

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 3560 of 2022

Dr. Ashok Kumar Singh, son of Raghunandan Singh, Resident of – DB –
169, RAC Campus, Birsa Agricultural University, Kanke, P.O. – Kanke,
P.S. – Gonda, District – Ranchi, Jharkhand.

... Petitioner

V E R S U S

1. State of Jharkhand
2. The Vice Chancellor, Birsa Agricultural University, Kanke, P.O. Kanke,
P.S. Gonda, Dist. Ranchi, Jharkhand
3. The Director, Birsa Agricultural University, Kanke, P.O. Kanke, P.S.
Gonda, Dist. Ranchi, Jharkhand
4. Dean, Faculty of Forestry, Birsa Agricultural University, Kanke, P.O.
Kanke, P.S. Gonda, Dist. Ranchi, Jharkhand

... .. Respondents.

CORAM: HON'BLE DR. JUSTICE S. N. PATHAK

For the Petitioner	:	Mr. Saurav Arun, Advocate
For the Respondents	:	Mr. Anshuman Kumar, AC to SC (L & C)-II
For the BAU	:	Mr. Abdul Allam, Sr. Advocate
		Ms. Asfia Sultana, Advocate
		Mr. Faisal Allam, Advocate
		Ms. Sushmita Kumari, Advocate

12/20.12.2024 Heard the parties.

PRAYER

2. The petitioner has prayed for quashing of Advertisement dated 10.02.2022 (Annexure-5). Petitioner has further prayed for a direction upon the respondents to pay salary from 15.12.2021 to 03.02.2022 i.e. for the period when he was allowed to work and continued as per the instruction of Dean, Faculty of Forestry, Birsa Agricultural University. Petitioner has also prayed for a direction upon the respondents to allow him to continue in service by giving extension and further to allow him to join the post.

FACTS OF THE CASE

3. According to the petitioner, he was appointed on 15.12.2020 after following due process of law in terms of advertisement/walk-in-interview

on contract basis for the post of Assistant Professor-cum-Junior Scientist. Petitioner made his joining on 15.12.2020 and the same was duly accepted. Thereafter, pursuant to letter dated 26.08.2021, the service of the petitioner was extended for a period of six months. After completion of extended period, petitioner was allowed to work till 03.02.2022 by verbal order of the Dean in expectation that his extension of contract will be continued. Thereafter, a fresh Advertisement dated 10.02.2022 was published for walk-in-interview.

4. It is case of the petitioner that though he stood first in the interview but was not given appointment stating therein that on the date of interview, he completed 50 years as stated by Head of the Department verbally without issuance of any letter. Being aggrieved, petitioner filed representations but no heed was paid. Being aggrieved, petitioner has been constrained to knock door of this Court.

ARGUMENTS ON BEHALF OF THE PETITIONER

5. Mr. Saurav Arun, learned counsel appearing on behalf of the petitioner submits that from the letter dated 28.08.2017, it would be evident that due to exigency of work, the persons working on contractual basis, will be given age relaxation till regular appointments are made. Learned counsel further argues that the petitioner has not crossed the maximum age limit in view of the fact that the date of birth of the petitioner is 25.09.1971 and as per the advertisement dated 10.02.2022, the required maximum age is 50 years as on 01.08.2021. Thus, petitioner was only 49 year 10 months 6 days on the cut-off date fixed by the University and thus, he has not crossed the upper age limit.
6. Learned counsel further argues that one Mrs. Oindrilla Basu was appointed as an Assistant Professor cum Jr. Scientist in the department of Natural Resource Management, Faculty of Forestry but she did not join the post. Learned counsel further argues that the petitioner's name figured at the top of the list of the selected candidate whereas said Mrs. Oindrilla Basu was in the 2nd position.
7. Mr. Saurav Arun, learned counsel for the petitioner in reply to the argument made by the university contended that even if it is a mistake the

University ought to have come out with the corrigendum for rectification of its mistake but the same has never been done and hence petitioner applied in terms of Advertisement dated 10.02.2022 where it has categorically been mentioned that the maximum upper age limit should be 50 years as on the date 01.08.2021. Admittedly, petitioner did not cross the upper age limit on the prescribed date.

8. Mr. Saurav Arun, learned counsel representing petitioner further argues that altogether four counter affidavits have been filed but the plea of mistake committed by the University is being raised for the 1st time and the University is trying to supplement the reason for the 1st time as per the last counter affidavit which is against the spirit of judgement passed by the Hon'ble Apex Court i.e., in case of the *Mohinder Singh Gill and others versus The Chief Election Commissioner, New Delhi* reported in *AIR1978(SC)851*. Learned counsel for the petitioner heavily relies upon the judgement reported in *2007(4)JCR443* in which it has been held that due to laches/wrong done on the part of the state, the delinquent should not be made to suffer and admittedly, in the present case no corrigendum has ever been issued, petitioner for the first time came to know about such mistake from the counter affidavit. Learned counsel further relies upon the judgement reported in *2007 (13)SCC290* in which the Hon'ble Apex Court has held that the person concerned should be allowed to continue in the service till regular appointments are made.

ARGUMENTS ON BEHALF OF THE UNIVERSITY:

9. Mr. Abdul Allam, learned Senior counsel representing Birsra Agriculture University submits that the petitioner has already crossed the upper age limits prescribed by the University. He can apply for the direct recruitment conducted through JPSC. Learned Sr. Counsel representing the University submits that by mistake in the advertisement cut-off date was mentioned as 01.08.2021 though the advertisement was floated on 10.02.2022 and in the note part, it was categorically stated that the upper age limit shall be 50 years on the 1st day of August of the Advertisement year. Learned Sr. Counsel further argues that the mistake can be rectified at any stage.

10. Mr. Abdul Allam, learned Senior counsel representing Birsa Agriculture University earlier contended that Mrs. Oindrilla Basu belongs to reserved category when the order dated 24.10.2024 was passed whereas in the third supplementary counter affidavit it has been accepted that she did not belong to reserved category. Now, the only ground taken by the University is that the petitioner has crossed 50 years of age.

FINDINGS OF THE COURT

11. Having heard counsel for the parties at length across the bar, on thoughtful consideration this Court is of the considered view that case of the petitioner needs consideration for the following facts and reasons:

- (i) Admittedly petitioner was initially appointed on contractual basis vide office order no. 1898, dated 08.12.2020 for a period of six months. The contractual period of the petitioner was extended for a period of six months vide office order no. 1316, dated 26.08.2021, as provided in para 14.5 of the Statute. Since extension was only for a period of six months, as per provisions made in para 14.5 of the Statute, further extension could not be given and therefore, the University vide memo no. 3399, dated 10.02.2022, floated a fresh advertisement for appointment vide Advertisement No. BAU (VC) 05/2022, for walk-in-interview. As per terms and conditions of the advertisement as contained in Annexure-5 to the writ petition, the maximum age as on 01.08.2021 was to be 50 years. Thereafter, in the Note, it has been mentioned that *“The upper age limit shall be 50 years on the 1st day of August in the Advertisement year relaxable up to 5 years for SC/ST and 3 years for OBC category candidates”*. The date of birth of the petitioner is 25.09.1971 and as per calculation made by the respondents, the petitioner was over age on the date prescribed and as such his candidature was rejected. From perusal of merit list prepared by the respondents, which is Annexure-A to the Supplementary Counter Affidavit dated 04.12.2024, it appears that petitioner’s name was on the top of the list having secured 70.74 marks and next to the petitioner was Mrs. Oindrilla Basu who had

secured 62.80 marks. As per respondents, since petitioner was over age, the candidate next to the petitioner was considered for appointment. From the documents brought on record it appears that two interpretations are there – one shows date of birth as on 08.01.2021 should be 50 years whereas Note says the upper age limit should be 50 years as on 1st day of August in the Advertisement year whereas it ought to have been 01.08.2022. Accepting contention of the respondents – Birsa Agricultural University, this Court is of the view that it was incumbent upon the respondents – Birsa Agricultural University to come up with the corrigendum giving clarification regarding upper age limit.

- (ii) The petitioner was initially appointed on 08.12.2020 and thereafter extension for a period of six months was given to him. Petitioner continued to work till 26.08.2021. Petitioner has thrown challenge to the advertisement also, though he had participated in the process of recruitment and was placed at serial no. 1 in the merit list.
- (iii) The issue to be decided in the instant writ petition is:

“Whether it was open for the petitioner to challenge the advertisement after participating in the selection process?”

The issue fell for consideration before the Hon’ble Apex Court in the case of ***Dr. (Major) Meeta Sahai Vs. State of Bihar and others*** reported in ***(2019) 20 SCC 17***. It has been held therein that *normally a candidate cannot challenge selection process after participating in process*. It was however, held that *the said principle is differentiated insofar as candidate by agreeing to participate in selection process only accepts prescribed procedure and not illegality in it*. It was further held that *where candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, same cannot be condoned merely because candidate has partaken in it because constitutional scheme is sacrosanct and its violation impermissible. Besides, it is possible that candidate may not have locus to assail incurable illegality or derogation of provision of Constitution, unless he/she participates in selection process*.

The University never ever issued any corrigendum clarifying the maximum age on the date of walk-in-interview. The clarification has been made only by way of counter affidavit and after selection process is over. Whether such clarification can be accepted by the Court, fell for consideration before the Hon'ble Apex Court in the case of ***Commissioner of Police, Bombay Vs. Gordhandas Bhanji***, reported in ***AIR 1952 SC 16***, has held in para 9 as under:-

“9. An attempt was made by referring to the Commissioner’s affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Further, the same view has been reiterated by the Hon'ble Apex Court in the case of ***Mohinder Singh Gill Vrs. Chief Election Commissioner***, reported in ***(1978) 1 SCC 405***, paragraph-8 of which reads as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought, out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

Admittedly, the clarification has been made in the counter affidavit and no corrigendum to this effect has been issued earlier which shows that the respondent authorities have tried to improve their case by supplementing the facts, which was never part of the advertisement and it has only come for the first time in the supplementary counter affidavit.

- (iv) The appointments were made purely on contractual basis. Petitioner was earlier appointed and continued after being given extension for six months. If at all the respondents wanted to make fresh appointment, it was open for them to come up with regular appointment. In the celebrated Judgment of the Hon'ble Apex Court in the case of ***Hargurpratap Singh Vs. State of Punjab and others*** reported in **(2007) 13 SCC 292** it has been held at Para-3 as under:

“3. We have carefully looked into the judgment of the High Court and other pleadings that have been put forth before this Court. It is clear that though the appellants may not be entitled to regular appointment as such it cannot be said that they will not be entitled to the minimum of the pay scale nor that they should not be continued till regular incumbents are appointed. The course adopted by the High Court is to displace one ad hoc arrangement by another ad hoc arrangement which is not at all appropriate for these persons who have gained experience which will be more beneficial and useful to the colleges concerned rather than to appoint persons afresh on ad hoc basis. Therefore, we set aside the orders made by the High Court to the extent the same deny the claim of the appellants of minimum pay scale and continuation in service till regular incumbents are appointed. We direct that they shall be continued in service till regular appointments are made on minimum of the pay scale. The appeals shall stand allowed in part accordingly.”

The similar view as reiterated by the Hon'ble Apex Court in the case of ***State of Punjab and others Vs. Supreet Rajpal and another*** reported in **(2007) 13 SCC 290**.

- (v) From the records it appears that the petitioner had secured highest marks and was at serial no. 1, only because of misinterpretation of the terms and conditions of the advertisement, he has been eliminated. The stand of the respondents that the candidate at Serial

No. 2 was appointed as she belongs to the reserved category and further clarified that no appointment have been made and inadvertently submission has been advanced by the University, the same is not acceptable to this Court and the same shows callous approach of the University. At the first extent, the University has tried to misguide this Court by giving wrong facts and later on when queries were made, it was found that wrong submissions based on wrong instruction has been made before this Court.

(vi) There is no dispute that the appointment was purely on contractual basis, it would be apt to direct the respondents to allow the petitioner to continue on the said post. However, it is open to the University to come out with regular appointment by floating fresh advertisement and as and when regular appointments are made, petitioner may also be allowed to participate subject to fulfilment of criteria and the appointment be made as per terms and conditions and as per the merit list that may be prepared on the basis of marks obtained by the individual candidates.

12. As a Sequitur to the aforesaid observation, rules, guidelines, legal proposition and judicial pronouncements, the impugned Advertisement dated 10.02.2022 (Annexure-5) is hereby quashed and set aside. The respondents are directed to allow the petitioner to continue on the said post till regular appointments are made after issuance of fresh advertisement and as per the observations made hereinabove. The respondents are further directed to pay salary for the periods from 15.12.2021 to 03.02.2022 i.e. for the period when he was allowed to work and continued as per the instruction of Dean, Faculty of Forestry, Birsa Agricultural University, if he has worked.

13. With the aforementioned observations and directions, the writ petition stands allowed.

(Dr. S.N. Pathak, J.)