

(2006) 10 JH CK 0020

Jharkhand High Court

Case No: Writ Petition (Service) No. 5478 of 2003

Professor Pravakar Pradhan

APPELLANT

Vs

Ranchi University

RESPONDENT

Date of Decision: Oct. 31, 2006

Acts Referred:

- Bihar State Universities Act, 1976 - Section 58, 58(10)
- Jharkhand State Universities Act, 2000 - Section 58(10)

Citation: (2007) 2 BLJR 988 : (2007) 3 JCR 510

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Advocate: D.K. Chakravarty, for the Appellant; A.K. Mehta, for the Respondent

Final Decision: Allowed

Judgement

Amareshwar Sahay, J.

In the instant writ application, the prayer of the petitioner is for a direction to the respondents to immediately and forthwith release the payment in favour of the petitioner which are dues in different heads such as pay difference on account of promotion from lecturer to reader for a period of 18 months, pay difference on account of promotion from Reader to Professor for a period of 24 months, arrears on account of Dearness Allowance (D.A.), arrear of salaries due to part payment for the period 1991 - 95, D.D.A., part payment of gratuity, compulsory deposit account (C.D.A.), earned leave, house rent allowance (H.R.A.), ad-hoc D.A. (50% of D.A.) etc.

2. The case of the petitioner is that he was appointed as a Lecturer in Oriya on 01.09.1961 by the Cooperative College, Jamshedpur by issue of Annexure-1 to the writ application. His appointment to the post of Lecturer was approved by the Vice Chancellor of Ranchi University which was communicated to the petitioner by the Principal of Jamshedpur College by issued of letter dated 05.01.1966 as contained in Annexure-1/1 to the writ application. He retired from the service from Cooperative

College, Jamshedpur with effect from 01.12.1995 after completing the age of 60 years.

3. The grievance of the petitioner is that though he attended his duties regularly since the date of his appointment till his superannuation but for the reasons best known to the respondents, he did not get the arrears for 18 months amounting to Rs. 18,000/- which fell due, on account of his promotion from the post of Lecturer to the post reader with effect from 14.11.1980. Similarly, a sum of Rs. 52,800/- accrued to him on account of his promotion from the post of Reader to the post of University Professor, since he was not paid the arrears of salary for about 24 months. He also did not get his arrears of salary from 1991 to 1995 amounting to Rs. 1,69,558/- which fell due on account of part payment of his salary. The arrears of difference (DDA) amounting to Rs. 2,24,177.00, unpaid gratuity amounting to Rs. 1,00,000/- compulsory deposit account (C.D.C.) amounting to Rs. 2,02,800/-, house rent allowance (HRA) amounting to Rs. 1,58,000/- and earned leave payment amounting to Rs. 23,710/- were also not paid to him and in this way, a total sum of Rs. 11,39,045 remained unpaid.

4. After superannuation, the petitioner made a demand for payment of aforesaid amount by filing representation but nothing was done and then, the petitioner filed a writ application before this Court being W.P.(S) No. 1619 of 2002. The said writ application was disposed of by order dated 07.03.2002 as contained in Annexure-6 to this writ application by directing the Principal, Cooperative College, Jamshedpur and the Registrar, Ranchi University, Ranchi to dispose of the representation filed by the petitioner within a period of 45 days from the date of receipt/production of the said order and the petitioner was given liberty that if he felt aggrieved by any order passed by the said respondents, he may approach this Court again.

5. It is stated that when the representation of the petitioner was not disposed of in terms of the said order of the High Court, he filed a Contempt Application being Contempt (C) No. 551 of 2002. In the proceeding for Contempt, show-cause was filed on behalf of the respondents annexing a copy of the order dated 12.02.2003 passed by the Registrar of the University and it was submitted that in compliance of the Order of this Court in W.P. (S) No. 1619 of 2002, the representation of the petitioner was already disposed of and the amount which the petitioner was entitled to has already been paid. A copy of the said reasoned order dated 12.02.2003 passed by the Ranchi University has also been annexed as Annexure-A to the present counter affidavit of the respondent University. The petitioner was not satisfied with the order of the University and therefore, this Court by order dated 15.04.2003 as contained in Annexure 8 to this writ application, directed the petitioner that he may file a separate writ application for his grievance.

6. From perusal of the order of this Court in aforesaid Contempt (G). No. 552 of 2002 (Annexure-8), it appears that the amounts under different head i.e. G.I.S., P.F., Gratuity. Leave Encashment and Arrears pension from December, 1995 to

November, 1999 were paid to the petitioner by the respondents. The grievance of the petitioner was that he was not paid the house rent and he was not given the promotional benefits in such a situation, this Court directed the petitioner that if he is so aggrieved he may approach this Court again by filing a separate petition. Accordingly, for the said relief, the present application has been filed.

7. On the other hand, on behalf of the respondent University, a counter affidavit has been filed wherein, it has been stated that pursuant to the order passed in the earlier writ application i.e. W.P.(S) No. 1619 of 2002, the University passed a reasoned order disposing of the representation of the petitioner by order as contained in Annexure-A dated 12.02.2003 and thereby, the petitioner was paid a total sum of Rs. 4,91,978.00 as retiral benefits. It further appears from Annexure-A that the pension of the petitioner was fixed on the basis of last ten months' salary drawn as University Professor. It is contended by the respondents that the petitioner was promoted as a University Professor vide issue of Memo No. RU/VC/2901-30 dated 31.12.1987 subject to the concurrence of the University Service Commission. The said promotion was purely on provisional basis. Subsequently, on the basis of letter from the Commission No. 255/BSUSC Dated 6th April, 1993, the case of promotion of the petitioner to the post of University Professor was re-screened and thereafter, along with relevant papers, the report of the Screening Committee was sent to the Commission on 29th July, 1995 and the same was already been received by the Commission but till date, no approval/recommendation of his promotion has been received by the University from Bihar State University (Constituent Colleges) Service Commission, Patna and in the mean time, the petitioner, retired from service on 31.11.1995.

8. So far the claim of arrears of salary on account of his provisional promotion from the post of Reader to the post of University Professor is concerned, in the said order (Annexure-A) it appears that his claim has been rejected in the light of Section 58(10) of the Jharkhand State University Act, 2000 on the ground that the concurrence regarding promotion of the petitioner to the post of University Professor was not received from the Bihar State University (Constituent Colleges) Service Commission.

The said issue has already been decided by the Supreme Court in the case of State of Bihar v. Dr. Braj Kumar Mishra reported 1999(3) PLJR 197 (SC). In the said case of the State of Bihar v. Dr. Braj Kumar Mishra (Supra), the Supreme Court held as follows:

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. Following the decisions of the Supreme Court, the Singly Judge of this Court in the case of Bhikhan Singh and Ors. v. Sudhu Kanhu University, Durnka and Ors. and analogous Cases reported in 2002(1) JCR 207 (Jhr) has also held that the promotion given to a person as the University Professor prior to amendment and insertion of Section 58(10) of the Bihar State Universities Act, 1976 cannot be taken away with retrospective effect nor the petitioner can be penalised on the basis of the said amendment or negligence on the part of the Commission.

10. In the present case also, there is no dispute of the fact that the petitioner was given promotion to the post of University Professor with effect from 31.12.1987 and as such, his promotion to the post of University Professor cannot be taken away by the subsequent amendment of the Act by insertion of Section 58(10) of the Bihar State Universities Act, 1976/Jharkhand State University Act, 2002 in view of the aforesaid two decision noted above.

11. From careful perusal of the order contained in Annexure-A to the counter affidavit, it appears that the claims of the petitioner on different heads have been rejected without assigning any reason whatsoever. Only this much has been said that the claim is not admissible or tenable and hence rejected. Such rejection of the claims without any reason certainly would amount to arbitrary exercise of the powers and therefore, cannot be sustained in law.

12. Accordingly, in view of the discussions and findings above, this writ application is allowed, the order as contained in Annexure-A to the counter affidavit dated 12.02.2003 is hereby set aside. The Ranchi University is hereby directed to re-examine the matter afresh and decide the claim of the petitioners in view of the observations and directions and findings above and pass an appropriate order in accordance with law within a period of two months from the date of receipt/production of a copy of this order.

There shall be no order as to costs.