

Somra Oraon Vs. State of Bihar and ors.

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Court : Patna

Decided On : Feb-09-1995

Judge : P.K. Deb, J.

Appeal No. : Civil Writ Jurisdiction Case No. 2798 of 1994 (R)

Appellant : Somra Oraon

Respondent : State of Bihar and ors.

Disposition : Petition Dismissed

Judgement :

P.K. Deb, J.

1. The grievance of the petitioner in this Writ application is that he was appointed as Lecturer in the subject of Oraon (Kurukh), a regional language in Mandar College, a Constituent college under the respondent No. 3, Ranchi University and he was serving as such till date, but he has not been paid his salary since July, 1991, so the relief claimed is that he should be paid his salary since July, 1991 till date and continued to be paid henceforth.

2. The petitioner's case is that he was appointed as a Lecturer while Mandar College was an affiliated college under the Ranchi University in the year 1982 on temporary basis and afterwards after due process of advertisement etc. he was

appointed on regular post and is working as such. Mandar College then declared as a Constituent College under Ranchi University and that the names of all the teaching and non teaching staffs including that of the petitioner was referred by the Ranchi University to the Government for approval, but the petitioner's case was not found favour with the Government for the purpose of approval and accordingly, as per direction of the State Government, Ranchi University has not paid his salary since July, 1991, although at every stage, Ranchi University was favouring the petitioner's case in sending his case for approval over and again to the State Government.

3. The case of the petitioner is totally covered by a Division Bench Judgment of this Court, as reported in 1993(2) B.L.J.R. page-893 (Manoj Prasad and Anr. v. Ranchi university) and also 1993 (2) B.L.J.R., page-897 (Gopi Krishna Pathak and Ors. v. Ranchi University). It has been held in both the cases that when the appointment of a teaching or a non teaching staff in violation of provisions of Section 35 of the Bihar State university Act then their appointment being illegal, cannot be said to be in existence for the purpose of approval by the State Government.

4. One Mr. Oscar Toppo, who was appointed alongwith the petitioner in the same post. The Mandar College came up before this Court in CWJC No. 2254 of 1994 (R) for the reliefs namely payment of salary since July, 1991 and for a direction the State of Bihar to sanction post of the aforesaid language and include the name of Mr. Oscar Toppo as an approved

By order dated 30.1.1995, the Writ petition of Mr. Oscar Toppo was dismissed by this Court relying on the decision of the above two cases.

5. The petitioner stands on the same footing as that of Mr. Oscar Toppo, as is submitted by Mr. Allam. By filing a supplementary affidavit, the petitioner has stated that if any steps regarding sacking of his service, he would come up with a writ, if necessary, at a later stage, but he should be paid of his salary as he worked for the period for which relief of salary has been claimed. Mr. Allam has referred to an order of this Court of Single Bench dated 5.1.1995 in Basid Ansari v. State of Bihar and Ors. but no decision has been arrived at in that case only

interimly, it was asked to the University to pay the current salary to the petitioner of that case. But in the present case, when the petitioner's appointment is violative of the provisions of Section 35 of the Bihar State Universities Act then the petitioner cannot be said to be in service, when his appointment is illegal on the face of it. and once question of payment of salary does not arise.

6. The writ petition is dismissed.

No order as to costs.

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