

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2123 of 2014

Jyoti Narayan Singh Son Of Late Jang Bahadur Singh Resident Of Village -
Bhandari, Police Station Belsand, District Sitamarhi

.... Petitioner/s

Versus

1. The Vice Chancellor Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur
2. The Registrar, Baba Saheb Bhim Rao Ambedkar Bihar University Muzaffarpur
3. The Finance Officer, Baba Saheb Bhim Rao Ambedkar Bihar University Muzaffarpur
4. The Principal, Jagannath Singh College, Chandauli, Police Station Belsand, District Sitamarhi

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Pushpendra Kumar Singh
For the Respondent/s : Mr. Harendra Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 01-10-2015

01.10.2015

Petitioner filed the writ application for quashing of an order, dated 29.01.2013, issued under the signature of the Registrar of B. R. A. Bihar University, Muzaffarpur, which is Annexure-20, appended with the supplementary affidavit of the petitioner.

By virtue of this order on a direction issued by the High Court earlier in C.W.J.C. No. 13540 of 2009, the university authorities considered the claim of the petitioner for grant of a particular pay-scale demanded by him and have rejected the same on the ground that the pay-scale being given to the petitioner is correct and authentic and he is not entitled to a superior pay-scale,

because the petitioner does not have the requisite qualification to go with the pay-scale.

Learned counsel representing the petitioner submits that the petitioner was appointed initially on the post of a Librarian having qualification of a Graduate. This decision was taken by the managing committee of the erstwhile college, which later on became a constituent unit under the B. R. A. Bihar University, Muzaffarpur. Petitioner's service was also regularized and recognized by the university as well the State authorities and there is no dispute on that issue any more. The problem arises now because petitioner is of the opinion that he is being given a pay-scale lower than what a Librarian is entitled to and there is discrimination practiced by the university. His actual pay-scale, as per the petitioner should have been Rs. 6500-10500/-.

Looking at the limited nature of dispute, the Court directed the respondent-authorities of the university to file their counter affidavit and justify the decision, contained in Annexure-20 as well as the previous order of rejection, contained in Annexure-16, dated 08.07.2009.

The stand of the university would be evident from a reading of the two orders, which are under

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challenge. The speaking order itself indicates as to the nature of engagement of the petitioner, his qualification and the prescribed pay-scale issued by the State Government revising the pay-scales and grant of replacement scales from time to time. The petitioner's pay-scale has been fixed in terms of the recommendation of the 5th Pay Revision Committee and the petitioner unnecessarily equates himself with better qualified or more qualified persons, holding the post of a Librarian. There is no one post or pay-scale for a Librarian. Recommendations and notifications, which are part of record, would indicate that there are variable pay-scales even for the post of Librarian and this aspect would be evident by having a look at the notification annexed by the petitioner himself as part of Annexure-13 of the writ application.

Learned senior counsel for the university points out that on page 44 of the writ application, the pay-scales of Librarians and Assistant Librarians are listed and in the remarks column it is recorded that there is a separate pay-scale for a person who does not have even a Diploma in Library Science, whereas for others the pay-scales revised or modified is indicated therein.

On such a plea being taken, learned counsel

for the petitioner draws attention of this Court to a Statute, dated 15th of July, 1986, annexed as Annexure-14. Emphasis of the petitioner's counsel is on Clause-2 relating to Assistant Librarian or College Librarian. Clause-2 of the Statute reads as under:

“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.”

Submission of the counsel, therefore, is that if Clause-2 of the said Statute is read, it is evident that the service of the petitioner is protected and so is his right for replacement scales by virtue of the post, which he was holding.

In contradiction thereof, learned senior counsel of the university draws the attention of this Court to Clause-3 of the same Statute. Clause-3 reads as under:

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

The submission of learned senior counsel is that Clause-2 cannot be read in isolation. It has to be read in conjunction with Clause-3. The entitlement of the employee will flow from the pay-scale, which the

Government will notify or has notified and approved from time to time. The notification by itself is a giveaway that in absence of a uniform pay-scale available for Librarian there cannot be a claim for same kind of replacement scales viz-a-viz other Librarians who have the benefit of higher education.

After having examined all these contentions and the materials, the Court comes to a considered opinion that the Statute, contained in Annexure-14, only protects the continuance of the petitioner despite not having the requisite qualification. Because of the said provision he had continued in service, otherwise, there would have been a piquant situation where for not fulfilling the requirements of qualifications, laid down in the Statute, he would have been ousted from service, since higher qualifications were needed for the post when statute came into play. His continuance by itself does not make him at par.

Different pay-scales having different kind of qualifications for the same post is not an unheard of phenomenon. An employer has within his right to decide different pay-scale for persons with better education as well as training than those who had only the basics of qualifications.



In the present case, if the Statute did not provide for in terms of Clause-2 the petitioner would have been on the road despite having been appointed on the post of Librarian since he did not have the requisite qualification, as required in terms of the notification, dated 15th of July, 1986.

Keeping the above variations in the qualifications, the State authorities have given variable and different pay-scales to the post of Librarian. Therefore, the petitioner being only a Graduate he cannot claim a benefit of a higher pay-scale than what is being made available to him by the two impugned orders, which are under challenge.

In view of the aforesaid facts and circumstances, the two impugned orders do not require any interference. The writ application, therefore, has no merit. It is dismissed

SKM/-

(Ajay Kumar Tripathi, J.)

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