

(2023) 01 JH CK 0011

In the Jharkhand High Court

Case No : Letters Patent Appellate No. 109, 111, 113, 141, 1721, 2106, 2107, 2108 Of 2019, IA No.1721, 2106, 2107 , 2108 Of 2019

State Of Jharkhand And Others

APPELLANT

Vs

Unmilika Das And Others

RESPONDENT

Date of Decision : 05-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 142

Jharkhand State University Act, 2000 — Section 3, 10(17), 35, 35(2), 45, 57(5)

Citation : (2023) 01 JH CK 0011

Hon'ble Judges : Sujit Narayan Prasad, J;Subhash Chand, J

Bench : Division Bench

Advocate : Darshanna Poddar Mishra, Omiya Anusha, Shivam Singh, Madhu Priya, Manoj Tandon

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. All these appeals have been directed to be listed together as would appear from the order dated 07.03.2019 since common order is under challenge.

2. L.P.A. No. 141 of 2019 has been preferred by the State while L.P.A. Nos.109 of 2019; 111 of 2019 and; 113 of 2019 have been preferred by the Sido Kanhu Murmu University.

3. These intra court appeals under Clause 10 of the Letters Patent are directed against the order/judgment dated 08.05.2017 passed by learned Single Judge of this Court in W.P.(S) No.3893 of 2016 and other analogous matters, whereby and whereunder, the claim of the writ petitioners for regularization as was rejected vide order dated 08.04.2016, has been refused to be interfered with but a direction has been passed upon the respondent concerned that till the regular appointments are made, the writ petitioners shall not be removed from their post and if, disengaged by virtue of order dated 04.05.2012, they shall be continued

in service.

Apart from that, the writ petitioners have been directed to be paid minimum of pay scale of lecturer as approved by the UGC.

4. The brief facts of the case as per the pleading made in the writ petitions required to be enumerated, read as under:

The writ petitioners were appointed as teachers on 15.03.1982 and 01.07.1982 respectively and have been working on the said posts with other regular lecturers.

It is the case of the writ petitioners that the Vice-Chancellor of Bhagalpur University wrote a letter bearing letter no. 7677 dated 15/30.04.1985 to the Department of Human Resources for sanction of posts in faculty of the College. The Bhagalpur University constituted a team for inspection of the college for creation of the additional posts in the science faculty and inspection was executed on 23.06.1987 and report was submitted to the State Government on 21.11.1987.. In the said inspection report, the name of the writ petitioners figures as lecturer in the Department of Botony and Department of Statistics respectively.

When services of the petitioners and other ad-hoc appointees were disengaged, they approached the High Court of Patna and the matter finally travelled to the Hon'ble Supreme Court in S.L.P. (C) No. 11078 of 1989. The Special Leave Petition and batch of writ petitions were heard together and disposed of by an order dated 06.12.1989, which was modified by an order dated 15.01.1990. Pursuant to the order passed by the Supreme Court, the petitioners resumed their duties on 15.09.1990 as communicated through letter bearing No. B/4931-5005 issued by the Bhagalpur University.

Thereafter, in the year 1992 the Bhagalpur University bifurcated and another University, namely, Sido Kanhu Murmu University, Dumka was formed and A.S. College, Deoghar was placed under Sido Kanhu Murmu University, Dumka.

Again, petitioners' services were terminated vide letter dated 25.09.1997. A writ petition being C.W.J.C. No. 10128 of 1997 was filed by one of the similarly situated appointees, namely, Sri Nikudimus Tudu and the writ petition was allowed quashing the termination vide order dated 10.05.1999 and thereafter, the petitioners also approached the writ Court in C.W.J.C. No. 3916 of 2000. By an order dated 05.07.2000, writ petition filed by the petitioners was allowed and consequently, they were continued in service.

The University sent a letter dated 04.09.2002 to the Department of Human Resources Development, Government of Jharkhand for creation of posts of teachers. Thereafter, on 01.04.2003, the State Government transferred three posts of teachers for physics, four posts of teachers for chemistry, two posts of teachers for zoology, two posts for botony, two posts for mathematics and one post of teacher each for Geology and Statistics from different colleges to A.S. College, Deoghar. But, then too the writ petitioners were not being paid at par

with the regular teachers.

Being aggrieved with the aforesaid action of non-payment of salary at par with the similarly situated teachers, one Bharat Bhushan Prasad and another filed a writ petition before this Court being W.P.(S) No. 3210 of 2003, for grant of basic scale in the pay-scale of Lecturer and for payment of arrears of salary and current salary. Another prayer in the writ petition was for a direction upon the respondents to take immediate steps for regular appointment of Lecturers in A.S. College, Deoghar and on commencement of the recruitment exercise due weightage should be accorded to the petitioners for their past services. The writ petition stood disposed of by an order dated 04.05.2012 directing the writ petitioners to move a representation before the Vice Chancellor and the same was directed to be forwarded to the State Government in light of which it was to take a decision considering the length of service and experience of the teachers after affording opportunity of being heard.

Thereafter, on representation being made by the writ petitioners, the College and the University recommended the case of the writ petitioners and other similarly situated employees for regularization of their services vide letter dated 29.11.2012. But, no decision was taken by the State Government regarding the said issue and a contempt case being Cont. Case (CvI) No. 394 of 2013 was preferred before this Court.

One I.A. was filed being I.A. No. 5912 of 2013 praying therein for release of payment of arrears of salary and the said interlocutory application was allowed vide order dated 28.02.2014. Thereafter, the

University vide its letter dated 13.03.2014 sent the claim regarding the arrears of salary of ad-hoc teachers including the writ petitioners to the State Government @ Rs.2200/- per month along with other admissible allowances as the last salary was paid to the writ petitioners and other at this rate upto October, 2005.

In consequence thereof, the writ petitioners and other similarly situated employees were paid arrears of salary @ Rs. 700/- per month without adhering to the order passed by the High Court in the contempt case.

In the meantime, the respondent-State preferred L.P.A. No. 342 of 2013 against the order passed in W.P.(S) No. 3210 of 2013, however, the said L.P.A. was dismissed vide order dated 05.02.2015 by the Division Bench of this Court.

Thereafter, in the light of the decision taken by the State Government, the contempt proceeding was dropped reserving the liberty to the writ petitioners to challenge the order dated 08.04.2016 in accordance with law.

The writ petitioners then preferred writ petition being W.P.(S) No. 3893 of 2016 along with other analogous matters before this Court which has been disposed of vide order dated 08.05.2017 directing therein that from November, 2005 to 03.05.2011 the writ petitioners shall be granted arrears of pay @ Rs. 2200/- with

other usual allowance and from 04.05.2012, they shall be paid the minimum of pay-scale of Lecturer with a further direction that in the light of the prayer in W.P. (S) No. 3210 of 2000 and the direction of the Supreme Court in S.L.P.(C) No. 11078 of 1989, the respondent-University was to issue a notice for regular appointment of Lecturers on the sanctioned vacant posts not only under A. S. College, Deoghar, but, also in all the colleges under it, within three months. Further direction was made that till the regular appointments are made, the writ petitioners shall not be removed from their posts and, if disengaged by virtue of order dated 04.05.2012, they shall be continued in service.

5. This Court before entering into the legality and propriety of the order and before consideration of ground as has been agitated by the learned counsel for the appellants, deems it fit and proper to refer certain orders passed in these proceedings with respect to the reason for filing of these appeals on behalf of the University. Such order was passed on the basis of a letter written by the University to the Secretary, Higher, Technical Education and Skill Development Department, Ranchi for releasing fund for difference of arrears of salary payable to the ad-hoc teachers of A.S. College which was to the tune of Rs.5,76,84,015/-. The said order dated 19.09.2022 reflects that the Director, Higher and Secondary Education had given two options to the Universities, first to file appeal against the impugned order or to pay from their own source.

This Court, therefore, has made an observation in the order dated 19.09.2022 that these appeals have been filed under coercion and under the direction of the State authorities and prima facie no independent decision appears to have been taken by the University.

However, this Court vide the aforesaid order, directed the Vice Chancellor, Sido Kanhu Murmu University, Dumka to file affidavits personally sworn by him, stating as to under what situation, if the

University was aggrieved by the State and not by the impugned order, these appeals have been filed against the impugned order passed by the learned Single Judge.

Further, this Court, vide aforesaid order directed the Secretary, Department of Higher & Technical Education to file an affidavit as to under what circumstances and authority, a letter dated 11.01.2019 was written to the University suggesting two options, one of which was to file appeal against the order impugned passed by the learned Single Judge.

This Court has also called upon the original records with respect to taking decision of filing such appeals. For ready reference, the order dated 19.09.2022 reads as under:

"L.P.A. No. 109 of 2019

with

L.P.A. No. 111 of 2019 and L.P.A. No. 113 of 2019

It appears that after the impugned order having been passed by the learned Single Judge, a letter was written by the University to the Secretary, Higher, Technical Education and Skill Development Department, Ranchi for releasing fund for difference of arrears of salary payable to the ad hoc teachers of A.S. College, Deoghar, which was to the tune of Rs.5,76,84,015/-. A request was made to sanction and release the same for the ad hoc teachers.

2. Vide the impugned order dated 08.05.2017 passed in W.P.(S) no.2931 of 2016 and analogous cases, the learned Single Judge, has held as under:

"17. Facts pleaded by the petitioners and not controverted by the respondents, would lead to an inference that the petitioners are discharging duties similar to the work undertaken by other regular appointees. It is admitted at Bar that minimum of pay-scale of Lecturers as approved by the U.G.C is in the scale of Rs.15,600 to 39,000/-. Accordingly, it is ordered that from November, 2005 to 03.05.2011 the petitioners shall be granted arrears of pay at the rate of Rs.2200/- with other usual allowance and from 04.05.2012, they shall be paid the minimum of payscale of Lecturer. In the light of the prayer in W.P.(S) No.3210 of 2000 and the direction of the Supreme Court in S.L.P. (C) No.11078 of 1989, the respondent-University is directed to issue a notice for regular appointment of Lecturers on the sanctioned vacant posts not only under A.S. College, Deoghar, but, also in all the colleges under it, within three months. Till the regular appointments are made, the petitioners shall not be removed from their post and, if disengaged by virtue of order dated 04.05.2012, they shall be continued in service. Appropriate age relaxation to the extent they have worked in the college shall be granted to the eligible candidates if they participate in the selection by direct recruitment.

18. The writ petitions stand partly allowed, to the aforesaid extent."

3. The impugned order was passed by the learned Single Judge on 08.05.2017.

4. All three letters patent appeals were filed on 07.02.2019.

5. From the cage column of the impugned order which has been filed in these cases, it appears that requisition for supply of certified copy was made on 06.02.2019, which was made available on 14.02.2019 and from the averments made in the limitation petition for condonation of delay, it appears that the appeal has only been filed because the State authorities have declined to pay from the State coffer and the University does not have any independent means to pay the dues. Therefore, it appears that the University was not aggrieved by the impugned order passed by the learned Single Judge rather it had requested the State to grant the fund for clearing the arrears/dues. Not a single line has been written in the interlocutory application that for any other reason, the appeals are being filed.

If the statements are read with the documents appended with Annexure-2, it

appears that the Director, Higher and Secondary Education had given two options to the Universities, first to file appeal against the impugned order or to pay from their own source. This shows that these appeals have been filed under coercion and under the direction of the State authorities and prima facie no independent decision appears to have been taken by the University.

6. However, before passing a final order with regard to limitation, we would direct the Vice Chancellor, Sido Kanhu Murmu University, Dumka to file affidavits personally sworn by him, stating as to under what situation, if the University was aggrieved by the State and not by the impugned order, these appeals have been filed against the impugned order passed by the learned Single Judge ?

7. Let the original records with respect to taking decision of filing such appeals be also produced under sealed cover before us.

8. There appears to be no explanation other than the aforesaid as to what has happened between 08.05.2017 which is the date of passing of the impugned order up to 06.02.2019.

9. Let an affidavit be filed by the Secretary, Department of Higher & Technical Education as to under what circumstances and authority, a letter dated 11.01.2019 was written to the University suggesting two options, one of which was to file appeal against the order impugned passed by the learned Single Judge.

We can well understand that it could be tested by the State Government regarding the fund payable to the University but we are not able to understand how the State can direct the University to file an appeal against the order passed by the learned Single Judge, the University being a statutory autonomous body.

Let this affidavit be also personally sworn by the Secretary, Department of Higher & Technical Education.

L.P.A. No.141 of 2019

10. It has been reiterated many times in this interlocutory application that as per the direction, the liability was upon the University to pay arrears as there was no specific direction against the State Department. This is the reason why they had rejected the claim of the University for release of fund for such payment.

However, it is intriguing that if the State authorities were thinking that there is no specific direction against the State to pay, how are they aggrieved and why they have filed this appeal ?

11. Then a supplementary affidavit has been filed. In the supplementary affidavit, again the statement has been made in paragraph 6 thereof that the main direction was issued to the respondent-University for making payment to the concerned respondents/writ petitioners and as there was no role of the appellant regarding the publication of post for appointment nor for grant of arrears of salary and the same is completely within the power and jurisdiction of

the University and the College concerned and the department is only amount disbursing authority.

If this is the case, though, we doubt that the concerned department is a State disbursing authority, even if considering it for the time being to be correct, if the State authority being the disbursing authority, have already rejected the claim of the University, then what was the occasion for filing this appeal ?

It is further stated in paragraph 6 that as per the direction issued by the High Court, the University was to comply and the University was directly affected party, then again a question arises why the State has preferred an appeal ?

The statement made in paragraph 17 is an interesting reading. It says that from perusal of the office notes, it transpires that several times files have been moved up and down and it also transpires that after consultation with the Vice Chancellor of the Sido Kanhu Murmu University, the department came to know that no appeal against the impugned order has been preferred by the University till 01.11.2018 and two contempt petitions have already been filed. Hence it is necessary to file L.P.A in this matter otherwise the University has to pay the entire amount.

12. Again a question cropped-up. If the University has to pay the entire amount, why it has bothered the State when the State has already taken a decision that it is not going to pay a single farthing ?

13. In the above view of the matter, we are not satisfied at all as to why the State has preferred this appeal when the State is categorically saying that there was no specific direction to it for payment of any dues and when the State further says that the direction was upon the University to pay the dues and it has already rejected the claim of the University for releasing the necessary fund.

14. In view thereof, we would direct the Secretary, Department of Higher & Technical Education to file a personal affidavit in this matter explaining as to what was the reason for preferring this appeal when the State says that it is not aggrieved by the impugned order at all.

L.P.A. No. 141 of 2019

with

L.P.A. No. 109 of 2019, L.P.A. No. 111 of 2019 and L.P.A. No. 113 of 2019

15. Put up these matters on 10.10.2022."

6. The supplementary affidavit dated 17.04.2021 was filed wherein statement has been made at paragraph-6 thereof that the main direction was issued to the Respondent-University for making payment to the concerned respondents/petitioners of the original writ petitions and as such there was no role of the appellant regarding the publication of post for appointment nor for grant of arrears of salary and the same is completely within the power and jurisdiction of

the University and the college concerned and the Department is only amount disbursing authority.

This Court, therefore, made an observation that if this is the case, though, we doubt that the concerned department is a State disbursing authority, even if considering if for the time being to be correct, if the State authority being the disbursing authority, have already rejected the claim of the University, then what was the occasion for filing this appeal.

It has further been taken note of the statement made at paragraph-6 by this Court that as per the direction issued by the High Court, the University was to comply the direction and the University was directly affected party, then again a question arises why the State has preferred an appeal.

The statement has been made at paragraph-17 of the affidavit wherein it has been stated that several times files have been moved up and down and it also transpires that after consultation with the Vice Chancellor of the Sido Kanhu Murmu University, the department came to know that no appeal against the impugned order has been preferred by the University till 01.11.2018 and two contempt petitions have already been filed. Hence, it is necessary to file L.P.A. in this matter otherwise the University has to pay the entire amount.

7. This Court has again raised a question that if the University has to pay the entire amount, why it has bothered the State when the State has already taken a decision that it is not going to pay a single farthing.

8. This Court, in above view of the matter, was not satisfied as to why the State has preferred this appeal when the State is categorically saying that there was no specific direction to it for payment of any dues and when the State further says that the direction was upon the University to pay the dues and it has already rejected the claim of the University for releasing the necessary fund.

In view thereof, this Court directed the Secretary, Department of Higher & Technical Education to file a personal affidavit in this matter explaining as to what was the reason for preferring this appeal when the State says that it is not aggrieved by the impugned order at all.

9. The Vice Chancellor has filed an affidavit stating that the appeal has been filed only because of the reason that the State has asked to do so as per the instruction dated 11.01.2019.

10. The matter was taken up for hearing on 01.12.2022 asking the Secretary of the Department of Education as to under what provision of law such type of pressure tactics is being applied upon the University by writing the letters like the aforesaid. For ready reference, the order dated 01.12.2022 reads as under:

"We have perused the original records.

This is a very strange situation that in the Court it is being stated by the University that these appeals have been filed under compulsion of the direction

which has been given by the State Government vide letter dated 11.01.2019. It is further submitted that the University was not aggrieved by the order passed by the learned Single Judge, therefore, it has requested the State Government to release funds for payment to the writ petitioners, but the State Government refused and vide letter dated 11.01.2019 directed that the University has only two options – either to file appeal against the order passed by the learned Single Judge or pay from their own resources. It is said that the University did not have the resource, therefore, it succumbed and under the direction of the State it has filed LPAs though it was not aggrieved by the order passed by the learned Single Judge.

The crux of the order of the learned Single Judge is that the payment should be made for the work which had already been done by the writ petitioners, though the demand of the writ petitioners for regularization has also been refused.

In above view of the matter, since learned counsel for the University has stated in the presence of the Vice Chancellor of the University, who is present in Court today, that the University was never aggrieved by the order passed by the learned Single Judge and this is also apparent from the original records that not a single line has been written as to why the appeal is required to be filed against the order passed by the learned Single Judge, in our view there is no occasion for the University to pursue these appeals which have been filed under pressure of the State authorities.

In above view of the matter, we would like an answer from the Secretary of the Department of Education as to under what provision of law such type of pressure tactics is being applied upon the University by writing the letters like the aforesaid.

Let the Secretary, Department of Higher and Technical Education, Government of Jharkhand, Ranchi, remain present before us to explain the conduct on the next date of hearing.

Put up this case on 06.12.2022 within top five cases.

Personal appearance of the Vice Chancellor is dispensed with for the present.”

11. The affidavit has been filed in pursuance to the aforesaid order by the Secretary wherein decision so taken vide letter as contained in Memo No. 74-A dated 11.01.2019 has been withdrawn and communicated to the Registrar, SKM University, Dumka vide Memo No. 2152 dated 21.12.2022 appended as Annexure-A to the aforesaid affidavit. The unconditional apology has also been sought for the inconvenience caused to this Court from the issuance of the letter dated 11.01.2019.

12. This Court, in view thereof, on the basis of the letter dated 11.01.2019 and the statement furnished in the supplementary affidavit, is of the view that the State without any authority of law has compelled the University to file an appeal and in view thereof, the appeals have been preferred by the University as also by

the State of Jharkhand.

I.A. Nos. 1721 of 2019 in L.P.A. No. 141 of 2019; 2106 of 2019 in L.P.A. No. 109 of 2019; 2107 of 2019 in L.P.A. No. 111 of 2019 and; 2108 of 2019 in L.P.A. No. 113 of 2019:

13. Mr. Sachin Kumar, learned AAG-II has submitted that since the appeal is against the order passed by the learned Single Judge where the legality and propriety of the aforesaid order is required to be considered, therefore, the appeals may be heard on merit.

14. A serious objection has been made on behalf of the learned counsel for the respondent by taking the ground of appeals being barred by 618 days of delay.

15. Upon this, learned counsel for the State as also for the University have submitted that the applications for condonation of delay have been filed.

16. I.A. Nos. 1721 of 2019 in L.P.A. No. 141 of 2019; 2106 of 2019 in L.P.A. No. 109 of 2019; 2107 of 2019 in L.P.A. No. 111 of 2019 and; 2108 of 2019 in L.P.A. No. 113 of 2019 have been filed wherein prayer has been made to condone the delay of 618 days occurred in filing the appeals.

17. Learned counsel for the respondents has submitted that the interlocutory applications are having no sufficient cause for condonation of delay and since the appeal are hopelessly barred by limitation, as such, the appeal may be dismissed on the ground of delay.

18. While, on the other hand, learned counsel for the University has submitted that since the legal issue is involved in this case, as such, the matter may be heard on merit so that the issue be decided taking into consideration the legal position, vis-à-vis, the factual aspects.

19. This Court, having heard the learned counsel for the parties and considering the rival submissions on the point of condonation of delay in filing the appeals, is of the view that the issue of entitlement of the writ petitioners regarding minimum of pay scale is involved, as such, deems it fit and proper to decide the issue on merit instead of dismissing the appeals on the ground of limitation and while considering the aforesaid fact, this Court, has also considered the judgment pronounced by the Hon'ble Apex Court in National Insurance Co. Ltd. vs. Giga Ram and Ors., (2002) 10 SCC 176 about not to go on technicality. Paragraph-5 of the said judgment reads as under:

"5. In the background of the facts set out hereinabove, we are of the opinion that the High Court was not justified in taking too technical a view of the facts and refusing to condone the delay in filing the appeal. The application seeking condonation of delay in filing the appeal, moved on behalf of the appellant, deserved to be allowed and the appeal deserved to be heard on merits. However, at this stage we feel that the interest of the claimants should be protected and they should not be dragged into further litigation...."

20. This Court after taking into consideration the aforesaid position of law not to dismiss the lis on technicality rather to decide it on merit so that the matter be set at rest for the time to come, the same is considered to be a ground to condone the delay. Accordingly, the delay of 618 days in filing these appeals is hereby condoned.

21. In view thereof, all the delay condonation applications are allowed and accordingly, disposed of.

L.P.A. No. 141 of 2019; L.P.A. No. 109 of 2019; L.P.A. No. 111 of 2019 and; L.P.A. No. 113 of 2019:

22. This Court is not proceeding to deal with the issue on merit. It appears from the impugned order and material available on record that the writ petitioners have approached this Court for their regularization in service and for disbursement of salary @ 2200/- per month alongwith other admissible allowances.

23. The learned Single Judge, while considering the regularization, has found that the writ petitioners have failed to make out a case for regularization, as such, the same has been rejected.

This Court posed a question to the learned counsel for the respondent writ petitioners as to whether any appeal has been filed against the order rejecting the relief sought for regarding regularization in service.

It has been submitted that no such appeal has been filed.

24. The learned counsel for the State, therefore, submits that since the claim of regularization has already been rejected, therefore, now only issue to be decided is as to whether the writ petitioners are entitled to get the minimum of pay scale or not?

25. It has been contended that the direction was passed directing the respondents to release the minimum of pay scale as per the UGC pay scale, cannot be said to be proper and justified order/direction since the learned Single Judge itself has come to the conclusion by making observation about the nature of appointment to be illegal, that is the reason, the claim of the writ petitioners have been rejected so far as it relates to regularization.

It has, therefore, been submitted that the appointment of the writ petitioners have been held to be illegal which has been taken as a cause not to allow the prayer for regularization, then, where is the question for a direction to release the salary on the basis of minimum of pay scale.

The ground has been agitated that in a case of illegal appointment, there cannot be any direction for minimum of pay scale as has been directed by the learned Single Judge.

26. It has been contended that the writ petitioners have been appointed without

following the due procedure and not by the competent authority and therefore, once the appointment has been held to be illegal, there can be no entitlement of minimum of pay scale, as such, the part of the order passed by the learned Single Judge to the effect holding that the writ petitioners are entitled for the minimum of pay scale, requires interference by this Court.

Reliance has been placed upon the provision of Sections 10(17); 35(2) and; 57(5) of the Jharkhand State University Act, 2000, hereinafter referred to as the Act, 2000.

27. Per contra, Mr. Rahul Kumar, learned counsel for the respondent-writ petitioners has submitted that there is no illegality in the direction passed by the learned Single Judge so far as it relates to disbursement of minimum of pay scale since the writ petitioners have been appointed and discharging their duties and once the decision is being taken, they become entitled for the minimum of pay scale.

28. It has been submitted that if the writ petitioners have been retained in service and work is being taken then non-payment of at least minimum of pay scale will be said to be unfair on the part of the respondent, both State and University and it will lead to unfairness and victimizing the writ petitioners.

He has relied upon the judgment rendered by the Hon'ble Apex Court in Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) & Ors., 2006 (4) SCC 1 and State of Punjab and Ors. vs. Jagjit Singh and Ors., (2017) 1 SCC 148.

29. This Court, after having heard the learned counsel for the parties and on perusal of the documents on record as also the finding recorded by the learned Single Judge, is of the view that the learned Single Judge while refusing to regularize the writ petitioners in service has directed the respondent-authorities to make payment of minimum of pay scale till regularization. Relevant part of the order passed by the learned Single Judge reads as under:

"... Accordingly, it is ordered that from November, 2005 to 03.05.2011 the petitioners shall be granted arrears of pay at the rate of Rs. 2200/- with other usual allowance and from 04.05.2012, they shall be paid the minimum of pay-scale of Lecturer. In the light of the prayer in W.P.(S) No. 3210 of 2000 and the direction of the Supreme Court in S.L.P.(C) No. 11078 of 1989, the respondent-University is directed to issue a notice for regular appointment of Lecturers on the sanctioned vacant posts not only under A. S. College, Deoghar, but, also in all the colleges under it, within three months. Till the regular appointments are made, the petitioners shall not be removed from their post and, if disengaged by virtue of order dated 04.05.2012, they shall be continued in service. ..."

30. The part of the order, i.e., direction pertaining to minimum of pay scale has been questioned both by the State and the University. The State is questioning the said order merely on the ground that the amount was directed to be paid in favour of the writ petitioners if borne by the University, the State is having no

objection as would appear from the quoted part of the order based upon the stand taken by the State in different affidavits.

The University on the other hand, has filed the appeal on the coercion shown by the State giving therein two options, i.e., either to make payment from its own source or to file appeal as would appear from the letter dated 11.01.2019, however, the aforesaid letter has been withdrawn as has been appended as Annexure-A to the affidavit.

31. The State has withdrawn the letter that there is no coercion on the part of the State but the said decision has been taken after the filing of the appeal and fact remains that on coercion, the University has filed the appeal.

32. The question herein arises that on what ground the State can issue such direction on earlier occasion and when a query has been put to the Secretary of the Department of Education, then the said letter has been withdrawn. The withdrawal of the said letter reflects that the State has acted without any authority of law and as such, this Court is considering the action of the Department to be very unfair and is nothing but in excess to the jurisdiction.

Such observance is being made for the reason that the University is to govern under the Jharkhand University Act, 2000 wherein Section 10(17) thereof provides that the Vice-Chancellor shall appoint officer (other than ifte Pro-Vice-Chancellor) with the approval of the Chancellor, and teachers and shall define their duties.

Section 35 of the Act, 2000 provides that no post for appointment shall be created without the prior sanction of the State Government.

Sub-Section (2) of Section 35 stipulates that no college other than one mentioned in clauses (a) and (b) of sub-section (1), shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government.

33. The statutory provision therefore confers power of appointment to the Vice-Chancellor to fill up the post created with the prior sanction of the State Government. The State, thus, has been conferred with the power to accord sanction for creating the post and the power to make appointment has been vested upon the Vice-Chancellor.

34. The Finance, Accounts and the Audit of the University has been dealt with by carving out provision under Section 45 by which a fund has been established in the name of the University referred in Section 3 of the Act to be called after the name of that University and the said fund shall vest in the said University for the purposes of the Act, subject to the provisions contained therein, and the following amounts shall be credited to it, namely-

(a) all sums contributed or granted to the University from the Consolidated Fund of the State of Bihar by the State Government for the purposes of the University

or for the purposes of the Colleges and all sums borrowed by the University for the purpose of carrying out the provisions of this Act and the Statutes, Ordinances, Regulations and Rules made thereunder;

(b) all money received by and on behalf of the institution and departments established and maintained by the University including all sums paid to the University under any provision of this Act and the Statutes, Ordinances, Regulations and Rules made thereunder;

(c) The balance amount as respectively standing, immediately before the commencement of the Act, to the credit of Ranchi University, Ranchi (constituted and incorporated under the Bihar State University Act 1960 (Bihar Act 14 of 1960), Sido-Kanhu-Murmu University (formerly Sidhu- Kanhu University), Dumka and Vinoba Bhave University, Hazaribagh both constituted and incorporated under the Bihar State University Act, 1976 (Bihar Act 9 of 1992);

(d) all interests and profits arising from endowments made to the University and all contributions, donations and subsidies received from any local authority or private person;

(e) all fees payable and levied under this Act and the Statutes, Ordinance and Regulations made thereunder; and

(f) all other sums received by the University, not included in clauses (a), (b), (c), (d) or (e).

It is, thus, evident from sub-section (a) of the aforesaid Section that all sums credited or granted from the Consolidated Fund of the State Government for the purposes of the University or for the purposes of the Colleges and all sums borrowed by the University for the purpose of carrying out the provisions of this Act and the Statutes, Ordinances, Regulations and Rules made thereunder.

Sub-Section (b) thereof provides that all money received by and on behalf of the institution and departments established and maintained by the University including all sums paid to the University under any provision of this Act and the Statutes, Ordinances, Regulations and Rules made thereunder.

The aforesaid provision, thus, stipulates that there will be a separate fund to be funded from the Consolidated Fund of the State Government. The carving out of such provision, according to the considered view of this Court, is that the University is to act with all autonomy and without any control of the State Government.

35. The question which is being raised on behalf of the State that post since has not been created since there is no prior sanction of the State Government as required under Section 35(2) of the Act, 2000, as such, any direction for making payment of minimum pay scale, if the appointment itself is illegal, cannot be said to be proper.

The University, however, has contended that they are having no issue if the fund

will be released by the State Government.

36. The issue of minimum of pay scale has been decided by the Hon'ble Apex Court in *State of U.P. and Ors. vs. Putti Lal*, (2006) 9 SCC 337 wherein at paragraph-5 it has been propounded by applying the principle of equal pay for equal work and the daily wagers have been held entitled for minimum of pay scale if they are discharging the same duty as those in the regular employment of the Government. Paragraph-5 of the said judgment reads as under:

"5. In several cases this Court applying the principle of equal pay for equal work has held that a daily-wager, if he is discharging the similar duties as those in the regular employment of the Government, should at least be entitled to receive the minimum of the pay scale though he might not be entitled to any increment or any other allowance that is permissible to his counterpart in the Government. In our opinion that would be the correct position and we, therefore, direct that these daily-wagers would be entitled to draw at the minimum of the pay scale being received by their counterparts in the Government and would not be entitled to any other allowances or increment so long as they continue as daily-wagers. The question of their regular absorption will obviously be dealt with in accordance with the statutory rules already referred to."

37. In *State of Karnataka vs. Uma Devi (3)* (supra), the issue of minimum of pay scale has also been considered by the Hon'ble Apex Court while dealing with the issue of regularization to be made of the backdoor entry of the daily wager. The aforesaid discussion has been made at paragraph-55 thereof wherein the High Court has passed an order in favour of the daily wagers working in the Commercial Tax Department to be paid wages equal to the salary and allowances that are being paid to the regular employees of that cadre in the Government service with effect from the date of their respective appointments.

The Hon'ble Apex Court has observed that at best the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to the regular employees be paid to these daily wagers with effect from the date of this judgment. Hence, that part of the order of the Division Bench has been modified and it has been directed that these daily wage earners be paid wages equal to the salary at the lowest grade of the employees of their cadre in the Commercial Tax Department in government service. For ready reference, the entire observation made at paragraph-55 is required to be referred herein, which reads as under:

"55. In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and

allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

38. It is, thus, evident that the Hon'ble Apex Court in the case of illegal appointment has found the principle of disbursement of salary on the basis of minimum of pay scale to be appropriate one. The Hon'ble Apex Court has further considered the applicability of the principle of minimum of pay scale in the case of State of Punjab and Ors. vs. Jagjit Singh and Ors. (supra) wherein by taking note of the direction contained at paragraph-55 of the Secretary, State of Karnataka vs Uma Devi (supra) has held at paragraph-36.2 that the daily wage earners should be paid wages at the rate of lowest grade. For ready reference, paragraphs-36.2 & 36.3 of the said judgment read as under:

"36.2. The Constitution Bench, having noticed the contentions of the rival parties on the subject of wages payable to daily wagers, recorded its conclusions as under : [Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , SCC p. 43, para 55]

"55. In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so-called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that is being paid to regular employees be paid to these daily-wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily-wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily-wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that the courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularisation. We also notice that the High Court has not adverted to the aspect as to whether it was regularisation or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them."

(emphasis supplied)

36.3. We have extracted the aforesaid paragraph, so as not to make any inference on our own, but to project the determination rendered by the Constitution Bench, as was expressed by the Bench. We have no hesitation in concluding that the Constitution Bench consciously distinguished the issue of pay parity from the issue of absorption/regularisation in service. It was held that on

the issue of pay parity, the High Court ought to have directed that the daily-wage workers be paid wages equal to the salary at the lowest grade of their cadre. The Constitution Bench expressed the view that the concept of equality would not be applicable to the issue of absorption/regularisation in service. And conversely, on the subject of pay parity, it was unambiguously held, that daily-wage earners should be paid wages equal to the salary at the lowest grade (without any allowances).

39. This Court, before proceeding further, requires to refer herein that the issue involved in this case is not of the daily wagers rather it is the case of Lecturer, now known as Assistant Professor. But the reference of the judgment of the Constitution Bench of the Hon'ble Apex Court rendered in *Secretary, State of Karnataka vs. Uma Devi* (supra) and *State of Punjab vs. Jagjit Singh* (supra) have been taken only in order to refer the principle laid down by the Hon'ble Apex Court regarding the entitlement of the minimum of pay scale.

Reference has also been made for answering the objection raised on behalf of the State that in case of illegal appointment, there cannot be applicability of the principle of minimum of pay scale.

40. There is no dispute as has been held by the Hon'ble Apex Court in *Secretary, State of Karnataka vs. Uma Devi* (supra) and *State of Punjab vs. Jagjit Singh* (supra) that in case of illegal appointment there cannot be any regularization and the learned Single Judge after taking into consideration the fact that the appointment so made of the writ petitioners are beyond the sanctioned strength, therefore, is correct in rejecting the prayer for regularization.

It also requires to refer herein that in a case of illegal appointment, the concerned employee cannot be held entitled for pay scale at par with the regular employee on the principle of applicability of equal pay for equal work on the ground that there is difference of mode of appointment and the concerned if appointed without any sanctioned post, they cannot claim parity with the regularly appointed employees who has been inducted in service after following due procedure and by order of the competent authority. But, question herein is regarding entitlement of minimum of pay scale, to be paid on the basis of the UGC Regulation, and from which date it is to be paid.

It also requires to refer that there is difference in between equal pay for equal work and minimum of pay scale. The equal pay for equal work will be the pay scale at par with the pay scale of the regular employees but the minimum of pay scale is different to that of the pay scale to be given to the regular employees as the minimum of pay scale will be said to be the pay scale at minimum of pay scale along with admissible DA excluding increments.

41. The foremost objection raised by the learned State counsel is that the writ petitioners have been appointed without any post and as such, the appointment is illegal and therefore, the concept of minimum of pay scale cannot be held applicable.

42. This Court, in respect of the aforesaid issue, has again considered the observation/direction made at paragraph-55 of the judgment rendered in Secretary, State of Karnataka vs. Uma Devi (3) (supra) from which it is evident that the Hon'ble Apex Court has taken into consideration that the appointment made was illegal but the said appointees have been held entitled for the minimum of pay scale as would appear from the quoted part of paragraph-55 hereinabove.

43. Since, minimum of pay scale has equally been applied in the case of illegal appointees as has been reiterated by the Hon'ble Apex Court in Secretary, State of Karnataka vs. Uma Devi (3) (supra) and State of Punjab vs. Jagjit Singh (supra) as would be evident from the observation made at paragraphs-36.2 & 36.3, therefore, the objection has been raised for holding the writ petitioners not entitled for the minimum of pay scale on account of appointment being illegal, is hereby over-ruled and the submission so made is hereby rejected by considering the fact that the learned Single Judge has passed the order directing to make payment of minimum of pay scale till the regular appointment is being made.

Such direction, according to the considered view of this Court, cannot be said to be unjustified for the reason that when the work is being taken from the writ petitioners there is no occasion not to make payment of at least minimum of pay scale as per the principle laid down by the Hon'ble Apex Court in Secretary, State of Karnataka vs. Uma Devi (3) (supra) and State of Punjab vs. Jagjit Singh (supra).

Accordingly, the direction passed by the learned Single Judge to the effect holding the writ petitioners entitled for minimum of pay scale, requires no interference.

44. The question now will come that from which date the writ petitioners are entitled for the minimum of pay scale.

45. The counsel for the State has submitted that the learned Single Judge has directed to make payment of the minimum of pay scale of Lecturer as approved by the UGC in the scale of Rs. 15,600 to 39,000/-, as such, the same has been directed to be paid in favour of the writ petitioners at the rate of Rs.2200/- which according to the learned counsel for the parties, admittedly, was the minimum of pay scale. However, direction has also been made with other usual allowances w.e.f. 04.05.2012. The direction was passed for disbursement of the minimum of pay scale from 04.05.2012 which is based upon a valid reason as recorded by the learned Single Judge since the writ petitioners have been disengaged vide order dated 04.05.2012.

The learned Single Judge has passed the order for engagement of the writ petitioners if disengaged by virtue of the order dated 04.05.2012 with a further direction to continue in service till the regular appointment. Such direction has been passed along with a direction for issuance of advertisement for regular appointment of Lecturers on the sanctioned posts not only under A.S. College,

Deoghar, but, also in all the colleges under it, within three months.

The learned Single Judge in that pretext since has directed the respondent-University to fill up the sanctioned post, therefore, there cannot be hindrance in the study and the writ petitioners have been directed to be engaged, if not already disengaged.

46. This Court, therefore, is of the view that what has been submitted on behalf of the State that the minimum of pay scale ought to have been directed to be paid from the date of order in view of the observation made by Hon'ble Apex Court in *Secretary, State of Karnataka vs. Uma Devi (3) (supra)* at paragraph-55, in the facts and circumstances of the case, will not be applicable reason being that when it is the case of the University that the writ petitioners have been disengaged by virtue of order dated 04.05.2012 and they are being directed to be engaged, therefore, they became entitled for minimum of pay scale with effect from the date of disengagement, i.e., 04.05.2012 till the regular appointments are made by following the due procedure.

47. This Court, therefore, is of the view that the objection so raised for disbursement of the amount from the date of order, is hereby rejected in view of the discussion made hereinabove.

48. This Court, in the entirety of the facts and circumstances and as per the discussion made hereinabove, finds no error in the impugned order, accordingly, the appeals fail and stand dismissed.

49. Before parting with the order, this Court is required to refer herein that the statement made on the part of the Secretary, Higher Education by recalling the instruction dated 11.01.2019 vide letter dated 21.12.2022 appended as Annexure-A to the supplementary counter affidavit, is held to be without jurisdiction and unnecessary interference with the internal affairs of the University that is being governed under the statutory Act, i.e., the Act, 2000.

Further, the Secretary has sought for unconditional apology in issuing such letter dated 11.01.2019 as would appear from the affidavit which also suggest that the action of the Secretary in issuing such direction commanding the University to file an appeal to make payment from its own source, is considered to be arbitrary decision on the part of the State being in consonance with the very object and intent of the Jharkhand State University Act, 2000.

50. Pending interlocutory application(s), if any, also stands disposed of.