

(2010) 03 PAT CK 0048
In the Patna High Court

Babulal Ram

APPELLANT

Vs

The Chancellor, Magadh University and Veer Kunwar Singh
University and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

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

Citation : (2010) 2 PLJR 731

Hon'ble Judges : Jayanandan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jayanandan Singh, J.—Petitioner has filed this writ application praying therein to quash the order dated 2.6.1984 (Annexure - 1), an office order of the respondent Magadh University, issued pursuant to the decision of the Syndicate, which held that the appointments of petitioner and others in the M.V. College, Buxar, as named in the order, were invalid and void ab-initio, which was held on the basis of a report of a subcommittee which had found that their appointments were not on sanctioned posts and without prior approval of State Government as required u/s 35(2) of the Act. Petitioner has also prayed for quashing of memo No. 475 dated 14.5.1999 (Annexure - 13), issued under the signature of the Under Secretary, Department of Higher Education, Government of Bihar, whereby the Registrar of the University was informed that, the State Government, after examining the records and staffing pattern, has decided to reject the representation of the petitioner, submitted in terms of the orders passed by this Court in his earlier writ application. Petitioner has also prayed for a direction to the respondents to treat him in continuous service and pay him salary like other class IV employee of the College, namely respondent No. 7, or direct them to adjust him also, after relaxing his age, if required, as done in the case of other similarly situated persons on the direction of this Court, passed in C.W.J.C. No. 2521 of 1989.

2. As per the pleadings, facts of the case, are that an advertisement was published in a daily newspaper, Indian Nation, on 10.7.1981, inviting applications for filling up class III & class IV posts in the college in question. Petitioner and several others applied. A selection committee was constituted which held interview on 17.1.1982 and the select list prepared by it was sent by the Principal to the University on 18.1.1982. Vice Chancellor passed orders for appointment strictly in accordance with the seriatim of select list. Accordingly, order of appointment dated 26.4.1982 (Annexure - 2) was issued and communicated to petitioner and others by the Principal. Petitioner, along with others, joined in the College on 1.5.1982. However, after about two years, pursuant to a decision of the Syndicate dated 14.5.1984, the Registrar issued the 1st impugned order. Petitioner and 17 others filed statutory representation before the Chancellor on 22.6.1984 and comments were called for by the Chancellor's Secretariat from the University on the said representation by letter dated 11.7.1984. Petitioner and others filed a reminder also, on which also comments were called for by letter dated 27.2.1987. On receipt of this communication from the Chancellor's Secretariat, University constituted a committee to examine the cases of non-teaching employees of the College and to submit a report, and this fact was communicated to the Chancellor's Secretariat vide letter dated 11.6.1987 (Annexure - 3). While the matter remained pending at that stage, the Registrar of the University issued an office order dated 2.2.1988 (Annexure - 4), on the orders of the Vice Chancellor, for payment of salary of 48 class III and class IV employees of the College, which included 7 petitioners before the Chancellor out of 18. However, petitioner's name was not there among the 48. On 19.7.1988, one Markandey Singh, who was also similarly affected as the petitioner, filed representation before the Chancellor (Annexure - 5) alleging that the committee had submitted report for absorption of all the 18 petitioners before him, but the University had issued orders for absorption of 7 only, illegally leaving out the rest 11, on which also a report was called for. However, the University did not submit its report to the Chancellor in respect of their first representation dated 22.6.1984 and it has remained pending till now.

3. It is further pleaded that all the appointments had been made by the Vice Chancellor on the basis of interview and select list and on the basis of staffing pattern, as none of the posts had been sanctioned or approved from before by the government. It is pleaded that all the persons who were appointed by annexure - 2 or in whose respect orders have been passed for payment of salary by annexure - 4 are in the same category and post of none of them had been sanctioned/approved by the government from before in terms of Section 35(2) of the Bihar State Universities Act. The 11 persons, the left out petitioners before the Chancellor, including the present petitioner, were not paid salary from their initial date of appointment and the persons covered by annexure - 4 have also been paid salary from 2.2.1988 only. In the circumstances, all the said 11 decided to move this Court and they entrusted the task of filing a writ application

in this Court to one Raghunath Singh. Accordingly C.W.J.C. No. 2521 of 1989 was filed, in which due to some mistake, only 10 persons were arrayed as party petitioners and the present petitioner was left out, although this petitioner always remained under the impression that he was also a petitioner in the case. The said writ application was disposed of by order dated 15.2.1990 (Annexure -6) with specific directions to the University in respect of adjustment of the writ petitioners. Petitioner, thereafter, still under the impression that he was also a writ petitioner, joined along with the said writ petitioners, and filed a petition on 24.4.1990 (Annexure - 7), before the respondent Vice Chancellor of Magadh University for necessary action in accordance with the said order of this Court. However no orders were passed on the said petition in compliance of the orders of this Court.

4. It is further pleaded that, on the other hand, under the orders of the Registrar of Veer Kuer Singh University dated 26.8.1994 (Annexure - 8), 21 persons were appointed on class III & IV posts in the College, out of which, 18 were from the amongst the said 48 who were terminated, including the petitioner, leaving out others covered by the said order of this Court. In the meanwhile, State Government had also issued a circular dated 10.5.1991 (Annexure - 9) in respect of continuance and future adjustment of non-teaching employees appointed prior to 10.5.1986. Accordingly, 4, out of the said 10 petitioners, moved this Court again through C.W.J.C. No. 8160 of 1994. While the said writ application was pending, an advertisement was published by the University on 5.10.1995 (Annexure - 10), for fresh recruitment. In the circumstances, this Court passed an interim order on 29.11.1995 making the appointments subject to the result of the said writ application. The said writ application was finally disposed of on 19.3.1996 (Annexure - 11) with directions to the respondents to adjust the said 4 petitioners in terms of the orders passed in earlier writ matter and in the light of the said circular dated 10.5.1991, along with payment of arrears of salary within 6 weeks. This order of the Court was complied with by the respondents and the said 4 petitioners were adjusted in service. Thereafter, the remaining 6 petitioners of the earlier writ matter also moved this Court through C.W.J.C. No. 12131 of 1996, which was disposed of on 7.4.1997. Petitioner, who was also filing petitions before the University Authorities, prepared to join the said 6 petitioners in the new writ, and then he came to know that he was not a petitioner in the earlier writ matters. Petitioner, thereafter, filed a separate writ, namely C.W.J.C. No. 12895 dated 1996 which was disposed of by order dated 21.5.1997, in the light of order passed in the writ matter of the said 6 persons (Annexure - 12 series). The claims of the petitioner were finally considered at the Department level, and, without appreciating his case, the same have been rejected by order dated 14.5.1999 (impugned annexure - 13).

5. It is contended that the impugned annexure -13 is a non-speaking order, and no reasons have been assigned for rejecting the claim of the petitioner. It is also contended that while rejecting the claim of the petitioner, the respondents have acted contrary to the principles laid down by this Court and the Apex Court in

this regard. It is also contended that petitioner has been subjected to hostile discrimination, in as much as, all the 30 persons, appointed on class III & IV post by order dated 26.4.1982 and terminated by order dated 2.6.1984, have now been adjusted in University service, except this petitioner and the said 6 petitioners of C.W.J.C. No. 12131 of 1996, although this Court, in its order dated 15.2.1990 had found the said appointments made by order dated 26.4.1982 as legal and proper and the termination by the said order dated 2.6.1984 as illegal, arbitrary and perverse. It has also been lastly contended that the petitioner has not been paid his salary even for the period he had actually worked.

6. Learned senior counsel for the petitioner submitted that as the petitioner was appointed in the college within the Staffing Pattern, he was well protected by the Full Bench judgment of this Court rendered in the case of Braj Kishore Singh and Others Vs. State of Bihar and Others, , accordingly to which, no prior approval of his appointment was required u/s 35(2) of the Bihar State Universities Act, 1976 (in short "the Act") from the Government. Referring to the resolution of the Government, as contained in Annexure-9, he also submitted that the respondents were not legally authorized to terminate his services as all the appointees prior to 10.05.1986 were saved by this resolution. The resolution clearly laid down that posts were to be created as per the Staffing Pattern and employees appointed till 19.05.1986 were to be absorbed against such posts. Resolution also provided that the persons working from prior to 10.05.1986, but not absorbed due to unavailability of posts under Staffing Pattern were to be allowed to continue in service and were to be absorbed against vacancies which may become available in future. Services of persons appointed after 10.05.1986 were to be dispensed with. He submitted that the Full Bench also noticed that this resolution of the Government dated 10th May, 1991 was later on recalled by a resolution dated 9.1.1996. However, it found the said resolution dated 9.1.1996 prima facie unreasonable.- Hence, he submitted that the resolution dated 10.05.1991 got the seal of approval by the Full Bench and, therefore, the same was binding on the respondents. The petitioner admittedly having been appointed prior to 10.05.1986 and against the post falling within the Staffing Pattern had a legal right to continue in service and get. absorbed against a sanctioned post.

7. Counter affidavit has been filed in the case on behalf of respondent Nos. 4 & 5, i.e. the Vice Chancellor and the Registrar of the Veer Kuer Singh University. They have contended that the letter dated 2.6.1984 of the Magadh University (Annexure - 1) was issued with the approval of the competent authority and had become final. Therefore the same cannot be challenged after 21 years. It is said that there are no sanctioned posts available in the College. Hence University is unable to adjust the petitioner. But it is also contended that most of the appointments, including that of the petitioner, were illegal ab-initio, since those were not made against sanctioned and vacant posts. By Annexure - 8 only existing incumbents working against vacant posts created prior to 16.8.1976 and falling under staffing pattern were adjusted. The said eighteen employees were

allowed payment as they were identified as working against posts within staffing pattern. The order of the State Government dated 10.4.1991 does not apply in the case of the petitioner in view of order of this Court passed in C.W.J.C. No. 252 of 1988. It is stated that the said advertisement, Annexure - 10, has been cancelled and no appointments have been made on that basis. It is finally said that, as per the letter of the Principal, Annexure - A, petitioner had never worked in the College and there are no records of his appointment or any payments made to him in the College.

8. A counter affidavit has been filed on behalf of respondent No. 6, the Deputy Secretary, also. It is contended in this counter affidavit also that writ petition is fit to be dismissed on the ground of delay and that the case of the petitioner was considered in the light of orders of this Court and final orders, as contained in Annexure - 13, was passed.

9. This Court has noticed the pleadings and submissions of the petitioner in detail purposely. From the facts emerging from the pleadings, it is clear that at best petitioner worked in the College from 1.5.1982 to 2.6.1984 only. This is also admitted that he was never paid his salary from day one. Although it is pleaded that an advertisement was published in "Indian Nation" on 10.7.1981, applications were invited, interviews were held, select list was prepared and was sent by the Principal to the University and Vice-chancellor passed orders on the same for appointment from the list strictly in seriatim, but no document has been produced by the petitioner in support of any of these facts. On the other hand, it is admitted that a sub-committee was constituted by the University in 1984 itself which enquired in respect of the validity of the appointment of the petitioner and others in the College and found the appointments invalid and void ab initio as having been made against non-sanctioned post and without prior approval of the State Government as required u/s 35(2) of the Act. It is admitted that the report was considered by the Syndicate and on the basis of its resolution the impugned order dated 2.6.1984 was issued. To explain the delay in filing of the present writ application petitioner has given detail facts in respect of filing of the representations before the Chancellor. He has also stated that on subsequent enquiry 48 class-III & class-IV employees of the College were ordered to be paid their salary. He has stated that C.W.J.C. No. 2521 of 1989 was filed by the 10 left out employees. Although the petitioner had also instructed one of the petitioner of the case, namely, Raghunath Singh to join him also in the writ petition, but somehow he was left out. He has explained the delay by pleading that all through he remained under impression that he was party in that writ application. He has said that he joined in the representation filed before the Vice-Chancellor by the petitioners after the said writ application was disposed of. Subsequently again 4 employees out of the 10 petitioners of earlier writ application moved this Court through CWJC No. 8160 of 1994 and the said writ application was disposed of vide Annexure-11 with a direction to adjust the 4 petitioners in the light of the said resolution of the Government dated 10.5.1991. The remaining 6 persons thereafter filed CWJC No. 12131 of 1996 and at that stage the petitioner came to

know that he was not the petitioner in any of the earlier writ matters. Petitioner thereafter filed a separate writ application, namely, CWJC No. 12895 of 1996, which was disposed of by order dated 21.5.1997, in the light of the order passed in CWJC No. 12131 of 1996. In terms of the orders of this Court the case of the petitioner was considered in the Department and by the order, as contained in Annexure-13, the same was rejected. The orders passed in the said two writ applications are Annexure-12 series.

10. The order passed in CWJC No. 12131 of 1996 shows that taking notice of the said Full Bench judgment of this Court, the Court had directed the petitioners to approach the competent authorities of the State to enable their cases to be considered in the light of the directions of the Full Bench. The said direction passed in the said writ application was quoted in the case of the present petitioner also and the application was disposed of. These facts show that the petitioner got out of service pursuant to the order dated 2.6.1984. Since then he has been approaching different authorities. As per his claim he was petitioner before the Chancellor in 1984 and joined with other employees in the representation in 1990. Finally he moved this Court in 1996 and after orders passed by this Court, his representation was considered and rejected by the impugned order Annexure-13 dated 14.5.1999. Six years, thereafter, the petitioner has filed this present writ application.

11. It is true that Annexure-13 is a non-speaking order and the ground mentioned therein is only that his appointment has not been found valid after due scrutiny on the basis of Staffing Pattern. Although he claims that his appointment was on a post falling within the Staffing Pattern, but no material has been produced by him on the record to substantiate his claim. In the counter affidavit, it has been specifically pleaded that the petitioner's appointment was not on a sanctioned post. The pleadings of the petitioner shows, and it has also been accepted in the counter affidavit that, upon enquiry those who were found appointed and working against sanctioned posts created prior to 16.8.1996 and falling under Staffing Pattern were adjusted. It has been specifically stated in the counter affidavit that the order of payment was issued in favour of the 18 employees after they were identified as working against posts falling within Staffing Pattern. A certificate of the Principle has also been produced as Annexure-A to assert that the petitioner never worked in the College and was never paid his salary.

12. Apparently, there are serious disputes of facts in respect of petitioner's appointment in accordance with law and after following due procedure; his appointment being against the post falling within the Staffing Pattern; he having worked in the College and having been paid his salary. Onus lay on the petitioner to establish these facts to sustain his claim at this belated stage. The facts also show that the petitioner has caused delay in contesting his claim stage after stage. A story has been set-up by him that he had entrusted the task to join him in CWJC No. 2521 of 1989 to Raghunath Singh, but there is nothing on record in

support of this story and even an affidavit of that Raghunath Singh has not been filed in support of his claim. Since there is serious dispute of facts on the question as to whether the post on which petitioner was appointed fell within the Staffing Pattern, or not, the benefit of judgment of the Full Bench of this Court is not available to the petitioner. The Full Bench Judgment came more than 10 years after the petitioner's services were terminated. Whether it can be applied to a case of termination of a employee more than 10 years back is also a factor against the petitioner, that too when the fact that the post fell within the Staffing Pattern itself is under serious challenge. The resolution of the Government dated 10.5.1991, annexed as Annexure-9, is also of no help to the petitioner as it lent support to only those employees who were appointed prior to 10.5.1986 and were in service. The persons who stood terminated two years prior to the cut-off date are clearly not entitled to the protection of the resolution.

13. In the circumstances, no useful purpose will be served in considering the submissions of learned senior counsel for the petitioners that the said resolution dated 10.5.1991 got seal of approval by the Full Bench when it prima facie found that the subsequent resolution dated 9.1.1996 withdrawing the earlier resolution was not reasonable. From paragraph 20 of the said judgment of the Full Bench, it is clear that although prima facie the Court found the resolution dated 9.1.1996 as not reasonable, but the Court also observed that, in the case, it was not "necessary to go into the correctness or otherwise of the aforesaid decision dated 9.1.1996 in a full-fledged manner." Hence, it is clear that the Court did not give a definite finding in respect of the resolution dated 9.1.1996 and held it as unreasonable, arbitrary and did not quash the same. This being the legal position, emerging from the observations of the Full Bench as contained in paragraph 20, it is clear that the said resolution dated 9.1.1996 still holds the field and therefore, the resolution dated 10.5.1991 stands recalled. Therefore, the petitioner is clearly not entitled to any relief on the basis of the said resolution dated 10.5.1991, as contained in Annexure-9, more so in view of the serious disputes of facts in respect of the legality or validity of his appointment and the nature of the post held by him. Besides this, the enormous delay and laches on the part of the petitioner committed at every stage before filing of the present writ application also disentitles him to get any relief from this Court.

14. In the circumstances, this Court does not find any merit in the writ application and the same is, accordingly, dismissed.