IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 430 of 2023

1. Birsa Agricultural University, represented through Deputy Registrar (Examination), Birsa Agriculture University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand
2. Vice Chancellor, Birsa Agricultural University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand.
3. The Director of Administration, Birsa Agricultural University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand.
4. The Recruitment Officer, Birsa Agricultural University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand. ……Appellants/ Respondent no. 2 to 4

VERSUS

1.The State of Jharkhand, through Secretary-cum-Commissioner, Agriculture, Sugarcane, Development Department, Govt. of Jharkhand, P.O & P.S. Doranda, Ranchi. ….. Respondents/ Respondent No. 1

2. Mahmud Allam, Son of Late Abdul Hakim, Resident of ChuriTola, P.O.- Kanke, P.S.- Gonda, District- Ranchi, Jharkhand.

….. Respondents/Petitioner

With

L.P.A. No.459 of 2023

1. Birsa Agricultural University, represented through Deputy Registrar (Examination), Birsa Agriculture University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand.
2.Vice Chancellor, Birsa Agricultural University, P.O.-Kanke, P.S.- Gonda District- Ranchi, Jharkhand.
3. The Director of Administration, Birsa Agricultural University, P.O.- Kanke P.S.- Gonda, District- Ranchi, Jharkhand
4. The Recruitment Officer, Birsa Agricultural University, P.O.- Kanke P.S.- Gonda, District- Ranchi, Jharkhand.

…. Appellants/ Respondent no. 2 to 4

VERSUS

1. The State of Jharkhand through the Principal Secretary, Agriculture and Sugarcane Development Department, Govt. of Jharkhand, At- Nepal House, P.O. & P.S.- Doranda, Dist.- Ranchi, Jharkhand.

Respondent no-1

2. Prawin Keshari, aged about 45 years, son of Deo Narayan Saw,
3. Navin Keshari, aged about 47 years, son of Deo Narayan Saw,
4. Arun Kumar Keshari, aged about 43 years, son of Deo Narayan Saw,
5. Sushma Devi, aged about 41 years, daughter of Deo Narayan Saw,
6. Reena Devi, aged about 42 years, daughter of Deo Narayan Saw,

All resident of Village Bodeya, P.O. & P.S. – Kanke, District- Ranchi, Jharkhand

7. Shekh Ketabul Hussain, son of Md. Jyaul Haque, Resident of Village, Hochar, P.O. & P.S. Husir, District- Ranchi, Jharkhand

--- --- Respondents / Petitioners

With

L.P.A. No.460 of 2023

1.Birsa Agricultural University, represented through Deputy Registrar (Examination), Birsa Agricultural University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand.
2. Vice Chancellor, Birsa Agricultural University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand.
3. The Director of Administration, Birsa Agricultural University, P.O. & P.S.-

Kanke, District- Ranchi, Jharkhand.
4. The Recruitment Officer, Birsa Agricultural University, P.O. & P.S.- Kanke, District- Ranchi, Jharkhand.

Appellants/ Respondent no. 2 to 4

Versus

1.The State of Jharkhand through Secretary cum Commissioner, Agriculture and Sugarcane Development Department, Govt. of Jharkhand at Krishi Bhawan, P.O. & P.S. – Kanke, District- Ranchi, Jharkhand
2. Md. Abbas Ali, aged about- 56 years, Son of Late Md. Ishaq Ali, Resident of Hussir, P.O.- Hussir, P.S.- Kanke, District- Ranchi, Jharkhand.

…… Petitioner/ Respondent No.2

…....

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellants : Mr. Abhijeet Kumar Singh, Advocate
Mr. Harsh Chandra, Advocate
For the Respondents : Mr. Suresh Kumar, SC(L&C)-II
Mr. Rajesh Kumar Singh, AC to SC(:&C)-II
: Mr. Abhinay Kumar, A.C to G.A.-I

6th March 2024

Per, Shree Chandrashekhar, A.C.J.

I.A. No. 7557 of 2023 in L.P.A. No. 430 of 2023

With

I.A. No. 7885 of 2023 in L.P.A. No. 459 of 2023

With

I.A. No. 7887 of 2023 in L.P.A. No. 460 of 2023

These interlocutory applications have been filed under Section 5 of the Limitation Act seeking condonation of delay ranging between 93 days to 101 days in preferring the present appeals.

2. We are satisfied with the cause shown by the appellants in these applications and, therefore, the delays in filing these Letters Patent Appeals are condoned.

3. I.A. No. 7557 of 2023 in L.P.A. No. 430 of 2023, I.A. No. 7885 of 2023 in L.P.A. No. 459 of 2023 and I.A. No. 7887 of 2023 in L.P.A. No. 460 of 2023 are, accordingly, allowed.

L.P.A. No. 430 of 2023
With
L.P.A. No.459 of 2023
With
L.P.A. No.460 of 2023

4. This batch of Letters patent Appeals seeks to challenge the order dated 13th April 2023 passed in WP(S) Nos.6605 of 2017, 7290 of 2016 and 772 of 2018.

5. The aforementioned writ petitions were filed by Mahmud Allam, Md. Abbas Ali, Deo Narayan Saw (since deceased) and Shekh Ketabul Hussain for their regularization from the date of joining in the service as daily wages employee or, in the alternative, counting of their past services for pensionary benefits given to the other similarly situated persons.

6. The writ Court referred to the orders passed in the previous proceedings between the parties and held that the respondents' past services shall be counted for pensionary benefits.

7. The respondents who were engaged under the Birsa Agricultural University (in short, University) as daily wagers on class-III posts approached the writ Court in CWJC No.1260 of 1989 (R) with a grievance against the regularization of other similarly situated daily wagers under the University. The writ Court vide order dated 29.08.1989 held as under:

> *"If, however, there are sanctioned posts against which the petitioners 'services can be regularized or absorbed their cases shall be considered along with the cases of others similarly situate keeping in view the job suitability, qualification, experience etc. and other things remaining equal all or any of them in order of seniority shall first be regularized in service or absorbed before any one junior to them / him and done.*
>
> *It goes without saying, therefore, the chance any person lesser qualified than the petitioner has been absorbed or regularized in services, petitioners shall not be discriminated against.*
>
> *With the aforesaid observation, this application is disposed of.*

8. The writ petition was disposed of with a direction to the University to consider regularization of the daily wagers keeping in view the job suitability, qualification, experience etc. But the daily wagers were again constrained to approach the writ Court by filing CWJC No.2839 of 1999 as their claim for the regularization was not considered. On 29.03.2001, the writ petition was disposed of and the following directions were passed by the writ Court:

> *"Having regard to the facts and circumstances, I dispose of the writ petition with direction to the respondents to consider the case of such petitioners, who applied in pursuance of*

> *Advertisement no.2/2000 for one or other post and give preference as mentioned in the advertisement. If the question of preference amongst two sets of employees or outsiders is arises, the petitioners, who are working in the University will get preference over the employees working under the State Government or any other organization or outsiders, if they are equally situated. Similarly, it will be open to the University to give weightage to its daily wage employee on the basis of their total experience.*
>
> *The step for regular appointment to be taken and final order, if not yet passed, be passed immediately, but not later than a period of six months from the date of receipt/ production of a copy of this order.*
>
> *If any interim order of stay has been passed by one or other Court, the University may bring to the notice of such Court for the purpose of vacating stay.*
>
> *The writ petition stands disposed of."*

9. When the aforesaid order dated 29.03.2001 were not complied, a proceeding under the Contempt of Courts Act vide Contempt Case (Civil) No.911 of 2001 was laid which was disposed of vide order dated 17.02.2003 on a statement made on behalf of the University that interview for selecting the suitable candidates was in progress.

10. Now, the respondents who were also claiming regularization filed writ petitions vide WP(S) Nos.3224/2003, 6154/2003 and 1631/2004 for their regularization in service with all benefits of pay, allowances etc. These writ petitions were disposed of by order dated 16th March 2010 with the following directions to the University:

> *9, Considering the above facts and circumstances, these writ applications are disposed of with a direction to the Respondent-University to consider the applications filed by the petitioners in response to the Advertisement No. 1/2008 and also to entertain fresh applications from other candidates who may not have applied till date, if such applications are received within 15 days of their order, and while considering the candidature of the candidates, the respondent shall keep in view the job suitability, qualifications, experience etc. of the candidates and shall give preference to such of the candidates including the present petitioners in respect of their job experience and continuous service rendered during the past several years so daily wage employees. In taking final decision regarding the selection of the candidates, the respondents shall also abide by the directions contained in the order dated 29.08.1989 passed by a Division Bench of this Court in C.W.J.C. No. 1260/89 (R) and act accordingly. The respondents shall ensure that the dates for interview of the candidates, as per the applications received, should be fixed within a reasonable period and the process of selection of the candidates, pursuant to the advertisements issued, shall be completed within a period of six months from the date of this order. Such of the petitioners and other daily*

> *wages employees who may not have applied in response to the Advertisement No. 1/2008 and any such subsequent advertisement, shall submit their respective applications within two weeks from the date of this order.*

11. Even then, only Md. Kafil Ansari who was one of the petitioners in WP(S) No.6154/2003 was regularized in service and Deo Narayan Saw and Shekh Ketabul Hussain were not regularized. Therefore, they again move before this Court by filing WP(S) No.3611 of 2013 which was allowed vide order dated 13th November 2013 with a direction for regularization of their services.

12. The respondents now have been offered appointment vide office orders dated 21st May 2011, 13th March 2014 and 21st May 2011 which according to the appellant-University is a fresh appointment and the respondents therefore are not entitled to claim any benefit of their past services. Mr. Abhijeet Kumar Singh, the learned counsel for the appellant-University has drawn support from Advertisement No.1/2008 to submit that in lieu of past services of the respondents appropriate age relaxation was granted to them.

13. The orders passed by this Court in CWJC No.1260 of 1989 (R) and CWJC No.2839 of 2019 as also WP(S) Nos.3224/2003, 6154/2003 and 1631/2004 clearly demonstrate that since several years the respondents had been raising a claim for regularization of their services. This is also an admitted position that by virtue of office orders dated 21st May 2011, 13th March 2014 and 21st May 2011 the respondents have been appointed by virtue of their being in service for decades under the University. The order dated 13.11.2023 passed in WP(S) No.3611 of 2013 records that the past services of the respondents shall be considered and appropriate age relaxation in lieu thereof be given to them.

14. In WP(S) No.3611 of 2013, the writ Court had observed as under:

> *16. From the aforesaid discussion, it appears that this Court in earlier proceedings has directed the respondent-University to give age relaxation and benefit of experience and continuous service rendered by the petitioners in past several years as daily wage employees. It also appears that the respondent University itself made a statement before this Court that benefit of past service would be given to the present-petitioners. I further find*

that in the counter-affidavit, the respondent- University has not disclosed any reason why the petitioners have not been selected. The specific allegations made in the writ petition that, less meritorious persons having lesser experience than the petitioners have been selected and the petitioners have been discriminated, have not been denied or disputed by the respondent- University. It is not the case of the respondent University that the persons who have been selected are better suitable candidates. I further find that in view of the continuous past services of the petitioners, an inference can be drawn that the petitioners are suitable candidates for being absorbed. From the documents on record, it is apparent that the claim of the petitioners has been ignored arbitrarily. I further find substance in the argument raised by the learned counsel for the petitioners that, the persons who have been illegally appointed do not have any vested right on the post on which they have been selected ignoring the claim of the present petitioners.

17. In "Commissioner, Karnataka Housing Board Vs. C. Muddaiah" reported in (2007) 7 SCC 689, the Hon'ble Supreme Court has held as under:

> *"32. We are of the considered opinion that once a direction is issued by a competent court, it has to be obeyed and implemented without any reservation. If an order passed by a court of law is not complied with or is ignored, there will be an end of the rule of law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.*
>
> *33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. It is open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the*

> *benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged."*
>
> *18. As the petitioners have been agitating their claim since, 1989 and they had to approach this Court on five occasions, no useful purpose would be served by giving a direction to the respondent University to consider the case of the petitioners for their absorption/regularisation.*
>
> *19. From the materials on record, I am of the opinion that the petitioners have been illegally denied appointment and they deserve an order for regularisation of their services and therefore, I hereby direct the respondent no.3 to appoint the petitioners on the post for which they had applied. The order of the Court should be complied with within six weeks from the date of production of a copy of this order."*

15. Notwithstanding the orders passed by the writ Court, the University has filed these Letters Patent Appeals against the common order dated 13.04.2023 passed in WP(S) Nos.6605 of 2017, 7290 of 2016 and 772 of 2018; apparently, on a frivolous plea. The orders passed by the writ Court in previous proceedings have attained finality and are binding on the University. The very fact that the University granted age relaxation to the respondents recognized the past services rendered by them and, therefore, they are entitled for counting of their past services for pension. Moreover, there is no stipulation in the appointment letter restricting the benefit of past services. This would be not only depriving the respondents the benefit of their past services if on a technical plea it is held that their appointment is a fresh appointment, the very philosophy behind pension shall then also be overlooked. In "***Deokinandan Prasad v. State of Bihar" (1971) 2 SCC 330 the*** Hon'ble Supreme Court held that pension is not a bounty or a charity, it is earned by the employee on account of meritorious past services. By laying a challenge to the writ Court's order dated 13th April 2023, the appellant-University is trying to rob the respondents of a constitutional right under Article 300-A of the Constitution.

16. While so, these Letters Patent Appeals are dismissed. Other pending I.As. are closed.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)

A.Mohanty/R.Kumar