

(1984) 01 PAT CK 0004

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 406 of 1983

Amarendra Kr. Thakur

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-1984

Acts Referred:

Bihar State Universities Act, 1976 — Section 35, 35(2)

Citation : (1984) PLJR 626

Hon'ble Judges : Uday Sinha, J;S.B. Sanyal, J

Bench : Division Bench

Advocate : Shyam Sundar Sinha "Shyam", for the Appellant; Tara Kant Jha and Binod Krishana Jha for Respondents 2 and 3, Mr. Yogendra Jha J.C. to G.A. for Respondent No. 1 State and S.M. Javed Anwar and Atul Chandra for Respondent No 4., for the Respondent

Judgement

Uday Sinha and S.B. Sanyal, JJ.—These two applications have been heard together and will be governed by this common judgment. The petitioners in the two applications claim to be holding posts of laboratory incharge, peon, accountant and store-keeper. All of them were appointed by the Governing Body of Uma Pandey Collage, Pusa, by appointment letters dated 23.7.1980. While they were working as such the Principal of the college published an advertisement inviting applications for the posts of class IV staff, laboratory incharge, store keeper and peon. The petitioners have moved this Court for quashing the advertisement (Annexure 3 in C.W.J.C. No. 406 and Annexure 1 in the other application) inviting application to the various posts.

2. The facts as alleged by the petitioners lie within a narrow compass. They were all appointed, as stated earlier, on 23.7.1980. In 1982 the college became a constituent college of Lalit Narain Mithila University (hereinafter called "the University"). The petitioners were called upon by the University by letter dated 13.2.1982 to furnish details of their appointment. In compliance thereof the petitioners furnished and submitted the details of their appointment No.

4.3.1982. The grievance of the petitioners is that without deliberating and rejecting the claims of the petitioners the Principal of the college issued the impugned advertisement on 25.12.1982. Hence the applications for a direction to the University and the college to forbear from appointing any person to the posts held by the petitioners and for quashing to the advertisement (Annexure 3).

3. Learned counsel for the petitioners submitted that the University and the college had no jurisdiction to issue the advertisement without deciding about the validity of the appointment of the petitioners. The second submission urged on behalf of the petitioners is that without terminating the services of the petitioners, no advertisement could have been issued for appointment to the various posts.

4. The case of the petitioners has been opposed in affidavits filed by the University and by Principal of the college. The stand of the University is that the petitioners had no appointment in the eye of law as they had been appointed by the Governing Body to unsanctioned posts. The University could therefore ignore the claim of the petitioners. It has been also asserted by the respondents that the alleged appointment letters are spurious appointment letters. In the counter-affidavit filed on behalf of respondent 3 and 4 on 1.8.1983 it has been stated that according to the Principal, the petitioner had not worked in any of the posts claimed by them.

5. It is not necessary to go into the disputed questions of fact. The application must be disposed of on a short point. Section 35 of the Bihar State Universities Act, 1976 (Bihar Act XXIII of 1976) places an embargo on appointment to any post in any college affiliated to University governed by the State Universities Act. It reads as follows:--

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 a religious or linguistic minority;

(i) shall, after the commencement of this Act, create any teaching or non-teaching post involving financial liability;

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

In 1980 when the petitioners claim to have been appointed by the Governing Body the said Act held the field. The college was affiliated to Lalit Narain Mithila University. The provision, quoted above, enjoined upon colleges to make appointments any after prior sanction of the State Government. It is not in controversy in these two applications that the State Government had not sanctioned creation of the posts to which the petitioners claim to have been

appointed. The assertion of the respondents in their counter-affidavit in this behalf is not challenged. It is obvious, therefore, that the petitioners had been appointed to posts which had not been created with prior sanction of the State Government. That being the position, the petitioners had no appointment in the eye of law.

6. There is still another aspect of the matter. In sub-section (2) of section 35 it has been laid down that 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. It is not the petitioners' claim that they had been appointed with the prior approval of the State Government. The proviso to sub-section (2) is not relevant for the present purposes. The sum and substance therefore, is that the petitioners had no appointment, or had appointment in contravention of the provisions of section 35. The University and the State Government could, therefore, ignore the appointments of the petitioners.

7. In the view that we have taken it becomes redundant for us to consider whether the University had deliberated upon the validity of the appointment of the petitioners at all. The affidavit on behalf of the University that is the advertisement had been published with the approval and sanction of the University. The claim of the petitioners must, therefore, be deemed to have been rejected impliedly.

8. The submission of the petitioners that the petitioners services not having been terminated no advertisement could have been issued equally stands lost. The petitioners do not have any appointment in the eye of law. There can therefore, be no question of terminating such an engagement. In our view, therefore, the petitioners have no case to agitate and no writ can issue commending the University and the Principal as prayed. For the reasons stated above, we find no merit in these application and they are dismissed accordingly. In the circumstances of the case, however, there shall be no order as to costs. It will be open to the petitioners to apply in response to the advertisement and take their chance along with others.