(2002) 01 JH CK 0018

Jharkhand High Court

Case No: Writ Petition (Service) No''s. 4758, 4759 and 5407 of 2001

Bhikhan Singh and Others with Arun Kumar Sinha and Others and Nishi Kant Thakur		APPELLANT
	Vs	
Sudhu Kanhu University, Dumka and Others		RESPONDENT

Date of Decision: Jan. 21, 2002

Acts Referred:

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

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

Bench: Single Bench

Advocate: Tapen Sen, for the Appellant; M.S. Anwar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, J.
In all the cases, as the common question of law is involved, they were heard together and are being disposed of by this common order.

2. The petitioners, who have retired as professor from the Services of the University. have preferred the writ petitions for direction on the respondents to pay them pension on the basis of last pay drawn by them and not to deduct any amount from their pension on the basis of any decision taken by the respondents after their promotion to the posts of professor.

Further prayer has been made to pay them the salary in the U.G.C. revised scale of pay w.e.f. 1.1.1986.

3. The brief facts of the cases of different petitioners are given hereunder :

W.P. (S) No. 5407/2001

The petitioners were initially appointed as Lecturer in one or other college and promoted to the higher post of Reader and thereafter to the post of professors. Petitioner No. 1, was promoted as University Professor vide Notification No. 35/90 dated 5.5.1990. Petitioner No. 2 was so promoted as University Professor vide Notification No. 42/92 dated 3.7.1992. On the other hand, petitioner Nos. 3 & 4 were promoted as University Professors w.e.f. 1.2.1985 vide Notification No. 116/87 dated 29.8.1987.

So far as petitioner No. 5 is concerned, he was given promotion as University Professor w.e.f. 1.2.1985 vide Notification No. 32/90 dated 5.5.1990 whereas petitioner No. 6 was promoted as University Professor w.e.f. 1.2.1985 vide Notification No. 101/87 dated 1.9.1987. All the petitioners subsequently retired from the services of the University.

W.P. (S) No. 4759/2001

The petitioners of this case were also initially appointed as Lecturer in one or other college. They were also promoted as Reader and then to the higher posts of University Professor as stated hereunder :

Petitioner No. 1 was promoted vide Office order No. GA-116/87 dated 8.9.1987 w.e.f. 6.9.1986 whereas petitioner No. 2 was promoted as University Professor w.e.f 11.8.1985 vide Notification No. 108/87 dated 1.9.1987. Petitioner No. 3 was promoted as University professor w.e.f. 1.2.1985 vide Notification No. 99/87 dated 1.9.1987, in respect to petitioner No. 4, such promotion was granted w.e.f. 2.3.1989 vide Notification No. GA-94/89. They also retired from the services of the University.

W.P. (S) No. 4758/2001

The sole petitioner was initially appointed as Lecturer whereinafter he was promoted as Reader and then to the next higher post of University Professor w.e.f. 25.8.1988 vide Notification No. GA-94/89 dated 28.9.1989. He also retired from the services of the University on 31.12.1999.

4. At this stage, it may be mentioned that the colleges in which the petitioners were appointed, were under the control of the Bhagalpur University but since the end of the year 1992, they were carved out and placed under newly constituted Sidhu Kanhu University.

5. The petitioners were entitled for pension in accordance with statute on the basis of last pay drawn by them but their pension stated to have not been made in terms with statute arid was fixed and reduced in view of amendment made in the Bihar State Universities Act, 1976 wherein Section 58(10) was inserted w.e.f. 28.8.1993.

6. According to petitioners, the amendment made in the Bihar State Universities Act, 1976 and the Section 58(10) of the Act being made effective from 28.8.1993 it a cannot be given retrospective effect and thus the promotion given to the petitioners as University Professors vide Notifications issued much prior to 28.8.1993 cannot be annulled, nor they can be ignored for the purpose of fixation of pay and pension. Reliance has been placed on the decision of the Supreme Court in the case of State of Bihar v. Dr. Braj Kumar Mishra, reported in 1999 (3) PLJR 197 (SC).

7. Counsel for the respondent-University submitted that the promotion to the posts of University Professor for the period exceeding six months cannot be accepted as valid without the recommendation of the Bihar State University (Constituent Colleges) Service Commission as per Sub-section (10) of Section 58 of the Bihar State Universities Act, 1976.

8. The issue as raised in the present writ petition practically stands determined by the decision of the Supreme Court in State of Bihar v. Dr Braj Kumar Mlshra, (supra). Therein the issue raised as to whether Section 58(10) of the Act has any retrospective effect on promotion already granted or not and the Apex Court answered the question, which reads as follow :

"Learned counsel appearing on behalf of the appellants have submitted that as the recommendation by the Screening Committee and consequent promotion was subject to the concurrence of the Commission and the Commission had not approved the promotion, the same had lapsed under Sub-section (10) of Section 58 of the Bihar State Universities Act which, inter alia, provide :

"Notwithstanding to the contrary contained in this Act or Statute, Rules or Regulations made thereunder promotion given on the post of Reader or Professor or office of the University shall not be valid for a period exceeding six months unless recommendation by the Bihar State University (Constituent Colleges) Service Commission."

The submission has to be noted only to be rejected inasmuch as the amendment came into force when the respondent No. 1 stood recommended for promotion and the effect of the amendment had not been made retrospectively. For the negligence of the Commission, the respondent No. 1 could not be penalised."

9. In the present case, as all the petitioners were promoted as University Professor prior to amendment and insertion of Section 58(10) of the Bihar State Universities Act. 1976. as per the decision of the Supreme Court, the said amendment cannot be given retrospective effect, nor the petitioners can be penalised on the basis of such amendment.

10. The respondents are directed, accordingly, to fix and pay the pension to 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 said Universities Act.

1976 in their cases.

so far as pay in the revised U.G.C. scale w.e.f. 1.1.1986 is concerned, petitioners may move separately before the Vice-Chancellor of the University, who will determine the claim and pay the admitted dues, if found payable, within four months.

11. All the writ petitions stand disposed of. with the aforesaid observations.

12. Writ petitions stand disposed.