

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5661 of 2013

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1. Navin Chandra Roy Son Of Shri Bhagwat Prasad Roy Resident Of Mohalla-Shivpuri, Damuchak, P.S.- Kazi Mohammadpur, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Education Department, Bihar, Patna
2. B.R. Ambedkar Bihar University, Muzaffarpur Through Its Registrar
3. Vice Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur
4. Registrar, B.R. Ambedkar Bihar University, Muzaffarpur
5. Principal, Mahila Shilpa Kala Bhawan College, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate.
For the State : Mr. Y.P. Sinha, AAG 15
Mr. R.S. Singh, Ac to AAG 15
For the University : Mr. Dhurub Mukherjee, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 07-04-2016

Heard the parties.

2. In the present writ petition, petitioner is challenging the order dated 10.2.2012 passed by the Joint Secretary, Education Department, Bihar, Patna by which his claim for arrears of salary for the period between 28.2.1982 to October, 1995 has been rejected on the ground that he could not produce the substantial evidence to show that he had discharged the duties in Mahila Shilpa Kala Bhawan College, Muzaffarpur (hereinafter referred to as 'the College') during the period 1982 to 1995.

3. Brief facts of the case is that petitioner was appointed as



Lecturer in the subject of Philosophy on 20.11.1975 by the competent authority. In pursuance of the appointment, he joined the post and started discharging the duty. At the relevant time when he joined the service, the post of Lecturer in Philosophy was not sanctioned by the Government of Bihar and later on Government of Bihar vide its letter dated 4.11.1981 has sanctioned the post of Lecturer in different subjects including Philosophy mentioned in the said letter. While discharging the duty the College was taken over and it became the constituent unit of the then Bihar University, now B.R. Ambedkar Bihar University, Muzaffapur. The petitioner and similarly situated persons were discharging the duties to the satisfaction of the competent authority but were not regularised. In such circumstances one Mrs. Suraiya Khatoon and others approached before this Court vide C.W.J.C. No.4757 of 1990 for regularisation of their services. In pursuance thereof this Court has considered their cases from different angle and arrived to a finding that they are entitled for regularisation in service as well as they are entitled to equal pay for equal work, the Court gave direction for regularisation of service. It will be relevant to quote paragraph 18 of the aforesaid judgment:

“18. For the reasons stated above, the respondents are directed to regularize the



services of these petitioners on their present posts held by them with effect from 20.11.1982 when the college became a constituent unit of the University and came under its direct control. They shall be paid their salary and other admissible allowances in the prescribed pay scale payable to the lecturers in the constituent colleges of the University with effect from 20.11.1982. The College Service Commission, respondent no.3, is further directed to consider the pending cases for concurrence in the appointments of the petitioners which is pending since the year 1982 in the office of the College Service Commission.”

4. The cases of the petitioner and other similarly situated persons were considered vide memo no.2078 dated 21.10.1995 issued office order mentioning therein that in pursuance of the orders of the Hon'ble Chancellor as contained in Governor's Secretariat letter no. BU-42/94-2055/G.S.-1 dated 14.9.1993 the Vice-Chancellor regularised the services of the persons mentioned in the list. In the said letter it has been mentioned that persons mentioned there will be entitled for the salary in the scale of pay of Rs.2200-4000 at the initial pay of Rs.2200/- per month plus other allowances as admissible under the University rules with effect from the date of issuance of the order without prejudice to their claim for absorption of their services until further orders. Later on B.R. Ambedkar Bihar University has issued further notification vide memo no.30 dated 4.1.1997



mentioning therein that in pursuance of the orders of the Hon'ble Chancellor as contained in Governor's Secretariat letter no. BU-58/94-3112/GS(1) dated 4.12.1996 accorded approval in the absorption of services of purely temporary Lecturers, the Vice-Chancellor in accordance with the provisions of Section 58 of the Bihar State Universities Act, 1976 regularised their services of lecturers who were appointed on or before 28.2.1982.

5. In the last portion it has been mentioned that consequent upon the aforesaid notification no arrear shall be payable. The deemed date 28.2.1982 in each case against recommended posts but yet to be sanctioned by the State Government was given in anticipation of the sanction of the posts at least from 28.2.1982. However, the final date of absorption of the incumbents for regularisation against recommended posts will be date of sanction of respective posts by the State Government. They were discharging the duties in the normal manner and after completion of Kalawadhi the petitioner was promoted to the post of Associate Professor along with three other Lecturers of the same College vide memo no.B/2480 dated 21.9.2001 (Annexure-8). Though persons were discharging the duties to the respective posts but the case of the petitioner for the entitlement of salary remained alive.

6. Some of the teachers, namely, Dr. Nirmala Jha and others approached this Court vide C.W.J.C. No. 10904 of 1998 and this Court vide order dated 13.1.2000 held that petitioners of that writ petition were entitled to the salary in the regular scale of pay with effect from 28.2.1982.

7. It is relevant to state that Dr Nirmala Jha and others were regularised along with petitioner in compliance of the order of this Court the University vide letter dated 3.1.2005 (Annexure-11) granted the arrears of salary for the period from 20.11.1982 to 30.11.1993.

8. The petitioner has claimed that he is also entitled for the same relief and when he was not granted he filed representation for the payment of arrears of salary with effect from 28.2.1982 and the same remained pending for consideration, the petitioner was compelled to approach this Court vide C.W.J.C. No.10083 of 2005 which was disposed of on 8.5.2008 where the Court has given direction to consider the case of the petitioner and take a decision by passing a reasoned order. While disposing of the matter the Court said that while considering the case of the petitioner the respondents authorities would be under obligation to consider the applicabilities of two judgments in the case of Mr. Suraiya Khatoon and Dr. Nirmala

Jha. It has also been mentioned that while considering the case of the petitioner the authority will take into consideration about the entitlement of arrears of salary to the other similarly situated persons. It will be relevant to quote relevant portion of the aforesaid order:

“....The State Government while passing the order in the case of the petitioner would be under obligation to consider applicabilities of two judgments in the case of Mrs. Suraiya Khatoon and Dr. Nirmala Jha. It is, however, made clear that while taking a decision on that aspect the State Government will also take a policy decision in the matter of payment of salary w.e.f. 28.2.1982 in respect of all such teachers whose services have been regularised under the Chancellor's Statute and whose services were left untouched in paragraph no.17 of the judgment dated 2.3.2001 in L.P.A. No.909 of 2000 (Annexure R/1 to the counter affidavit) reported in 2001(2) P.L.J.R. 817 whereby and whereunder the Division Bench had held that the regularisation which have already been made and finally concluded before the date of judgment, i.e. 2.3.2001 shall not be reviewed or recalled.”

9. While disposing of that writ petition the Court has directed the present petitioner to file a detailed representation bringing all facts for consideration and pass necessary order in accordance with law. The Court considered the case of the petitioner and decided that petitioner is not entitled to any salary for the period 28.2.1982 to October, 1995 as the petitioner could not produce

some concrete evidence to show that he was discharging the duties during the aforesaid period.

10. Learned counsel for the petitioner submits that all the persons who were absorbed along with him has been granted benefit of arrears of salary leaving aside the petitioner and without proper consideration has rejected the claim of the petitioner. He has further submitted that he was granted promotion of Associate Professor which shows he had worked as Assistant Professor for at least ten years. He has placed strong reliance on the aforesaid office order which substantially proves that he had discharged the duties for the aforesaid period. He is claiming that as no teacher can be given promotion without having completed minimum period of duty for the purposes of time bound promotion to the post of Associate Professor. So much so this Court while disposing of the case has given a positive direction for consideration of the case of Mr. Suraiya Khatoon and Dr. Nirmala Jha so much so the statute of the University under which the petitioner has been regularised in service. But the Joint Secretary has not taken into consideration the relevant facts and without proper application of mind decided the case against the petitioner.

11. Learned counsel for the State has tried to justify the

order of the Joint Secretary stating therein that as he did not find that he had discharged the duties in the College during the period in question as could not produce any concrete evidence to show that he was there and discharged the duties to Assistant Professor.

12. Learned counsel for the University has also supported the case of the State but one thing is very clear from the order that while deciding the case of the petitioner the Joint Secretary has not acted and decided the representation of the petitioner in terms of the direction issued by this Court. While disposing of the case this Court has specifically given direction for consideration of the case of Mr. Suraiya Khatoon and Dev. Nirmala Jha. Both of them have been granted arrears of salary for the period 1982 to 1995.

13. In such view of the matter, this Court finds that the Joint Secretary while disposing of the matter has not taken note of the orders passed by this Court about consideration of cases of two persons as well as he was also too consider about the promotion to the post of Associate Professor as no Associate Professor could be promoted to the higher posts without crossing the period of Kalawadhi.

14. This Court is not giving any opinion of the merit of the case but this Court finds that order passed by the Joint Secretary suffers from illegality and as such the impugned order dated

10.2.20012 is hereby quashed and matter is remanded back to the Joint Secretary, Education Department, Patna who will examine the case of the petitioner, will also hear the present petitioner and would take into consideration the direction issued by this Court and pass a reasoned order.

15. With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

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