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**(2004) 08 JH CK 0010**

**Jharkhand High Court**

**Case No:** CWJC No. 4763 of 2000

Sharat Chandra Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision:** Aug. 3, 2004

**Citation:** (2004) 4 JCR 149

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** Ajit Kumar Singh, for the Appellant; Indrani Sen Choudhary, SC-III and Rajesh Kumar, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Tapen Sen, J.

Heard Mr. Ajit Kumar Singh, learned counsel appearing for the petitioner, who submits that he has been authorized by Mr. Om Prakash, Advocate to appear and conduct arguments on behalf of the petitioner.

2. In this writ application, the petitioner prays for a direction upon the respondents to pay salary for the period he has actually worked together with interest. He further makes a prayer for quashing the order as contained in AnneXure-3 which was passed pursuant to the order of the Patna High Court in CWJC No. 5384 of 1998 (Annexure-1). It is evident upon reading the said order dated 7.9.1999 as contained in Annexure-1 that the Patna High Court noticed an appointment letter dated 8.8.1988 (Annexure-2/2 hereof), which is equivalent to Annexure-B appended to the counter affidavit. It is further evident upon perusal of the aforementioned appointment letter, that the petitioner had himself applied for being appointed as Lecturer in Mathematics before the Principle, Deoghar College subject to approval of the University. Annexure "A" appended to the Counter Affidavit is that application. The Patna High Court further took into consideration the fact that the

appointment was on the temporary basis on a fixed pay of Rs. 700/- per month and the payment was subject to approval of the University. It further took into consideration a letter of the University dated 9.4.1990 (Annexure 2/3 to this writ application) by which the Registrar of the said University wrote to all Heads of the Departments and others including the Professors-in-Charge of constituent Colleges informing them that in view of the judgment of the Supreme Court, all ad-hoc teachers in service on February, 10, 1989 shall continue till selection was made by the University Service Commission and that they shall be paid in terms agreed for the period in which they have actually worked. It was further mentioned that only ad-hoc teachers contained in the list of ad-hoc teachers which was enclosed along with the letter should be allowed to continue and work till further orders. The name of the petitioner figures at serial No. 82 of that letter, which has been marked Annexure-2/3 (see running page 41). In the counter affidavit a stand has been taken that on account of a voluntary application (Annexure "A"), the then Professor-in-Charge ignored the rules and regulations, and without prior permission of the University, appointed the petitioner a Lecturer in the Mathematics on a fixed salary of Rs. 700/- per month in anticipation of the approval of the University which was never granted. It is further stated that the Professor-in-Charge or the Principal of a College is not an authority to make such appointments and that no teacher could have been appointed without advertisement and following selection procedure.

3. Upon perusal of the aforementioned letter dated 9.4.1990 as contained in Annexure-2/3, it is evident that it contained a list showing the name of the petitioner at serial No. 82. This letter was issued by the Bhagalpur University much after the appointment of the petitioner in the year 1988. Moreover, at this stage, the University cannot be allowed to say that the Principal or Professor-in-Charge should not have appointed him because if that was the position, there is no explanation coming forth as to why the said University wrote that letter at all on 9.4.1990, including the name of the petitioner in the list of ad-hoc teachers. It obviously means that the said University, at that stage, recognized the status of the petitioner as a member of the teaching staff. Additionally, in the earlier writ petition also, the aforementioned letter dated 9.4.1990 was duly taken note of and therefore, the observation of the said Hon"ble Court is worth reproducing :--

"Annexure-2/3 is the appointment letter of the petitioner dated 8.8.1988, by which petitioner was appointed on temporary basis on fixed scale of Rs. 700/- per month. Said payment was subject to approval of the University. Annexure-5 is the letter issued by the Bhagalpur University dated 9th April, 1990. By the said letter issued by the Registrar of the University written to all the Heads of Post Graduate Department of Bhagalpur University, Administrative Head of P.G. Centre and Principals/Professor-in-charge of constituent college, it was communicated that in view of judgment of the Supreme Court all, the ad-hoc teachers in service of February, 10, 1989 shall continue till selection is made by the University Service

Commission and they shall be paid in terms agreed for the period for which they have actually worked. The list enclosed along with Annexure-5 shows the name of the petitioner at serial No. 82. In view of aforesaid fact it is accepted by the authorities of the University that petitioner was appointed as an ad-hoc teacher and pursuant to order of the Registrar of the University as contained in Annexure-5 as he was an ad-hoc teacher in service on February, 10, 1989 and he was allowed to continue in service and as a direction has already been made to pay him for the period he has actually worked and shall be paid in terms agreed. Appointment letter of the petitioner itself shows that his appointment has been made on a salary of Rs. 700/- per month." [Italics added]

4. It was in this background that the Patna High Court set aside and quashed the impugned order of that writ petition by which the Vice Chancellor had held that nothing was payable to the petitioner till regular appointment was made. While doing so, the Patna High Court observed :--

"I am aforesaid such interpretation cannot be given to the aforesaid direction of the Supreme Court as well as the order by which the matter was remitted back to the Vice Chancellor."

5. After making the aforementioned observation and after holding that the order of the Vice Chancellor was improper, the Patna High Court further observed, with reference to the letter dated 9.4.1990, that :--

"....It is accepted by the authorities of the University that petitioner was appointed as an ad-hoc teacher and pursuant to the order of the Registrar of the University as contained in Annexure-5 as he was an ad-hoc teacher in service on February, 10, 1989, and he was allowed to continued in service and as a direction has already been made to pay him for the period the has actually worked and shall be paid in terms agreed. ....:"

6. After having held and observed in the manner as aforesaid, the matter was remanded to the Vice Chancellor to pass a fresh order in accordance with law whereafter, by reason of the present impugned order dated 29.4.2000, as contained in An-nexure-3, the Vice Chancellor once again rejected the claim of the petitioner holding inter alia that he was not entitled to any payment on the ground that the petitioner was a simple MA and had no Ph.D degree and was thus not qualified to be a lecturer. He again held that the Professor-in-Charge of the concerned college was not the competent authority to appoint a lecturer.

7. The order of the Vice Chancellor is against the spirit of the earlier communication dated 9.4.1990 issued by the Bhagalpur University (Annexure-2/3) in which specific guidelines were given in relation to continuance of ad-hoc teachers. In that communication, as already noticed above, the petitioner"s name was enlisted at serial No. 82. Let it be recorded that this letter was issued in the light of the order of the Supreme Court of India. That apart, the earlier order of the Patna High Court has

also not been considered by the Vice Chancellor while passing the impugned order. Therefore, the grounds taken by the Vice Chancellor in rejecting the claim of the petitioner at this stage is not only belated, but amounts to disregarding judicial orders of the Supreme Court as well as of the Patna High Court. This Court would therefore have taken a serious view of the matter but for the present, only proceeds to observe that the stand of the Vice Chancellor is not appreciated by this Court.

8. At the risk of repeating, let it be recorded that the guidelines contained in the aforementioned letter as contained in Annexure-2/3 was passed on the basis of the order of the Supreme Court which has been brought on record vide Annexure-2/4. At running page 47 of the instant writ petition, the order of the Hon"ble Supreme Court of India can be seen and upon perusal thereof, it is evident that the said Apex Court made the following directions :--

"Taking all those facts and circumstances into consideration we make the following direction :--

(I) The University Service Commission shall advertise the posts available for direct recruitment within four months.

(II) The Government shall consider the work load in each university and sanction such additional posts that may be required within the said period, such additional posts shall also be filled regularly either by direct recruitment or by promotion as per rules and not by ad-hoc appointment.

(III) The university/Government shall relax the maximum age prescribed for direct recruitment of teachers to the extent of service rendered by persons and ad-hoc teachers.

(IV) All the ad-hoc teachers in service on February, 10, 1989 against sanctioned posts shall continue till selection is made by the University Service Commission and they shall be paid in terms agreed for the period in which, they actually worked.

(V) Other ad-hoc teachers who have worked till that day must also be paid.

(VI) The payment shall be made within one months.

With these directions the SLP and writ petitions are disposed of.

In the circumstances of the case we made no order as to costs.

Sd/-,

(K. Jagamathe Shetty)

Sd/-

(N.M. Kaltwal)"

9. The relevant paragraph of the Supreme Court for purposes of this writ petition is paragraph (IV) quoted above and it says that all ad-hoc teachers in service on February, 10, 1989 against sanctioned post shall continue till selection was made by

the University Service Commission and that they shall be paid in terms agreed for the period in which they actually worked.

10. By including the name of the petitioner at serial No. 82 of the list appended to Annexure-2/3, it is evident that the petitioner was accepted to be working in the sanctioned post of Mathematics and his letter of appointment (Annexure-2/2) show that it was on a temporary basis on a fixed salary of Rs. 700/- per month.

11. The respondent-University, after so many developments cannot take a plea that the petitioner is not entitled to any payment at all. On the contrary, he is certainly entitled to his salary for the period he has actually worked.

12. Taking into consideration, the attitude of the University in virtually repeating whatever they had to say notwithstanding the earlier order passed on 7.9.1999 by the Patna High Court as also notwithstanding Annexure-2/3 and 2/4, this Court does not consider it appropriate to remand the matter any further to them. That being the position, this Court directs the respondents to pay to the petitioner his salary for the period he has actually worked without causing any further harassment to the petitioner. Such payment must be released within a period of six weeks from the date of receipt of a copy of this order. For the foregoing reasons, the writ petition is allowed and the impugned order, set aside.

There shall, however, be no order as to costs.