revealed that the Petitioner has dealt this aspect in Paragraphs 20 and 26 of the writ petition that no opportunity, before withdrawing the order passed in 2005, was given to the Petitioner. In reply to these paragraphs, in Para 17 and 19, nothing has been said that he was given any opportunity. Learned Counsel for the Respondents could not demonstrate me from the record that before passing the said order, any opportunity had been given to be heard. It is not a case where the rights of the Petitioner has not been violated. The Petitioner was conferred a right by passing a speaking order that he will get CAS from particular date in the year 2005. When the said order was recalled and the date of the promotion of the Petitioner under CAS Scheme was shifted and a recovery was ordered, it was the bounden duty of the Respondents to give an opportunity of hearing to the Petitioner. In

the instant case, no such right of hearing had been given, as such the order is bad in law.

9. In view of the above, the order dated 28.3.2007 as described in relief "a" is hereby quashed. It is further given liberty to the Respondents that if the Respondents had to pass any order regarding shift of date of CAS the Respondents will give an opportunity of hearing to the Petitioner before passing any such order. If any amount has been deducted by the University as ordered by the impugned order during the pendency of the writ petition, the said amount may be returned to the Petitioner within four months from today. Liberty is given to the Respondent - Vice Chancellor to proceed further, if he desires so, after giving due opportunity and the Vice Chancellor will pass a speaking order within a period of three months from today.

10. With these observation and direction, this Writ Petition is disposed of No order as to cost.