
(2019) 01 JH CK 0083

In the Jharkhand High Court

Case No : Writ Petition (S) No. 48 Of 2009

Uma Shankar Upadhyaya

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 01 JH CK 0083

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : S.K. Pandey, Richa Sanchita, Pramod Kr. Choudhary, D.K. Dubey, Rashmi Kumari

Final Decision : Dismissed

Judgement

Pramath Patnaik, J

1. In the instant writ application, the petitioner has inter alia prayed for direction upon the respondents to send the name of petitioners of the Department of History of the college in question to Jharkhand Academic Counsel for absorption and regularization and to take appropriate steps to facilitate the petitioners in the aforesaid college as lecturers; and for direction upon the respondents for high power enquiry by respondent nos. 1 and 2 through vigilance/CBI into the malfunctioning of the aforesaid college whose G.B and authorities have appointed some illegible teachers, who are kith and kins and favourite of the authorities of the college; as also for direction upon the respondents to pay the petitioners' salary and other consequential benefits from which they have been deprived of.

2. The facts, as delineated in the writ application in brief is that petitioner no. 1 was appointed vide letter 30.07.1984 w.e.f 07.08.1984 as lecturer in Department of History, Sonbhadra Adarsh Mahavidyalya (Inter College), Kandi, Garhwa and his services was subsequently confirmed on the recommendation of Bihar College Service Commission, Patna vide letter dated 29.01.2001 and 29.08.2001.

Petitioner no. 2 was appointed on the post of lecturer in the department of History vide letter dated 25.03.1986 and his services was confirmed by the Governing Body its meeting dated 18.04.1986. But, the Principal on the dictates of the Secretary and upon some political pressure did not allow the petitioners since 2004 to do teaching job, for which the petitioners represented before the Principal and Secretary of the aforesaid college for sending their names with all documents to the Jharkhand Academic Council and to pay salary but it did not evoke any response.

3. Learned counsel for the petitioners submitted that authenticity, validity and permanency of the petitioners' service in the aforesaid college is also authenticated and corroborated vide affidavit, made before notary public, dated 15.10.2005 by the ex-principal of the said college. It has further been submitted that though the petitioners are founder members/lecturers constituting permanent commissioning lecturers of the aforesaid college but due to some political inclination and prejudice of the Secretary and Principal of the college hurdles have been created in their peaceful working in the college. It has further been submitted that the respondent no. 3-Governing Body particularly the Secretary and Principal of the aforesaid college have acted malafidely, arbitrarily by not sending their names to the Jharkhand Academic Council and H.R.D Department to suit their vested interest. It has further been submitted that the petitioners are entitled for resuming their duties being founder and permanent teachers of the aforesaid college, who are forcefully and illegally being prohibited by the authorities of the Governing Body i.e. Principal and Secretary; as such they are entitled to get payment of back wages as they are going to their duty on every working day but they have been forcefully by muscle power and coercive methods and threats of life being debarred from performing their duty.

4. Learned counsel for the respondents-State besides raising the issue of maintainability on the ground that there is alternate remedy before Jharkhand Education Tribunal and submitted that the relief sought for in the instant writ application is mainly against respondent no. 3, as the petitioner has prayed for a direction upon the the Managing Committee of the college to send their names of absorption and regularization of their services in the college. It has further been submitted that respondent-State in the list of teachers working in the college, the names of the petitioners do not find place, hence they are not entitled to the relief as sought for.

5. Learned counsel appearing for the respondent-Governing Body, on the strength of averments made in counter affidavit, submitted that earlier the petitioner no. 1 was appointed and his name was also sent to the Bihar College Service Commission, but, he was not in service sing long time, hence the Governing Body of the college deleted his name along with other lecturers due to their long absence and non-submission of written assurance to serve regularly. So far petitioner no. 2 is concerned, he was not appointed after following due process of law and in anticipation of sanction of 2nd post he had been directed

orally to work in the college by the then Principal and his name had never been recommended by Bihar College Service Commission. It has further been submitted that in response to the advertisement no. 24 of 2002 dated 23.10.2002 of Jharkhand Academic Council, the Governing Body of the College made a resolution and list of all regular and irregular (absent) lecturers and the same was sent to council vide letter dated 6.11.2002, wherein the name of petitioner no. 1 was included in the list of irregular lecturers, however the petitioner no. 2 was appointed illegally hence his name was not included any of the lists. It has further been submitted that there is no valid documents to show that petitioners have been working in the college since 1984 continuously and not an absentee.

6. Having heard learned counsel for the parties at length and on close scrutiny of pleadings available on record, it is admitted case so far petitioner no. 1 is concerned that he was initially appointed in the year 1984 vide letter dated 30.7.1984 and his services was confirmed by the Governing Body and further his name was recommended by Bihar College Service Commission vide letter dated 29.08.2001 for permanency. So far petitioner no. 2 is concerned, he was appointed and working since 01.04.1986 in the Department of History on second post of Lecturer of History and his services was confirmed by the Governing Body vide letter dated 5.12.1995 w.e.f 1.4.1986 and further his name was also recommended by Bihar College Service Commission vide letter dated 10.09.2001 for appointment on permanent basis.

7. However, on plain reading of minutes of meeting no. 30 of the Governing Body dated 6.11.2002, it appears that a meeting was held in respect of advertisement published in newspaper on 24.10.2002 by Jharkhand Intermediate Education Council (Now Jharkhand Academic Council) and on the basis of attendance register of college, a list was prepared of regular and irregular lecturers serving in the college, in which the name of petitioner no. 1 was placed in the list of irregular lecturers. Regarding, petitioner no. 2 it has been averred in counter affidavit that he was not appointed properly as he was appointed on unsanctioned post in the Department of History on second post of Lecturer of History and was not working properly. On the other hand, learned counsel appearing for the petitioners submitted that it is the respondent-College/ Governing Body which prevented the petitioner no. 1 to do teaching work.

8. Be that as it may be, it is all disputed question of fact, which cannot be effectually gone into by Writ Court under Article 226 of the Constitution of India, as per the law laid down in the case of New Okhla Industrial Development Authority Vs. Kendriya Karamchari Sahkari Grih Nirman Samiti as reported in (2006) 9 SCC 524, wherein the Hon'ble Court has held that ..When the petition raises complex questions of fact which may, for their determination, require oral evidence to be taken and on that account the High Court is of the view that the disputed statement may not be appropriately tried in a writ petition, the High Court should ordinarily decline to try the petition. Moreover, the college in

question gets aid from the government and the power of appointment of teaching and non-teaching staff is with the Managing Committee/Governing Body of the college and in the case at hand undisputedly Governing Body had not recommended their names.

9. For the reasons aforesaid, the writ petition being devoid of any merit is dismissed.