

(1995) 03 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2790 of 1992 (R)

Akhilanand Pandey and Others

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227, 320

Citation : (1995) 1 BLJR 678

Hon'ble Judges : R.N. Sahay, J; Gurusharan Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—There are fifteen petitioners in this writ application. All of them claim to have been appointed as Lecturers in different subjects by the Governing Body of Sri Sadguru Jagjit Singh Namdhari College, Garhwa (hereinafter to be referred to as "the College") in the manner indicated hereinbelow :

_____ SI. Nos. Name of the petitioners Subjects Date of appoint- ment/ joining. _____

_____ 1. Akhilanand Pandey History 17.1.1981 (2nd Post) 2. Dr. Subaran Mahto Hindi 28.7.1981 (2nd Post) 3. Ghanshyam Pandey Hindi 27.6.1983 (3rd Post) 4. Ram Badan Mahto Philosophy 03.1.1983 (2nd Post) 5. Binod Kumar Geography 26.1.1984 (2nd Post) 6. BibhaKumari Philosophy 16.7.1984 (3rd Post) 7. Dr. Anil Kumar Verma History 17.12.1984 (3rd Post) 8. Mahendranath Tiwari Political Science 01.9.1984 (3rd Post) 9. Dilip Kumar Political Science 02.2.1986 (4th Post) 10. Satya Prakash Choudhary Geography 02.7.1985. (3rd Post) 11. Awadh Kishore Pandey History 02.9.1985 (4th Post) 12. Nita Rani Sinha Philosophy 01.05.1985 (4th Post) 13. Dr. Lakshmi Narayan Mishra Sanskrit 03.02.1986 (3rd Post) 14. Brahmdeo Singh Economics 03.02.1986 (4th Post) 15. Raj Kumar Sinha Economics 03.02.1986 (3rd Post)

2. The Governing Body of the College made advertisement on 7.7.1984, 14.8.1984, 7.12.1985 and 23.8.1986 (Annexures-1 series) for appointment of lectures in different subjects and conducted interviews on 4.4.1985, 19.1.1986, and 28.1.1987 and appointed petitioners 9 to 15 and accordingly they joined from 1.5.1985 onward till 3.2.1986 as shown above. So far petitioners 1 to 8 are concerned they were appointed earlier. Subsequently on 9.5.1985 and 29.1.1987 the Governing Body confirmed the appointment of petitioners 1 to 5 and petitioners 6 to 15 respectively. Later on the Bihar College Service Commission granted temporary concurrence for a limited period in the case of petitioners 1, 4 and 5. On 8.8.1986, petitioner No. 2 on 23.1.1987, petitioners 6 to 9 and 11 to 15 on 28.5.1987 and petitioner No. 10 on 27.2.1988 (vide Annexures 6 series). The college was declared a constituent unit of the University vide Notification dated 3.7.1987 (Annexure-4) with effect from 1.4.1987. Thereafter by virtue of the communication dated 26.9.1987 (Annexure-5) the State Government intimated to the University that even the persons working in recommended posts shall get payment and so the petitioners went on being paid their salaries upto December, 1990. From January, 1991 their salary was stopped pursuant to letter of the Finance Officer of the University dated 26.7.1991 that from January, 1991 onwards salary of only ten teachers of the college shall be remitted.

3. In Paragraphs 3 and 4 of the Government Letter No. 632 dated 3.7.1987 (Annexure-4) by which the petitioner's college was taken over, the University was directed to constitute a three man committee to enquire and report about the details of sanctioned post of teachers and non-teaching staff, the appointments of teachers and the staff in accordance with law by the competent Authority under the Act and the Rules/Statutes, their salaries allowances etc. and the assets and liabilities of the college of which two members were to be nominated by the Vice-Chancellor of the University and one by the State Government. The Government by letter No. 163 dated 6.2.1988 nominated the Regional Deputy Director, South Chhotanagpur Division, Ranchi, as a member of the said committee and by letter dated 17.3.1989 (Annexure-9) asked the Vice Chancellor, Ranchi University to nominate two members in accordance with Para-4 (ka) of the said letter dated 3.7.1987.

4. The said three man committee submitted its report dated 15/21.1.1990 (Annexure-10) and found three categories of teachers working in the college.

A-(i). Teachers duly appointed by the Governing Body of the college against sanctioned post with College Service Commission's concurrence.

(ii) Teachers continuously working since appointment.

(iii) Teachers covered within the number of posts as per criteria of work load.

B-(i) Teachers duly appointed against posts recommended by the University,

sanction of which is pending with the Government.

(ii) Teachers having requisite qualifications.

(iii) Teachers working and covered within the number of posts as per criteria of work load.

Teachers who are duly appointed, possessing minimum requisite qualifications and are working but are in excess of number of posts as per criteria of work load. List of teachers with their biodata and other relevant information mentioned against each as per categories A.B.C. stated have been prepared accordingly and are enclosed as Annexure-II and III.

The Committee observed that as per criteria approved by the Government in respect of 36 newly converted constituent college the minimum number of posts in each subject is 7 under Humanities, Social Sciences and Science Faculties and in commerce it is 9. Accordingly, persons according to the said committee were validly appointed, were working regularly and possessed requisite qualifications were recommended for absorption. Such names appear in the statement under Category A (Annexure-I) to the report (Annexure-10). The names of all the fifteen petitioners subjectwise, stand mentioned therein with the dates of their respective appointment/joining as also the dates on which those posts were sanctioned by the State Government.

5. In the said report only the dates of appointment and dates of sanction orders for the posts have been mentioned. Neither the criteria approved by the Government in respect of the newly converted constituent colleges including the petitioners' college nor the details of the so called valid appointment of the persons, who were recommended for absorption was mentioned. Further, from the chart vide (Annexure-I) to the report (Annexure-10) it appears that the petitioners had joined their respective posts earlier to the sanction orders issued creating those posts. In the circumstances even if either on the date of taking over of the college or on the date of the report the petitioners were found working on the sanctioned posts, the fact remains that all of them were appointed prior to creation of those posts.

6. In spite of the said report (Annexure-10) not only the petitioners did not get their salaries with retrospective effect from 1.4.1987 rather their salaries were also stopped from 1.1.1991 without assigning any reason. The petitioners, therefore, filed C.W.J.C. No. 2042 of 1991 (R) in this Court, which was permitted to be withdrawn on 11.10.1991 (Annexure-8) with the following observations and directions :

The matter whether the petitioners were working against the sanctioned post when the college in question was taken over, is under scrutiny of the committee of the Human Resources and Development Department and, therefore, no direction can be given to the respondents to pay salary to the petitioners unless the committee records a finding that petitioners were working against the

sanctioned posts. If the finding of the committee goes in favour of the petitioners, they shall be entitled to not only the current salary but also the arrear salary. In view of this, no relief can be granted to the petitioners at this stage. The petitioners are permitted to withdraw this application.

7. Thereafter on 9.11.1991, the petitioners filed a representation, as contained in Annexure-11, for payment of their salary before the Vice Chancellor, Ranchi University, Ranchi, stating therein that as per the report of the Committee (Annexure-10) they fulfill the conditions as observed in the order (Annexure-8) passed by this Court and so the arrears as well as current salary be paid to them.

8. On 2.12.1991, the Principal of the college issued a certificate (Annexure-12) to the effect that the petitioners have been working continuously right from the date of their respective appointments.

9. However, the petitioners again moved this Court vide C.W.J.C. No. 2855 of 1991 (R), wherein the Ranchi University filed a counter-affidavit. By order dated 12.3.1992 as contained in Annexure-13, the said writ application was disposed of with the following observations and directions:

We take serious view in the matter and the lapses on the part of the Human Resources Department as to why any such action has not been taken in pursuance of the Bench Order dated 11.10.1991 when all these teachers claim to have been teaching on the regular sanctioned post which has been so recorded by the Committee under the University, therefore, prima-facie it appears that they have been working against the sanctioned post. We, therefore, direct that such committee, if not yet constituted shall be constituted within a fortnight from today and they shall record such a finding within the stipulated time and in view of that report, if it is found, that the petitioners were working against the sanctioned post then their salary shall be paid within a period of fifteen days from that date which will include not only the current salary but the arrears also. If this order is not carried out within the time stipulated in this matter then this Court shall proceed to initiate a contempt proceeding on such application which the petitioners may file before this Court. This application is accordingly disposed of with the directions indicated above.

10. According to the direction of this Court, the State Government by Notification No. 287 dated 20.4.1992 constituted a High Power Committee to enquire into the fact as to whether the petitioners were working against sanctioned post or not. The said Committee on 27.4.1992 submitted its report, as contained in Annexure-15.

11. According to the said report as per Section 35 of the Bihar State Universities Act, 1976 (hereinafter to be referred to as "the Act") only the State Government has power to create posts. Out of the fifteen petitioners, in four cases the sanction of posts without financial assistance was given on 6.8.1985 and in other cases on 30.3.1987. The process of selection should start only after creation of posts i.e., in the present case subsequent to 6.8.1985 and 30.3.1987. As per

Section 57-A of the Act the appointments were required to be done only with the recommendation of the Bihar College Service Commission. The petitioners claim their appointment as well as confirmation by the then Governing Body of the College prior to the date of creation/sanction of the posts. The petitioners' college was taken over as one of its constituent units of the Ranchi University with effect from 1.4.1987. The petitioners' claim of concurrence by the Commission, according to the mandate of Section 57-A of the Act was not tenable. It was not established that the due process of appointments, like advertisement, interviews and observing reservation norms were followed by the Bihar College Service Commission in the case of the petitioners.

12. The said Committee, therefore, sent a report (Annexure-15) with the following findings:

(i) The selection and appointment process will have to be gone through after creation of posts as per the norms laid down in the laws of the University and reservation policy on the Government which had not been followed in the petitioner's case.

(ii) The petitioners have not been duly appointed against the posts under consideration and as such they cannot be deemed to be working against the sanctioned posts (even without financial assistance).

13. The Commissioner-cum-Secretary, Human Resources and Development Department, by its letter No. 326 dated 29.4.1992 (Annexure-16) communicated a copy of the said enquiry report to the Vice Chancellor, Ranchi University, Ranchi, with a direction that since according to the findings of the Committee, the petitioners have not been found to have been working on sanctioned posts, question of payment of salary etc. to them does not arise and the petitioners' claim can be rejected. Accordingly the University by Memo No. 9440-55 dated 18.5.1992 informed the petitioners that as per the report of the High Power Committee constituted by the State Government (Human Resources and Development Department), pursuant to the order dated 12.3.1992 passed by this Court in C.W.J.C. No. 2835 of 1991 (R) all of them were found to have not been duly appointed on the sanctioned posts and accordingly the claim for payment of salaries etc. has been rejected by the State Government.

14. Aggrieved by the aforesaid decision of the State Government and the University, the petitioners have filed this writ application for quashing the report of the High Power Committee (Annexure-15), the order of the State Government (Annexure-16) and the communication of the Ranchi University (Annexure-17). The petitioners have also prayed for issuance of a writ in the nature of mandamus commanding upon the respondents to pay their salaries from 1.4.1987 till date after deducting twenty two months' salaries already paid and to treat their appointment on the sanctioned posts substantively.

15. A counter-affidavit has been filed by the Ranchi University stating, inter alia, that the petitioners have not been appointed in accordance with the provisions of

Sections . 35, 57, 57-A and 58 of the Act and the Statutes; rather their appointments are illegal and void abinitio and as such they cannot have any claim to the posts. The report of the Committee (Annexure-10) to the writ petition) is not binding on the University as the said Committee did not consider the aforesaid provisions of the Act. Further, pursuant to the directions of this Court the High Power Committee was constituted by the State Government in the Department of Human Resources and Development and the said Committee after examining the matter in detail reported that the petitioners were not duly appointed against the sanctioned posts, which is mandatory requirement of Section 57-A of the Act and as such they were not entitled to payment of salary. The petitioners' claim, therefore, has rightly been rejected by the State Government and the same has been duly accepted and notified by the University.

16. A counter-affidavit has also been filed on behalf of the Secretary, Human Resources Development Department, Government of Bihar, Patna (Respondent No.3) stating, inter alia, that till 31.3.1987 only 32 posts of teachers in different subjects besides the post of a Principal were sanctioned by the State Government for the College in question (details whereof with dates have been given in Paragraph 8); that the Committed appointed under the orders of this Court examined the petitioners' claims in the light of actual date of creation of posts and rejected on the ground that claims of appointment were made from the dates on which posts did not exist (details have been given in Paragraph 9); that the affairs of the College in this regard were also enquired into by the Vigilance Department and the said Vigilance report shows the extent of complicity of the Secretary of the Governing Body of the College in helping the petitioners to forge documents in order to help them to establish their bogus claim; that the alleged appointments made by the Governing Body without reference to a panel prepared by the Commission was ipso facto valid in view of the amendment in the Act by Amending Act 68 of 1982 and; that the writ application having no merit was fit to be dismissed.

17. Mr. Anil Kumar Sinha, counsel for the petitioners, submitted that this Court directed to follow the report of the Committee regarding payment of the current as well as the arrear salary to the petitioners vide C.W.J.C. No. 2042 of 1991 (R). Admittedly, the report of the Committee (Annexure-10) was in favour of the petitioners, wherein all of them were found to have been working on the sanctioned posts and as such, the petitioner's salary ought to have been paid forthwith.

18. According to Mr. Sinha the stand of the Ranchi University that the said Committee was constituted at the University level is not correct. In fact the said Committee was constituted by the Human Resources Development Department of the State Government, as is found from Annexure-4 and 10 reference whereof was made in the order dated 11.10.1991 (Annexure-8) of this Court. Mr. Sinha has, therefore, challenged the report of the High Power Committee, Annexure 15, on various grounds, inter alia, that no opportunity was given to the

petitioners to appear the place their case before the said Committee and that it is an ex parte report.

19. We are not in a position to accept the argument of Mr. Sinha that the report (Annexure-10) was of the said Committee (Constituted by the Human Resources Development Department), reference of which was made in the order (Annexure-8) passed by this Court for the reason that the said report was annexed as Annexure-6 to the writ petition (CWJC No. 2835 of 1991/R) which was subsequently filed by the petitioners and after taking into consideration the said report, this Court by order dated 12.3.1992 (Annexure 13) directed the Secretary of the Human Resources Development Department to constitute a Committee for scrutiny within a fortnight from the date of the order as earlier directed by this Court in order to record a Finding whether the petitioners were appointed on the regular sanctioned posts and thereafter the State Government to pass orders. Accordingly, the Department constituted a High Power Committee, which submitted its report vide Annexure-15, and on the basis of the said report, the Authority concerned passed orders vide Annexure-16 and the University accepted the same by Annexure-17. The said High Level Committee of the Department reported that out of the 16 posts on which the petitioners claim to have been working, three were sanctioned on 6.8.1985 and the rest twelve on 30.3.1987. As per the statements made in Paragraph 7 of the writ application as well as Paragraph 8 of the petitioners' reply to the counter-affidavit the said position stands admitted that petitioners 1, 2 and 4 were appointed earlier to 6.8.1985 and petitioners 3 and 5 to 15 were appointed earlier to 30.3.1987. So it is clear that all of them were appointed on non-sanctioned posts.

20. Section 35 of the Act reads as under:

35. No post for appointment shall be created without the prior sanction of the State Government.--Notwithstanding anything contained in this Act, no University or any College affiliated to such a University, except such college--

(a) as is established, maintained or governed by the State Government; or

(b) as is established by religious or linguistic minority;

(i) After the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government.

(ii) shall either increase the pay or allowance attached to any post, or sanction any new allowance:

Provided that the State Government may, by an order, revise the pay scale attached to such post or sanction any new allowance;

(iii) shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) shall incur expenditure of any kind or any development scheme without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no college other than one mentioned in Clauses (a) and (b) of Sub-section (1), shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government:

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by a candidate possessing the prescribed qualification.

21. From the facts of this case, it is not in dispute that the college before it became a constituent unit of Ranchi University was an affiliated college of the University and if not covered by Clauses (a) and (b) of Section 35 of the Act. It was neither established, maintained or governed by the State Government nor by a religious, or linguistic minority. It is also not in dispute that the appointments of the petitioners were not made after taking prior approval of the State Government, on the contrary the State Government have not approved their appointment. In that view of the matter, the appointments of the petitioners and even continuance beyond six months are in breach of the mandatory provisions of Section 35 of the Act.

22. Sections 57 and 57-A of the Act are reproduced below:

57. Appointment of teachers and officers. -- (1) Subject to the provisions of this Act and the statutes, the Bihar State University (Constituent Colleges) Service Commission shall, as far as may be, perform, in respect of appointment to the post of teachers and officers (other than Vice Chancellor, Pro-Vice Chancellor and the Dean of Faculty) of the University, the same functions as are assigned to the State Public Service Commission in respect of the State services under Article 320 of the Constitution of India.

(2) The Bihar State University (Constituent Colleges) Service Commission shall, on the basis of an interview held for appointment of teachers and officers of different categories in all Universities and Constituent Colleges, prepare a separate panel for each University. This panel will be prepared for the teachers subjectwise and teachers and officers of different Universities and Colleges shall be appointed on the basis of the said panel.

(3) In making recommendations for appointment to every post of teacher and officer, the Bihar State University (Constituent Colleges) Service Commission shall fulfill conditions contained in Section 58 of the Act.

(4) The appointment of teachers of affiliated colleges shall be made on the recommendation of the Bihar College Service Commission.

57-A. (1) Appointment of teachers of affiliated colleges not maintained by the State Government shall be made by the Governing Body on the recommendation

of the College Service Commission. Dismissal, termination, removal, retirement from service or demotion in rank of teachers of such colleges shall be done by the Governing Body in consultation with the College Service Commission in the manner prescribed by the statutes :

Provided that the Governing Bodies of affiliated minority colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them with the approval of the College Service Commission :

Provided further that the advise of the College Service Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed.

(2) Recommendation for the appointment of teachers of colleges shall be made in accordance with the following provisions :--

(a) College Service Commission shall give its consent/recommendation for the appointment, dismissal or termination etc. of teachers of affiliated colleges till the date of their being made constituent colleges. Its consent/recommendation shall be deemed valid only till that date.

(b) If an affiliated college becomes a constituent college of a university by the time the recommendation of the College Service Commission is received, the Syndicate shall take action in accordance with Sub-section (4) of Section 57 of the said Act, as if the recommendation has been made by the Commission.

(c) For the purpose of absorbing the service of the teachers of the affiliated colleges, who were appointed by the governing body of the college against the sanctioned posts before the establishment of the College Service Commission and whose services have been approved by the University as also the services of such teachers who were appointed by the governing body on the recommendations of the University Service Commission (Dissolved College Service Commission) as the case may be, approval of the Bihar State University (Constituent Colleges) Service Commission shall be necessary, and such teachers shall be absorbed in the University Service from the date of making the college constituent and then seniority shall be determined according to the rules prescribed in the statutes.

23. This Court in *Dr. Mahendra Thakur v. The State of Bihar and Ors.* 1987 PLJR 548 held that appointments of teachers have to be made on the basis of the recommendation of the Selection Committee/Commission and unless an appointment is made under the procedures prescribed in Sections 57 and 58 of the Act, the appointment cannot be said to be on substantive basis.

24. In *Rita Mishra and Ors. v. Director, Primary Education, Bihar and Ors.* 1987 PLJR 1090 a Full Bench of this Court held that even in cases of termination of services, the rules of natural justice are not attracted, where in the original appointment itself is void ab initio. Now once that is so, a fortiori no question of

any rules of natural justice arises merely in the case of refusal of salary in an identical context. No mandamus for the payment of salary can be issued. The petitioners, if so advised, are relegated to their ordinary remedies, by way of a suit.

25. In the present case, it is established that the Authorities have acted in the matter of the appointments, continuance or even in relation to payment of wages contrary to the above mentioned provisions of the Act, they have done so at their own risk and it cannot confer any right on the petitioners to claim the reliefs for payment of salary. The petitioners, therefore, cannot claim their rights under order of appointment, which is *per se* void in terms of the Act. Such appointments cannot be said to be in existence right since its inception and, therefore, it has not created or vested any right on them. The Act prescribes specific mode and method of recruitment of teachers by the Governing Body/Commission, but the impugned appointments were made without following the mandate of the Act and, therefore, there cannot be any doubt, having regard to the clear and unambiguous language of the provisions of the Act that the consequences would automatically set in, i.e. contravention of the provisions of the Act is so patent that no determination as to the nature of the appointments beings null and void is required to be made

26. In the circumstances at the point of time when the petitioners were allegedly appointed the College was either affiliated or not even affiliated, but it is not in dispute that those posts were not sanctioned at the relevant time and as such no appointment could have been made by the Governing Body. Such appointments, if any, could be made only for the period of six months. It is settled view that appointments made in violation of the mandatory provisions of the Statute, recruitment rules as also Articles 14 and 16 of the Constitution of India, is a nullity and it cannot be encouraged by this Court.

27. Counsel for the petitioners has placed reliance in a decision dated 3rd May, 1990 (Annexure-7) rendered by this Court in C.W.J.C. No. 1496 of 1989 (R)(Smt. Sareeta Kumari v. Ranchi University and Ors.), From. perusal of the said decision, it appears that on the concession made by the University that if she joins the College at an early date, she will be allowed to mark the attendance Register and to take classes and will be paid her salary, which are lawfully payable to her taking into consideration the number of days she worked and other relevant considerations viz; number of days for which she is entitled to leave etc. in accordance with leave Rules, this Court directed the University to allow her to join and take classes and determine the quantum of salary payable to her after taking into consideration the Attendance Register maintained by the College and other relevant rules. In the said case, the counsel for the parties informed this Court that question of absorption of Smt. Sareeta Kumari in the College from the date of joining was pending consideration before the University. In the circumstances, in our opinion, the petitioners cannot take benefit of the said decision.

28. For the reasons aforesaid, we do not think it expedient to interfere with the stand of the State Government University as it would not be in the aid of justice. It is well settled that the jurisdiction under Articles 226 and 227 of the Constitution of India should not be exercised, if it would result in restoration or revisal or perpetuation of illegality. Therefore, we refuse to interfere in the matter because in the facts and circumstances of this case, it would be inequitable to do so. However, since we have not gone into the question as to whether inspite of payment of their salary having been stopped from January, 1991 onwards the petitioners continued working or not, it is open to the petitioners to seek appropriate alternative remedy, if any, for claim of wages/ salary in accordance with law.

29. In the result, this writ application fails and it is accordingly dismissed. No costs.

R.N. Sahay, J.

30. I agree.