

**(2010) 08 JH CK 0094**  
**In the Jharkhand High Court**

Sukanti Kumar Rana

APPELLANT

Vs

Birsa Agricultural University and Others

RESPONDENT

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**Date of Decision :** 30-08-2010

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2010) 4 JLJR 434

**Hon'ble Judges :** Dhirubhai Naranbhai Patel, J

**Bench :** Single Bench

**Final Decision :** Allowed

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**Judgement**

D.N. Patel, J.—The present petition has been preferred mainly on the reasons that pay scale of the present petitioner, who is working as Assistant Agricultural Engineer, has been reduced from Rs. 6500- 10500/- to Rs. 5,000-8000/- viz. in the pay scale of Junior Engineer with effect from 1.1.1996. The impugned order at Annexure-7 is dated 16th September 2006.

2. It has been submitted by the Counsel for the petitioner that without giving any opportunity of being heard to the petitioner, unilaterally and arbitrarily, the impugned orders at Annexure-7 and 8 to the memo of petition have been passed by the respondents, which is in violation of Article 14 of the Constitution of India, and therefore, the same deserve to be quashed and set aside. In fact, the pay scale given to the petitioner for the post of Assistant Engineer was absolutely true and correct and in consonance with the law and unnecessarily what has already been given to the petitioner has been taken away in the year 2006 with retrospective effect and vide Annexure-8, recovery order has also been passed with effect from the year 2004.

3. I have heard Learned Counsel appearing for the respondents, who has submitted that the petitioner was wrongly given the higher pay scale as he is a Diploma in Engineering and therefore, he is entitled to the pay scale of the junior Engineer and wrongly the pay scale of Assistant Engineer was given to the

petitioner and therefore, the order at Annexure-7 has been passed as the petitioner is entitled to get the pay scale of Rs. 5000-8000/- with effect from 1.1.1996 and consequently an order at Annexure-8 has also been passed for recovery of the excess amount paid to the petitioner.

4. Having heard Counsel for both sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order at Annexure-7 dated 16th September 2006, whereby the pay scale of the petitioner has been reduced with effect from 1.1.1996 for the following facts and reasons:

(i) The present petitioner was appointed as Assistant Agricultural Engineer in the year 1991. Order of appointment is at Annexure-1 to the memo of the present petition. It appears that from the very beginning the petitioner was appointed as Assistant Agricultural Engineer and not as Junior Engineer.

(ii) Vide office order at Annexure-2 also it appears that the present petitioner was absorbed on the post of Assistant Agricultural Engineer with effect from 19th August 1991 and thus, the stand taken by the respondents that the petitioner is a Junior Engineer is contrary to this Annexure 2.

(iii) It also appears looking to the further documents i.e. from Annexure-3 that the petitioner is an Assistant Agricultural Engineer and was allotted a new General Provident Fund Account number. This letter is dated 8th September 1992.

(iv) It further appears from Annexure-4 that the pay scale of the present petitioner was fixed on the post of Assistant Agricultural Engineer. From this Annexure also, it appears that the petitioner was never appointed or absorbed or given the pay scale of junior Engineer. Thus, the stand taken by the respondents is contrary to this Annexure also.

(v) It further appears from office order dated 18th March 2004 that the petitioner's services have been re-affirmed on the post of Assistant Engineer in the pay scale of Rs. 6500-10500/- by the respondents-. This office order has been issued on the recommendation of the Fitment Committee Notification Bihar Gazette (Extra) dated 13th February 1999, which is already referred in Annexure-5 to the memo of the present petition.

(vi) Thereafter it also appears that the pay scale of the present petitioner on the post of Assistant Agricultural Engineer has been enhanced/revised and the revision in the pay scale has been described in much detail at Annexure-6. Thus, there is also enhancement/revision in the pay scale of the present petitioner on the post of Assistant Agricultural Engineer.

(vii) It appears that abruptly and unilaterally, a decision has been taken by the respondents that the petitioner should be given a pay scale of Junior Engineer of Rs. 5000-8000/- with effect from 1.1.1996. This decision is taken in the year 2006, which is at Annexure-7 to the memo of the present petition and consequently, a recovery order has also been passed vide order at Annexure-8 to the memo of the petition. These orders have been passed without giving any

notice to the petitioner. Counsel for the respondents is unable to point out that whether any notice was given to the petitioner prior to passing the order at Annexure-7. Thus, admittedly no notice was given before reducing the pay scale of the present petitioner.

(viii) Hence, as stated herein above, several office orders have been passed from 1991 onwards referring the petitioner's designation as Assistant Agricultural Engineer and he was also given the pay scale and also revision in the pay scale on the post of Assistant Agricultural Engineer and without giving any opportunity of being heard and without giving any notice, on 16th September 2006, the pay scale of the petitioner has been reduced to the pay scale of Junior Engineer from Rs. 5000-8000/.

(ix) Moreover, it appears that no reasons have been assigned in the order at Annexure-7 worth the name. Thus, the order at Annexure-7 is thoroughly a non-speaking order. Once an order has been passed which is a non-speaking order and that too without giving any notice or without giving any opportunity of being heard to the affected party, no reasons can be supplied in the affidavit. The reasons ought to have been mentioned in the order itself, otherwise all non-speaking and invalid orders after passage of time, with the help of affidavits, will be converted into a speaking and valid orders and therefore, in fact, the reasons given in the counter affidavit cannot give any strength to a non-speaking order. Non-speaking order remains a non-speaking order despite the reasons given in the counter affidavits and/or supplementary counter affidavits filed by the respondents in the Court. What reasons were running in the mind of the concerned officer, at the time of passing of the impugned order is not known to this Court. Subsequently supplied wisdom, is of no value in the eyes of law and therefore, by supplying the reasons by way of counter affidavit filed by the respondents a non-speaking order cannot be converted into a valid reasoned order and hence, also the impugned order at Annexure- 7 deserves to be quashed and set aside.

5. Annexure-8 is a consequent order and therefore, once this Court is quashing the order at Annexure-7, the order at Annexure-8 is also deserves to be quashed.

6. As a cumulative effect of the aforesaid facts and reasons, I hereby quash and set aside the order at Annexure-7 dated 16th September 2006 as also the order at Annexure-8 dated 13th December 2006. Liberty is reserved with the respondents to take action in accordance with law and at least after following the principles of natural justice.

7. In view of the aforesaid observations and directions, this writ petition is accordingly, allowed and disposed of.

8. Consequent to the disposal of the main writ petition, I.A. Nos. 303 of 2010, 513 of 2010 & 3178 of 2010 2009 are also hereby disposed of.