

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7221 of 2012

=====

Chandra Kishore Shahi S/O Late Kameshwar Prasad Shahi Resident Of
Village - Chadua, P.O. & P.S.- Kurhni, District - Muzaffarpur

.... Petitioner/s

Versus

1. B.R.Ambedkar Bihar University, Muzaffarpur Through Its Registrar
2. The Vice-Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur
3. The Registrar, B.R. Ambedkar Bihar University, Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava

For the Respondent/s : Mr. Harendra Kumar Tiwary

=====

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

CAV ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

10 16.10.2015

In the present writ application, which has been placed before us, this Court has been called upon to address itself to the provisions of the Statutes 24 regarding qualification, pay scales etc. of University Librarian, Deputy Librarian, Assistant Librarian and College Librarian. The interpretation of the said statutes came to be an issue in this writ application on account of the fact that the State Government by the resolution contained in Memo No 1972 dated 12.10.2004 (Annexure-5) revised the pay scales of officers and non-teaching employees of different universities. The pay scale of Assistant Librarian was revised to Rs. 4500-7000. By this revision of pay scales, the State Government imposed a rider that the incumbent eligible to get this revised scale would have to be a graduate with diploma in Library

Science otherwise he would get the revised scale of pay of Rs. 3050-4590.

The facts of the case in short are that admittedly, at the time of revision of pay scales, the petitioner, who is not a Diploma Holder was working as an Assistant Librarian in the College. He was getting the pay in the unrevised scale of pay of Librarian. At the relevant time, the petitioner was not having degree of graduation and a diploma in Library Science, and hence he was given the revised pay scale of Rs. 3050-4590. The petitioner superannuated from service on 30.04.2008 and at the time of superannuation, he was drawing his pay in the scale of Rs. 3050-4590.

The petitioner moved this Court in C.W.J.C No. 3301 of 2009 seeking a direction from this Court to the respondent to allow him pay revision in the pay scale of Rs. 4500-7000, which was disposed of by order dated 19.03.2009 (Annexure-7) granting liberty to him to file a representation before the respondents and directed to consider the same and pass appropriate orders. Such representation filed by the petitioner was kept pending, hence he filed a contempt application in this court but during its pendency, the Vice Chancellor vide order dated 15.11.2010 rejected the representation on the ground that the qualification of diploma/degree in Library Science was not possessed by the petitioner. It was under such facts and circumstances that the

petitioner again filed a representation addressed to the Registrar of the University on 12.05.2011 (Annexure-10) in which he has drawn the attention of the authorities to Article 2 of said Statute.

The petitioner again filed a representation calling upon the authorities and making special reference to Article 2 of the said Statute requesting them to reconsider his case as in the opinion of the petitioner he was clearly entitled for being granted the pay scale admissible to persons holding the post of Librarian, Deputy Librarian, Assistant Librarian etc. holding the prescribed degree/diploma in Library Science. He contended that he had been working on the post of Assistant Librarian prior to coming into force of the aforesaid Statute. The contention of the petitioner is that on account of mis-application of Article 2 of the said Statute, the petitioner has been rendered substantial financial losses coupled with mental trauma and agony. His case for regular promotion against the post of Librarian had been ignored though the petitioner had been discharging the duty attached to the said post ever since August 1996, till the date of his retirement in the month of April 2008. It was urged that the rejection of the petitioner's representation was thus, highly arbitrary and unreasonable and in gross violation of the Article 14 of the Constitution of India and thus, could not be sustained in the eye of law.

The said representation was disposed off rejecting his case and hence, the present writ application.

In the present writ application, the petitioner accordingly sought for a declaration that the respondent-authorities under B. R. A. Bihar University, Muzaffarpur take steps towards fixation of salary in the pay scale admissible to College Librarian in terms of various decisions taken by the State Government from time to time. The petitioner also prays for consideration of his case for promotion against the post of Librarian on regular basis.

A brief story of the petitioner's service career would suffice for a better perspective in the matter and for proper adjudication of the issue at hand.

I. The petitioner was initially appointed against the post of Assistant Librarian at the college vide letter dated 25.07.1970 issued by the governing body of the college. At the relevant time, the college was an affiliated college under the erstwhile B.R.A. Bihar University Muzaffarpur.

II. Subsequently, the college was taken over as a constituent college of the university and the petitioner's service was also absorbed in the college against the post of Assistant Librarian.

III. Vide office order dated 08.07.1996 issued by the Principal of the college, the petitioner



was authorized to take over the charge of all books, records, files, almiras and furnitures of the college on account of the retirement of the then Librarian with effect from the date i.e 31.07.1996. The petitioner, thereafter, requested the Registrar of the university for granting him regular promotion against the post of librarian and other benefits as he claimed to be qualified and had been discharging all the duties attached to the post of librarian.

IV. The representation of the petitioner was forwarded to the Registrar, B.R.A Bihar University, Muzaffarpur for further action by the Principal of the college.

V. The State Government vide letter dated 12.10.2004 revised the pay scale of the officers and teaching and non-teaching staff of the universities and constituent colleges prompting the petitioner to file another representation dated 23.01.2006 before the university requesting them to consider his case for grant of promotion against the post of librarian at the college and for extending all consequential benefits attached thereto. A perusal of Annexure 5, however, indicates that by the order of revision of pay scale of the post of Librarian/Assistant Librarian the revised pay scale



of Rs. 4500-125-7000 was granted. It was clearly indicated therein that the employee must have a graduate degree alongwith diploma in Library Science for availing the said scale or else he would be entitled to the pay scale of Rs. 3050-75-3950-80-4510.

VI. However, the petitioner's representation was not considered till the date of his superannuation in the month of April 2008 which led to the filing of the present writ application.

VII. The petitioner therefore, sought leave of this Court in C.W.J.C. No. 3301 of 2009 for grant of appropriate scale and fixation of other benefits as claimed in his representation. The aforementioned case was disposed of by this court directing the authorities to consider the representation of the petitioner by a reasoned order within four weeks. The authorities failed to adhere to the time frame directed in the order which necessitated the filing of MJC No. 3703 of 2009.

VIII. Soon thereafter, the representation of the petitioner was rejected by the Vice-Chancellor of the University on 15.11.2010 and the MJC was dismissed holding that the authorities had already dealt with the representation of the

petitioner stating further that the correctness of the order passed by the VC could not be gone into under contempt jurisdiction and the petitioner, if so aggrieved could take recourse to appropriate remedy.

IX. The representation filed thereafter by the petitioner has since been rejected again vide Annexure 10 leading to the present litigation.

In the present case, the petitioner has staked his claim on the basis of Article 2 of the said Statute. For proper appreciation of the same Article 2 of the Statute referred to above is quoted below:-

“ The existing incumbents of posts noted above, who hold the qualifications as prescribed by the University before this Statute came into force (i.e. before 15th July, 1986 shall be deemed to be qualified for the posts they are holding”.

The submission advanced by the learned counsel for the petitioner is that the State Government vide Annexure-5 had revised the pay scale of Librarians/Assistant Librarian vide resolution dated 12.10.2004 (Annexure-5). The said revision of pay scales entailed that the Assistant Librarian/professional, would draw Rs. 4500-7000 if they possessed the qualification of graduation alongwith diploma in Library Science or in the absence of such qualification would be entitled to the pay scale of RS. 3050-4590 only.



Learned counsel for the petitioner further submits that as per Article 2 of the said Statute the petitioner having been in employment since before the time this resolution came into existence, would be entitled to the benefit attached to the post of Assistant Librarian in view of the deeming fiction of this Statute. It is submitted by learned counsel for the petitioner that he had actually discharged his duty as Assistant Librarian and he is being deprived of the scale only after his retirement in the year, 2008.

The submission advanced on behalf of the petitioner is that Article- 2 of the said Statute under reference extended protection in favour of the petitioner against a distinction sought to be brought in by the said rule and such distinction sought to be made that the petitioner was not qualified is an over sight of Article 2 of the statute. It was submitted that the legislative intent behind Article 2 conveyed a progressive construction as the deeming fiction bestowed an advantage upon the petitioner and the Article could not be treated a mere surplusage. It was contended that while considering the language of the rule it is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the Statute to be considered. It has been argued by learned counsel for the petitioner that the meaning and intention of the legislature must govern which are to be ascertained not



only through the phraseology of the provision but also by considering its nature and design and the consequence which were to follow from construing it in one way or the other. Furthermore, a close reading of Article 2 of the statute reveals that the statute intended that the existing incumbents of post who hold the qualification as prescribed by the university before this statute came into force (i.e, before 15 July 1986) shall be deemed to be qualified for the post, they are holding. Learned counsel for the petitioner submitted that the word “shall” having been used in Article 2, the petitioner was entitled to hold the post on which he was functioning as he had held the prescribed qualification and was qualified for the post he was holding prior to the coming into force of the Statute, i.e. before 15th July 1986. Learned counsel contended that the petitioner was also entitled to be deemed qualified for the post of Assistant Librarian and should get the pay scale of Rs. 4500-7000 . It was submitted that the petitioner is qualified for the post of Assistant Librarian and the salary/ pay scale attached to the same, now being revised to the pay scale of Rs. 4500-7000, could not be denied to him.

Mr. P.N. Shahi Counsel appearing on behalf of the University contends that the arguments advanced on behalf of the petitioner are not tenable and that the writ application must fail for non joinder of necessary party, as State



Government was not impleaded in the present writ application. He further contended that Annexure -5 of the writ application which is a notification by the State Government has not been challenged nor can he be permitted to do the same at this belated stage. A further argument advanced by him is that Article 2 of the Statute has to be read in conjunction and conformity with Article 3 which follows thereafter, and is quoted below:-

“Article 3- “The scales of pay for the post mentioned in Article 1 above, shall be the same as may be approved by the State government from time to time”.

It is submitted by learned counsel for the University that in the wake of the fact that there being no challenge to Annexure 5 which is the pay fixation made by the State Government, it is not open to the university to make pay fixation as claimed by the petitioner as he does not fit into the parameters prescribed by the said notification. It is submitted that the pay fixation clearly distinguished the two categories, one possessing the qualification and the other not possessing the same. Those having the qualification were entitled to draw the scale of 4500-7000 whereas with regard to those not possessing the same, it was clearly stated that they would be entitled to the pay scale of 3050-75-3950-80-4590. Thus, the State clearly drew a distinction and dis-similarity between the

classes of one who was possessing the degree/diploma whereas the other who did not possess the same.

In order to enforce his argument, learned counsel for the University has also produced another similar notification dated 13.04.1991 issued by the Department of Human Resources in which also a similar distinction had been drawn by the State for fixation of salary of Librarians/Assistant Librarians and Librarians of colleges, wherein it was clarified that the fixation of pay scale of the said post would be available to those, who were possessing the requisite qualification. The pay scale of Rs.2000-3800 could be granted only to such persons who were possessing the prescribed qualification, as contained in Letter No 1682 /GS (1) dated 15.07.1986 issued by the Governor's, Secretariat. It was thus contended that the petitioner was not entitled to the benefit of the higher scale and therefore, Article 2 did not facilitate grant of scale as well. Accordingly the petitioner's writ must fail.

Learned counsel for the petitioner in reply to the argument advanced on behalf of the university however, stated that under such circumstances it was the maxim "*ut res magis valeat quam periat*" which should be adopted in construing the meaning of such statute. It was contended that the construction should be meaningful so as to make the Statute workable and not to render it futile. It was

argued that it was the court's duty to make what it can of the statute knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a court to declare a statute unworkable.

We have heard learned counsel for the petitioner and learned counsel for the respondent-University.

In the present instance we are of the view that Article 2 of the said Statute was further qualified by the recitals in Article 3 of the said Statute. Moreso, this conclusion can be drawn from the fact that the present distinction as made out in Annexure-5 also stood in tune with the earlier notification of 1991 issued by the State Government whereby pay revision was made carving similar distinction between those possessing the qualification and those without the same as indicated in the two notifications issued by the State Government. Therefore, the argument advanced that the petitioner was entitled to the pay scale irrespective of qualification in view of the fact that he has discharged of duties as Librarian on the basis of equal pay for equal work especially as it defeats Article 2, cannot be sustained in the eye of law.

The interpretation which is required in the instant case regarding the scope and ambit of Article 2 of the Statute has to be considered in consonance with Article 1

and Article 3. A complete presentation of Statutes with regard to qualification, pay scales etc. of University Librarian, Deputy Librarian, Assistant Librarian and College Librarian are reproduced hereunder for appropriate appraisal of the said Statute.

“The following shall be the minimum qualifications, for the posts of University Librarian, Deputy Librarian, Assistant Librarian and College Librarian:-

I (a) *University Librarian*

Qualifications:

- (i) First or Second Class Master’s degree in Library Science; or M.A./M.Sc./M.Com. plus a First or Second Class Bachelor’s degree in Library Science; or M.A./M.Sc./M.Com. plus a Diploma in Library Science.**
- (ii) Ph.D. degree or equivalent research work in the field relevant to the profession; and**
- (iii) At least ten years’ experience as Librarian or in a responsible professional capacity not below the rank of Deputy Librarian in a University Library.**
- (iv) Training in Computerization/information Technology/Specialised Areas may, if the University so decides, be also taken into consideration.**

(b) *Deputy Librarian*

Qualifications:

- (i) **First or Second Class Master's degree in Library Science or M.A/M.Sc/M.Com. plus a first or second class Bachelor's degree in Library Science or Diploma in Library Science.**
- (ii) **Ph. D. degree or equivalent research work in the field relevant to the profession; and**
- (iii) **At least seven years' experience as Librarian or in a responsible professional capacity in a University Library.**
- (iv) **Training in Computerization/Information Technology /Specialized Areas may, if the University so decides, be also taken into consideration.**

(c) *Assistant Librarian or College Librarian*

Qualifications:

- (i) **Good academic record with at least a high second class degree in a subject other than Library Science, and**
- (ii) **A first or high second class Master's degree in Library science.**

2. The existing incumbents of posts noted above, who hold the qualifications as prescribed by the University before this Statute came

into force (i.e. before 15th July, 1986) shall be deemed to be qualified for the posts they are holding.

3. The scales of pay for the posts mentioned in Article 1 above, shall be the same as may be approved by the State Government from time to time.

It is evident from perusal of the said rules enshrined in the statute that the qualifications of University Librarian, Deputy Librarian and Assistant Librarian or College Librarian have been clearly prescribed in the statute in Article 1 (a), (b) and (c) respectively.

So far as Article 2 is concerned, the exception has been made in favour of the existing incumbents of the posts noted above who hold qualifications other than those prescribed hereinabove, by the Statute and before the said came into force. Article 2 further states that they shall be deemed to be qualified, for the posts they are holding. The argument advanced on behalf of the learned counsel for the petitioner that by stating that they shall be deemed to be qualified the incumbents of the posts would be also entitled for the benefit attached thereto. However, this deeming fiction cannot be enlarged so as to give the interpretation that they would also be entitled to the scale as the State Government has clearly made a distinction while revising the pay scales of such incumbents and qualified Article 2 by following it with

Article 3 of the Statute.

We are in agreement with the argument advanced by learned counsel for the University that the State Government in its notification has clearly stipulated that the revised scale would be available only to those who possesses the qualifications as prescribed therein and that those having lesser qualifications, those existing on the post would not be entitled to the scale sought to be claimed by the petitioner. Furthermore, this Court also finds strength in the argument advanced by learned counsel for the University that such distinction between the two classes of incumbents of the posts have been given as early as in 1991 and thereafter, in 2004. Furthermore, the said notification of the State Government has neither been challenged at any stage by the petitioner nor the State Government has been impleaded as party- respondent.

Hence, in our view, the impugned order cannot be faulted and the writ application must fail. We also find and hold that the University is bound to implement Article 2 of the Statutes in terms of Article 3 which clearly enunciates that the scales of pay for the posts mentioned in Article 1 above shall be the same as may be approved by the State Government from time to time. The petitioners having failed to challenge the State Government's notification issued from time to time cannot be permitted to assail the same at

this stage and for that reason also, this Court does not find any merit in the arguments advanced by learned counsel for the petitioner.

In the result, this writ application fails and the question of law placed herein is decided and answered accordingly.

(Anjana Mishra, J)

Ramesh Kumar Datta, J

(Ramesh Kumar Datta, J)

Jagdish/-

U			
---	--	--	--