

(2002) 12 JH CK 0011

Jharkhand High Court

Case No: Writ Petition (S) No. 5450 of 2002

Prof. Raghu Nath Ray and Others

APPELLANT

Vs

The Sidhu Kanhu University and
Others

RESPONDENT

Date of Decision: Dec. 10, 2002

Acts Referred:

- Bihar State Universities Act, 1976 - Section 58(10)

Citation: (2003) 1 JCR 314

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Anjani Kumar Verma, I. Sen Choudhary, S.C. III, for the Appellant; M.S. Anwar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.

The petitioners have preferred this writ petition for direction on the respondents to pay them the retiral benefits and other dues on the basis of last pay drawn by them.

2. According to petitioners, they were promoted to the posts of University Professor by one or other order.

3. The petitioner Nos. 1 and 2, namely, Prof. Raghunath Roy and Prof. Chandradhar Pathak "Arya" were promoted to the post of University Professors of Economics vide notification No. 106/87 dated 1st September, 1987 w.e.f. 1st February, 1985. The petitioner No. 3, Prof. Namo Narayan Jaj-ware was promoted as University Professor w.e.f. 1st February, 1985 vide notification No. 108/87. The petitioner Nos. 4 and 5, namely, Prof. Krishna Prasad Deo and Prof. Nitya Nand Mishra were promoted to the post of University Professors w.e.f 25th November, 1986 and 13th January, 1987 respectively vide notification No. 101/87 dated 1st September, 1987 issued by the

then Bhagalpur University. The petitioner No. 6, Prof. Tara Charan Khaware was so promoted as University Professor w.e.f. 1st February, 1985 vide notification No. 96/87 dated 1st September, 1987.

4. So far as petitioner No. 7 Prof. Satyadhan Mishra is concerned, his date of promotion as University Professor is 14th August, 1988 vide notification No. 15/89 dated 19th February, 1989 whereas petitioner No. 8, Prof. Rama Shankar Prasad Singh was promoted as University Professor w.e.f. 30th August, 1987 vide notification No. 162/88 dated 11th May, 1988.

5. Further case of petitioners is that they have already retired. Petitioner No. 1, Prof. Raghu Nath Roy retired as Principal, Madhupur College, Madhupur, a constituent college of the Sidhu Kanhu University, Dumka on 31st August, 1996. Petitioner No. 2, Prof. Chandradhar Pathak retired as University Professor incharge, Deoghar College, Deoghar on 1st December, 1993. Petitioner No. 3, Prof. Namo Narayan Jajware retired as University Professor from the P.G. Centre of the University on 1st March, 1995 whereas petitioner No. 4, Prof. Krishna Prasad Deo retired as University Professor-cum-Principal, A.S. College, Deoghar on 31st January, 1999.

6. So far as petitioner No. 5, Prof. Nitya Nand Mishra is concerned, he retired as University Professor on 31st January, 1998 whereas petitioner No. 6, Prof. Tara Charan Khaware retired as University Professor-cum-Incharge, Deoghar College, Deoghar on 31st May, 1998. Similarly, petitioner No. 7, Prof. Satyadhan Misra retired as University Professor on 31st December, 1998 from the University whereas petitioner No. 8, Prof. Rama Shankar Prasad Singh retired as University Professor on 30th June, 1999 from Deoghar College, Deoghar.

7. According to respondents, the petitioners were, wrongly allowed to continue beyond the period of six months of promotion in absence of recommendation of the University Service (Constituent Colleges) Commission. In another case W.P.(S) No. 5407 of 2001, decision has been given by this Court on the basis of a decision of the Supreme Court, reported in 1999 (3) BLJR 197 . At that stage, the decision of the Supreme Court reported in [Dr. B.P. Yadav and Another Vs. Dr. Ratneshwar Prasad Singh and Others](#), was not brought to the notice of this Hon'ble Court.

8. At this stage, it may be mentioned that this Court in W.P.(S) No. 5407 of 2001 Bhikhan Singh and Ors. v. Sidhu Kanhu University, Dumka and analogous cases by its judgment dated 21st January, 2002 (Reported in 2002 (1) JCR 207) held that the amendment made in the Bihar State Universities Act, 1976 by insertion of Section 58(10) cannot be given effect from retrospective date, nor the petitioners of the said case can be penalised on the basis of such amendment. The respondents including the University was directed to fix and pay the pension of those petitioners, in accordance with statute within three months taking into consideration the last pay drawn by them without giving effect to Section 58(10) of the University Act, 1976 in their cases.

9. In the present case of petitioners, admittedly, they were promoted as University Professors and were paid salary till they retired from the services of the University. There is nothing on the record to suggest that the petitioners misrepresented and obtained such promotion. It is also not in dispute that Section 58(10) was inserted and given effect from 28th August, 1993 i.e. much after promotion of petitioners. Some of the petitioners also retired by the said date.

10. In the case of [Sahib Ram Vs. State of Haryana and Others](#), the Supreme Court prohibited recovery from the retiral benefits, the amount having not paid on misrepresentation.

11. In view of the aforesaid decisions and observations taking into consideration that the petitioners have retired from the service of the University, I direct the respondents to fix and pay the pension of the petitioners, in accordance with Statute, within three months taking into consideration the last pay drawn by them without giving effect to Section 58(10) of the Bihar State Universities Act, 1976 in their cases. The respondents are also directed not to make any recovery from the retiral benefits.

12. The writ petition stands disposed of, with the aforesaid observations/directions.