
(2012) 04 JH CK 0048
In the Jharkhand High Court
Case No : L.P.A. No. 452 of 2011

Uday Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Bihar State Universities Act, 1976 — Section 35, 4(1)(14)

Citation : (2012) 3 JCR 577 : (2012) 4 JLJR 1

Hon'ble Judges : Prakash Tatia, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Manoj Tandon and Ranjit Kumar, for the Appellant; I. Sen Choudhary and Ajit Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Learned Counsel for the parties, The appellant-writ petitioner is aggrieved against the order dated 17.11.2011 passed by the learned Single Judge by which W.P.(S) No. 6093 of 2011 has been dismissed.

2. The appellant-writ petitioner was holding the post of Lecturer in the Markham College of Commerce, Hazaribagh In the subject of History challenged the order of his absorption/regularization of service w.e.f. 15.10.2001 by which he was absorbed in the regular cadre from 1.5.2004 and the petitioner's claim is that he was duly selected candidate on the post of Lecturer in the Markham College of Commerce, which was affiliated college to Vinoba Bhave University and subsequently became the constituent college to the Vinoba Bhave University, In matter of about 4000 such teaching staff of constituent colleges dispute arose for their absorption and issues have been finally decided by the Supreme Court ". after obtaining report from one man Hon"ble Justice S.C. Agarwal Commission. In the light of recommendation of said Agarwal Commission which has been accepted by the Supreme Court, the petitioner was entitled to his absorption in service from the date of his acquiring requisite qualification which he acquired on 15.10.2001. According to the Learned Counsel for the appellant-petitioner, his

name was duly considered by the commission constituted by the order of the Hon'ble Supreme Court, whose recommendation has been accepted in the case of State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, after rejecting all the objections against that commission's report which was submitted by the various persons including the State Government also.

3. However, learned Single Judge held that petitioner was absorbed in service on the post which became vacant on the retirement of Dr. Hayat Ahmad and that absorption was made on the basis of the recommendation of the Agarwal Commission. Learned Single Judge also held that Agrawal Commission has given definite finding that petitioner has become eligible for consideration from 15.10.2001 but since there was no vacant post and learned Single Judge also observed that petitioner in the writ application has not stated that on 15.10.2001 any sanctioned vacant post in history was available. In view of the above reasons, it has been held that petitioner has been rightly absorbed in the regular cadre w.e.f. 1.5.2004 because on 30.4.2004 the post in the History subject became vacant due to retirement of Dr. Hayat Ahmad.

4. Learned Counsel for the writ petitioner-appellant submitted that as back as, even prior to 29.2.1987 petitioner was one of a recommendee in service against the sanctioned post and because of that reason on 29.2.1987, the requisite amount for salary was sanctioned by the Government. The petitioner's name was in the list annexed with letter dated 22.2.1987, Annexure-1 under the heading of persons working against the recommended teaching post. Then due to a dispute of large number of claims of absorption on the various posts, a writ petition was filed at Patna High Court which is C.W.J.C. No. 4021 of 1995, which was filed by the union of the employees. This writ petition was filed at Patna before bifurcation of the State of Bihar and creation of Jharkhand. This writ petition was decided by the Division Bench of the Patna High Court vide judgment dated 31.1.1997 and direction was issued to the Universities to take steps in accordance with the communication of the State Government, which was in Annexure-5 of the writ application, in the light of the observation made in said judgment and in accordance with the proviso to Section 4(14) of the Bihar Universities Act; 1976. The petitioner-appellant's further case is that petitioner's name was again came in the list (Annexure-3) dated 1.10.1997 and specifically it has been mentioned for the name of the various lecturers in different departments including for petitioner that their cases will be considered for regularization. Not only this in compliance of the order of the Patna High Court in C.W.J.C. No. 4021 of 1995 dated 31.1.1997 name of four other persons were considered on 4.8.1998 and recommendation was made for absorption of those four persons and those have been absorbed in service. The petitioner's case was also considered in the same way and thereafter the notification was issued by the University on the same date i.e. 4.8.1998 wherein it has been clearly declared that the petitioner was appointed in regular selection and is working from before 30th April, 1986 against recommended post and was being paid his salary through bank transfers, and he was recommended to be regularized in the

service subject to his acquiring the minimum percentage of marks at the Masters level or acquiring the degree of Ph. D within a period of four years from the said notification dated 4.8.1998. However, it was made subject to the sanction of post by the State Government. This notification was issued in view of the approval granted by the syndicate. Since, the judgment of the Patna High Court was challenged before the Hon''ble Supreme Court and finding the complexity in the dispute as it was for about 4000 employees working in about 40 colleges affiliated to various universities, therefore Hon''ble Supreme Court constituted committee headed by Hon''ble Justice Sri S.C. Agarwal. The petitioner's name was considered by the said Agrawal Committee and the petitioner's case was considered at page 1125 of the report in para IX which is as under:--

Sri Uday Kumar Singh was appointed as Lecturer in History by order dated October, 5, 1985. On the date of appointment he did not have high second class Post Graduation qualification having secured 47.8% marks. He obtained Ph. D degree on October 15, 2001. He became eligible for consideration on October 15, 2001.

(Emphasis supplied)

5. The petitioner's name was also included in Annexures appended to the Commission's report is Annexure-IIIA at serial No. 38 against the subject history and In Annexure IVA also petitioner's name is at serial No. 11 in subject history. The Annexure-IVA Is "teaching staffs who are eligible to be considered for absorption".

6. Learned Counsel for the appellant-petitioner submitted that in view of the above facts, it is clear that petitioner was appointed prior to 30.4.1986 against the vacant post and his absorption was recommended prior to 1986. However, no order of absorption was passed, but in view of the recommendation of the Agarwal Commission referred above, the petitioner was entitled to be absorbed from 15.10.2001 as he acquired requisite educational qualification on 15.10.2001 and that fact has been taken note of by the Agrawal Commission.

7. Learned Counsel for the University vehemently submitted that there were only ten posts for subject history, which is clear from the Annexures appended to the said Agrawal Commission itself as in Annexure 1-A it is mentioned that recommendation was sought for two posts of History teacher and Annexure-26-A for eight posts for History teacher were also sought and therefore, at relevant time ten posts only were sanctioned. Against said ten posts, ten persons named in the list of Agarwal Commission were working. The petitioner's name in the Agrawal Commission report finds at serial No. 11, therefore, the petitioner could not have been absorbed even if he had acquired the requisite qualification on 15.10.2001. Learned Counsel for the University drew our attention to the observation of the Agrawal Commission made in its report wherein it has been observed that the State Government has taken decision regarding absorption for the additional post made by the University up to cut off date which is pending

before the State Government in the light of the aforesaid five member committee constituted by the State Government vide resolution No. 307 dated 8.3.1988. Then it has been observed that subsequent to the date of conversion of college into a constituent college some vacancies would have arisen on account of retirement or death of teachers whose services are absorbed with effect from the date of conversion and teachers who had been working in the college on the date of conversion are eligible for consideration for appointment against such vacancies could be considered for absorption against such vacancies. Therefore, so far as petitioner's, time of appointment prior to 30th April 1986 is not in dispute and petitioner's name in the documents referred by the petitioner is concerned his name was certainly in those documents but admittedly the "petitioner was only recommended for absorption against the vacant post. From the Agrawal Commission's report itself, since it is clear that there were only ten posts and the petitioner was eleventh candidate, therefore in view of the Commission's observation and suggestion made, referred above, he could have claimed his absorption from the date when the vacancy occurred and learned Single Judge has taken note of this fact and there-fore held that the first vacancy occurred in history subject only upon the retirement of said Dr. Hayat Ahmad. In view of the above reasons, there is no illegality in the order of the learned Single Judge.

8. Learned Counsel for the State drew our attention to the judgment of the Hon"ble Supreme Court delivered in the case of State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, and submitted that all the objections were rejected by Hon"ble Supreme Court and thereafter, recommendation of the Commission was accepted and it has been held by the Hon"ble Supreme Court that we agree with the opinion of the Commission that only such members of the staff are liable to be considered for absorption who were working against the additional post for which proposal had been received from the University by the State Government before the cut off date".

9. We have considered the submission of the parties and perused the facts of the case.

10. So far as the facts are concerned, there is no controversy about the facts that petitioner was appointed prior to 30.4.1986 and he was appointed against the post which was not the sanctioned post. How-ever his name was recommended for absorption obviously he could have been absorbed, only subject to sanction of the post by the State Government. The University itself treated the petitioner as recommendee for absorption and that too prior to cut off date. 30.4.1986. The petitioner's case, therefore, falls within the category of persons whose cases were already recommended for absorption to the State Government obviously, subject to the sanction of the post by the State Government. When the matter came up before the Hon"ble Supreme Court in the above referred case State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, to find out whether the prior sanction or approval by the

State Government u/s 35 is a condition precedent for creation of the post and for giving appointment, the Hon''ble Supreme Court held, that in view of Section 4(1) (14), the said matter is within the exclusive jurisdiction of the University concerned and Section 35 requiring prior sanction or approval of the State Government for creation of post and appointment is not a constraint on the power of university and university can review appointment and consider absorption of several employees without valid sanction of the post. Therefore, it appears that prior to decision of Supreme Court and even prior to recommendation of Justice Agarwal Commission the University was of the view that petitioner should be absorbed but since the post can be sanctioned by the State Government, therefore University was waiting for sanction of the post from the State Government. Had the position of law would have been clear at that time, that as per the law the university who recommended for sanction of the post itself could have absorbed the writ petitioner-appellant on the post and without obtaining sanction from the State Government certainly the University which was continuously treating the petitioner as appointee against the recommended post would itself have passed the order of absorption. However, before such order could have been passed by the University the matter came in litigation and came for consideration before the said Agrawal Commission wherein again this fact has been taken note by the Agrawal Commission specifically that earlier petitioner was not eligible for absorption for want of requisite educational qualification, which he acquired subsequently on 15.10.2001 and then he became eligible for absorption. Therefore the petitioner was entitled to be absorbed irrespective of the fact of the sanction of the post and if any approval of Government was required then the formal order of approval was only required in view of the decision of the University Itself wherein the University is in unequivocal terms, more than once treated the petitioner to be recommendee against the sanctioned post.

11. Learned Counsel for the University submitted that petitioner's name in the Agrawal Commission's report is at serial No. 11 and that was because of reason that the persons who were already appointed and whose cases were recommended for absorption they only could have been absorbed against the, vacancies and petitioner was eligible for absorption but upon subsequently occurred vacancy and therefore petitioner's name was included in the Commission's report and it was not meant for regularization/absorption of the petitioner's service from the date he acquired the requisite educational qualification.

12. However, we are of the considered opinion that in sub-para 4 of Para 73 Hon''ble Supreme Court held that University shall take a decision u/s 4(1)(14) of the Act in the matter of absorption of appointees named in list(ii) of the report of the Commission, being appointees against posts for which recommendations were sent by the Universities to the State up to the cut-off date, in accordance with the decision of the State Government conveyed in its letter dated 19th August, 1986 followed by letters dated 25th August, 1986 and 12th June, 1987.

By this order Hon''ble Supreme Court, it is clear that it was for the University to take a decision u/s 4(1)(14) of the Act in the matter of absorption of the appointees and the University should have taken the decision of absorption of the petitioner because the petitioner was already recommended for absorption In service to the State Government obviously, for the absorption prior to 30th April, 1986.

13. So far as the contention of the Learned Counsel for the University that ten sanctioned posts are taken into account by the Commission is concerned, it may be true but in fact situation if the University, while submitting the requisite number of sanctioned post ignored the petitioner it cannot change the decision given by Hon''ble Supreme Court requiring to absorb those persons whose names were recommended and for whom posts were sought to be sanctioned prior to cut-off date. Petitioner's case is not that his name was recommended but post was not sought for his absorption and it is not the case of the University that the petitioner's name was recommended for absorption by the University but University did not demand sanction of post for the petitioner's absorption because that would be contrary to the University own stand and how University can recommend, for absorption without asking for the post.

14. In view of the above reason, we are of the considered opinion, that petitioner was entitled to be absorbed on 15th October, 2001 and he was not a person who was required to be absorbed only upon occurrence of the vacancy which occurred upon retirement of Dr. Hayat Ahmed. Consequently, this L.P.A. is allowed and the impugned Judgment dated 17th November, 2011 is set aside and the Respondents-University is directed to pass appropriate order. The petitioner-appellant is also entitled to all consequential benefits and consequential benefits will be released by the State Government, in accordance with law.