
(1964) 12 PAT CK 0020

In the Patna High Court

Case No : Misc. Judicial Case No. 618 of 1963

Basudeo Chandra Sinha

APPELLANT

Vs

Chancellor, University of Bihar and Others

RESPONDENT

Date of Decision : 22-12-1964

Acts Referred:

Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) Amendment Act, 1962 — Section 4
Bihar State Universities Act, 1976 — Section 2
Constitution of India, 1950 — Article 226

Citation : AIR 1966 Patna 11

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : B.C. Ghosh, Radha Raman and Dinendra Nath, for the Appellant;
Govt. Advocate, Ramananda Sinha and Shyam Prasad Sharma, for the Respondent

Final Decision : Allowed

Judgement

Untwalia, J.—Shri Basudeo Chandra Sinha, the sole petitioner in this case, holds a Second Class Master's Degree in Psychology and a Bachelor's Degree in Law obtained from the University of Bihar. His case is that he was appointed as a Laboratory Assistant in Samastipur College on the 1st of September, 1960, and, besides his duties as such, he was also entrusted with the work of teaching of Psychology upto B. A. classes. The Governing Body of the said College, in accordance with the Bihar University Statutes hereinafter called the Statutes, promoted the petitioner to the post of a Lecturer in Psychology on the 24th of January, 1962, and his appointment to the said post was also approved by the syndicate of the Bihar University as required by the Statutes. The Bihar State Universities (University of Bihar, Bhagalpur and Ranchi) (Amendment) Act, 1962 (Bihar Act XIII of 1962) was passed by the Bihar Legislature which received the assent of the Governor on the 20th April, 1962, published in the Bihar Gazette, Extraordinary, on the 21st April, 1962, Section 4 of the Act provides--

"Notwithstanding anything contained in the said Act or the Magadh University Act, 1961 (Bihar Act IV of 1962) or the statutes made thereunder, or the Bihar State Universities (University of Bihar, Bhagalpur and Ranchi Ordinance, 1962 (Bihar Ordinance No. 1 of 1962) every appointment, dismissal, removal, termination of service or reduction in rank of any teacher of a college, not belonging to the State Government affiliated to the University established under the said Act or the Magadh University Act, 1961 (Bihar Act IV of 1962), made on or after the twenty-seventh day of November, 1961, and before the first day of March, 1962, shall be subject to such order as the Chancellor of the University may, on the recommendation of the University Service Commission established u/s 48A of the said Act, pass with respect thereto."

2. In exercise of the power conferred by the said provision of law, respondent No. 1, the Chancellor of the University of Bihar, directed that the post held by the petitioner as a Teacher in Psychology in the Samastipur College be advertised and permitted him in the meantime to continue on the said post upto the 20th November, 1962, or till a candidate recommended by the University Service Commission joined. The said order of the Chancellor was communicated by the Secretary to the Governor of Bihar, to the Vice-Chancellor, University of Bihar, in his letter dated 27th of August, 1962, a copy of which is annexure D to the writ application. Thereupon, the petitioner sent memorials to the Chancellor, the Vice-Chancellor and the University Service Commission stating therein that the disapproval of the petitioner's appointment was illegal and improper and that it could not be interfered with by the Chancellor in exercise of his powers u/s 4 of the Bihar Act XIII of 1962, as his appointment was in accordance with the Statutes of the Bihar University. The University Service Commission, respondent No. 3, sent a Circular No. 2655 dated 19th November, 1962, asking the petitioner to show cause on the 6th December, 1962.

"as to why the Commission should not recommend to the Chancellor that there is no adequate justification or reason for the Chancellor to modify the orders already passed by him in the matter of the appointment of Shri Basudeo Chandra Sinha."

A copy of the said Circular is annexure E to the application. In the meantime respondent No. 3 twice extended the dates of termination of petitioner's services on the ground that his representations were under consideration.

The petitioner appeared before the University Service Commission on the 6th December, 1962, and, according to his case, inter alia, he submitted that the show cause notice dated the 19th November, 1962, was not valid and his service could not be interfered with u/s 4 of the Bihar Act XIII of 1962. Eventually, the Secretary to the Governor of Bihar, by his letter dated 23rd of February, 1963, a copy of which is annexure F to the application, communicated to the Secretary to the Governing Body of the College that the Chancellor had disapproved the appointment of the petitioner for the reasons mentioned in that letter which will be referred to hereinafter. In accordance with the Chancellor's order, respondent

4, the Governing Body of the Samastipur College, terminated the petitioner's service as a Teacher in Psychology on the 28th of February, 1963. The petitioner sent another representation to the Chancellor for revising his order communicated in the letter (annexure F) but he was informed by his Secretary by letter dated 13th of June, 1963, that the Chancellor had rejected his representation. The petitioner has obtained a rule from this Court against the respondents to show cause why the orders of the Chancellor dated 27th of August, 1962, and the 23rd of February, 1963, and the order made by the Secretary of the Governing Body dated 28th of February, 1963, and later approved by the Governing Body itself be not quashed by grant of a writ in the nature of certiorari under Article 226 of the Constitution of India.

3. Nobody has appeared on behalf of the Chancellor, respondent No. 1, and the Governing Body of Samastipur College, respondent No. 4, The learned Government Advocate has appeared on behalf of the State of Bihar, respondent No. 5, only for the purposes of supporting the validity of Section 4 of Bihar Act XIII of 1962 which has been attacked on behalf of the petitioner as unconstitutional and violative of Article 14 of the Constitution. A counter-affidavit has been filed on behalf of the University Service Commission, respondent No. 3, only, but Mr. Ramananda Sinha has appeared to show cause and make his submissions not only on behalf of the said respondent but also on behalf of the University of Bihar, respondent No. 2.

4. Mr. B.C. Ghosh, learned counsel for the petitioner, has urged the following points in support of the rule:

(1) Section 4 of Bihar Act XIII of 1962 is ultra vires and illegal since it violates the guarantee of equal protection of law under Article 14 of the Constitution inasmuch as the exercise of the power has been left to the arbitrary discretion of the Chancellor without laying down any criteria or grounds in accordance with or upon which the power could be exercised.

(2) The first order of the Chancellor communicated in letter dated 27th August, 1962, (annexure D) passed without any notice to the petitioner was illegal and void as having been passed in violation of the principles of natural justice as held by this Bench of the Patna High Court in Ram Kripalu Mishra Vs. University of Bihar and Others, .

(3) The subsequent notice dated 19th of November, 1962 (annexure E) was a colourable device to get over the invalidity of the previous order communicated in the letter dated 27th August, 1962, and the form in which the notice was given was so defective and illegal that it could not cure the incurable infirmity in the previous order.

(4) In any event the order of the Chancellor contained in letter dated 23rd of February, 1963 (annexure F) is based upon erroneous, irrelevant and illegal considerations which are so on the face of the order and the records of the case, and hence it is liable to be quashed; and so is the order of the Secretary of the

Governing Body dated the 28th of February, 1963.

5. Speaking for myself, I should have thought that the first and the third points urged on behalf of the petitioner had force and required further consideration but, as at present advised, I would answer them against the petitioner following an unreported Bench decision of this Court in Jagdish Pandey v. Vice-Chancellor, University of Bihar M. J. C. No. 498 of 1963 D/- 30-4-1984 : (AIR 1985 Pat 11) wherein exactly the identical points have been answered against the petitioner of that case and which decision is binding on us. To support the constitutional validity of Section 4 of Bihar Act XIII of 1982 learned Government Advocate merely relied upon this decision, and Mr. Ramananda Sinha also did so in answer to the third point urged on behalf of the petitioner. It had to be conceded on behalf of the respondents that, in view of the Bench decision of this Court in Ram Kripalu Mishra Vs. University of Bihar and Others, , the second point urged on behalf of the petitioner must prevail and it has got to be held that the first order of the Chancellor contained in the letter dated 27th August, 1983 (annexure D) interfering with the petitioner's appointment as a Lecturer in Psychology in Samastipur College is illegal and void.

It seems in the case of the petitioner as in other similar cases it was realised perhaps after the filing of M. J. C. 854 of 1962, namely, Ram Kripalu Mishra Vs. University of Bihar and Others, that the order passed by the Chancellor in exercise of his power conferred by Section 4 of Bihar Act XIII of 1982 without giving an opportunity to the person concerned of having his say in the matter was so obviously illegal on the well established principles of violation of natural justice that notices similar to the one contained in the Circular dated 19th November 1982 (annexure E) were issued to the persons concerned by the University Service Commission in its endeavour to cure the infirmity of the previous order of the Chancellor. But the mere invalidity of the order contained in annexure D dated 27th August 1962. will be of no use to the petitioner as that order, to all intents and purposes, has been superseded and replaced by the second order contained in annexure F dated 23rd February 1963. The main question, therefore, which falls for decision in the present case is as to whether the second order is such as is liable to be quashed by grant of a writ in the nature of certiorari under Article 226 of the Constitution of India.

6. The Bihar State Universities (Patna, University of Bihar, Bhagalpur and Ranchi) (Second Amendment) Act 1961 (Bihar Act II of 1962) was passed by the Bihar Legislature and received the assent of the Governor on the 18th of January, 1982, and the assent was first published in the Bihar Gazette, Extraordinary on the 19th January, 1962. But it came into force later than the 24th of January, 1962. by virtue of the Notification of the State Government issued u/s 1 (2) of the said Act. By this amending Act, apart from other amendments made in the parent Act, Section 48-A was introduced by which provision was made for the establishment of the University Service Commission for affiliated colleges not belonging to the State Government and its powers and functions. After the

establishment of the Commission, the Governing Body of an affiliated college was required to appoint teachers of the college on the recommendation of the University Commission made in the manner provided in the section aforesaid.

The Bill resulting in the passing of Bihar Act II of 1962 was probably introduced in the Bihar Legislature on or about the 27th of November, 1961. It appears between that date and the date when Bihar Act II of 1962 came into force, certain appointments to the posts of teacher were hurriedly made in various affiliated colleges. And, that led to the passing of Bihar Act XIII of 1962 giving wide powers to the Chancellor to interfere with such appointments made during the said period on the recommendation of the University Service Commission established u/s 48-A of the parent Act. As stated above, in exercise of the said power, the Chancellor disapproved the appointment of the petitioner to the post of Lecturer of psychology for the reasons

"that the laboratory Assistants are not recognised as teachers within the provisions of the Act and secondly that promotion after four mouths of service is not justified."

I now proceed to examine as to whether the order of the Chancellor can be sustained or justified for the two reasons mentioned in it or whether it suffers from an infirmity of the kind which would warrant its quashing by grant of a writ in the nature of certiorari.

7. In the parent Bihar State Universities Act, 1960, namely, Bihar Act XIV of 1960, Clause (p) of Section 2 defined "teacher" to include

"Principal, University professor, professor, reader, lecturer and other person imparting instruction in a department or institute maintained by the University or in any of the colleges but does not include a research scholar or research fellow."

By Bihar Act II of 1962, the definition was amended and within its ambit "demonstrator" was also expressly included. "Teacher of the University" has been separately defined in Clause (q) of Section 2. Section 4 of Bihar Act XIV of 1960 says :--

"The purposes and powers of the University shall be the following, namely :--

* * * * * (8) to recognise teachers as qualified to give instruction in colleges :
* * * * *."

The Statutes were framed under the University of Bihar Act, 1951 (Bihar Act XXVII of 1951) which were continued even after the passing of Bihar Act XIV of 1960 u/s 60 of that Act. Section 29 of Bihar Act XXVII of 1951, with which Section 30 of Bihar Act XIV of 1960 corresponds, provided :--

"Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely :--

* * * * * (f) the classification and recognition of teachers of the University :

* * * * *

Neither Section 29 of the 1951 Act nor Section 30 of the 1960 Act authorised the Statutes to provide for the classification and recognition of teachers of admitted of affiliated colleges of the University.

8. Statute XIV deals with the classification and recognition of teachers of the University. But there is no Statute corresponding to Statute XIV in respect of the classification and recognition of teachers other than those of the University, for, as I have just said, neither the Act of 1951 nor that of 1960 authorised the framing of such a Statute. Statute XVI deals with number, grades, qualifications, pay, scale and other conditions of service of teachers of admitted colleges and their regulation by the University. Article 1 of Statute XVI enumerates the classifications of teachers of admitted colleges. Clause (c) of Sub-article (1) requires that a lecturer should have the minimum qualification of a Second Class Master's Degree. But in this category either the Demonstrator or the Laboratory Assistant as such is not mentioned. That, however, would not mean that a Demonstrator who has now been included expressly in the amended definition of "teacher" in Clause (p) of Section 2 of Bihar Act XIV of 1960 or a Laboratory Assistant "imparting instruction in a department maintained by the University or in any of the colleges or institute" is not a teacher within the meaning of the word "teacher" as defined in the Act.

Although no minimum qualification/ seems to have been prescribed for a person to be qualified to be Teacher while working as a Demonstrator or a Laboratory Assistant, in the instant case it is noteworthy that the petitioner was holding a Second Class Master's Degree in Psychology, the minimum qualification required for being appointed as a Lecturer. But that apart, I do not find anything in the University Act or the Statutes to enable me to sustain the view of the Chancellor that merely because the petitioner was a Laboratory Assistant, he could not be a teacher in accordance with the provisions of Bihar Act XIV of 1960. His view is that "Laboratory Assistants are not recognised as teachers within the provisions of the Act"; but with reference to the relevant provisions of the Act and the Statutes I have shown that it is obviously erroneous in law. But that by itself will not make the petitioner a teacher within the meaning of Clause (p) of Section 2 of the Bihar Act XIV of 1960 either as it stood at the relevant time in January, 1962, or after the amendment of the definition by Bihar Act II of 1982, unless it is further found as a fact that he was imparting instruction in the College. I may, before I proceed to discuss this question, state that the order of the Chancellor contained in annexure F does not decide the said question of fact against the petitioner as it proceeds merely upon an erroneous view of the law.

9. In paragraph 3 of the petition, the petitioner claims that besides his duties as a Laboratory Assistant he was entrusted with the work of teaching Psychology upto B. A. classes in view of his proficiency in the subject. The said claim of the petitioner finds support from the following annexures :

(i) The testimonial dated 4-12-62 of the Principal of the Samastipur College (annexure A) which says --

"...Sri Basudeo Chandra Sinha has been working herein this institution for the last two years i.e. from 1st September 1960, to the 23rd January 1962, he worked as a Laboratory Assistant in the department of Psychology and then from 24th January he was promoted to the post of a lecturer in recognition of his efficiency as a teacher as also his qualifications. Even during the period that he had worked as a Laboratory Assistant he engaged some of the top classes to the entire satisfaction of his students".

(ii) Testimonial of Sri Hiranand Jha, Head of the Department of Psychology, Samastipur College, dated the 17th May, 1962 (annexure A/1), which is almost to the same effect as that of the Principal.

(iii) Letter of the Vice-Chancellor of the Bihar University to the Chairman, University Service Commission dated 24th October, 1962 (annexure H) which states--

"My attention has been drawn to the case of Shri Basudeo Chandra Sinha of Samastipur College, Samastipur and after going through the resolutions passed by the Governing Body of the College on 24-1-62 and 23-9-62 and also the approval of the Syndicate of the promotion of Sri Sinha to the post of lecturer on 24-1-62. I am of opinion that this particular teacher, was, in fact, a teacher as defined in the University Act, since, while working as a Laboratory Assistant, he was also working as a lecturer over since his appointment as a Laboratory Assistant in September, 1960. This point has also been emphasised by the Principal of the College in his certificate, dated the 20th September, 1962. To my mind, this case will have to be distinguished from the general cases of Laboratory Assistants who are not deemed to be teachers in the terms of the Act as they are not imparting instruction".

10. The only counter-affidavit on behalf of the respondents is the one filed on behalf of the University Service Commission, respondent No. 3. In paragraph 13 of the said counter-affidavit, the statement made by the petitioner in paragraph 3 of his petition that, as a matter of fact, he was doing the work of teaching Psychology upto B.A. classes, is not denied. What is pleaded is that the University of Bihar had never accepted Laboratory Assistants as Teachers within the meaning of the Act, and the letter of the Vice-Chancellor dated 24th October, 1962 (annexure H) merely expressed his personal opinion and that was said to be contradicted by the statement furnished by the Principal of the Samastipur College in his letter dated 28th April, 1962. But the facts quoted in paragraph 13 of the counter-affidavit with reference to that letter, in my view, instead of supporting the stand of: the University Service Commission contradicts it as it is expressly stated therein that the petitioner had "1 1/2 years teaching experience as Lab-assistant at this college (as a lecturer for one month out of 1 1/2 years)". That clearly indicated that the petitioner was doing the work of teaching even as

a Laboratory Assistant. And, I may reiterate that merely because the University of Bihar never accepted Laboratory Assistants as Teachers within the meaning of the Act, it was of no consequence in the eye of law.

11. The fact that the Syndicate in its meeting held on 24th of January, 1962, had approved the appointment of the petitioner as a Lecturer in Psychology by promotion within the meaning of Article 4 (1) of Statute LVI as communicated in the letter of the Assistant Registrar dated 5th of February, 1962 (annexure C to the writ application) also shows that at the time of according the approval the Syndicate accepted the position that the petitioner was a teacher serving in lower grade in the College and could be appointed as a lecturer in Psychology by promotion. The stand of the University Service Commission in paragraph 15 of its counter-affidavit that because the appointment of the petitioner was made by the Governing Body on the 24th January, 1962, at Samastipur and the approval was made by the Syndicate on the same day at Muzaffarpur, the Commission held that the Syndicate did not properly apply its mind to the implication of the approval of the petitioner's appointment, to my mind, is not correct.

The Vice-Chancellor's opinion contained in annexure H to the writ application is also annexed as annexure III to the counter-affidavit, and yet the University Service Commission does not refute the facts stated in the letter of the Vice-Chancellor. I may add that Mr. Ramananda Sinha who also appeared, as I have said above, to show cause on behalf of respondent No. 2 University of Bihar, could not give any answer when we specifically put a question to him at the time of the hearing of the case as to why the Syndicate had approved the appointment of the petitioner on the 24th of January, 1962 and whether it was being refuted by the University in this case.

12. Certain more annexures are appended to the petitioner's rejoinder to the counter-affidavit of respondent No. 3. Annexures J and J/1 are copies of routine showing that the petitioner had been engaging Intermediate and Degree classes as a teacher during the sessions 1960-61 and 1961-62 at the time he was designated and working as a Laboratory Assistant. Annexure L is a certificate dated 13-5-61 by Sri C.S. Keshri, the Principal of the Samastipur College showing that the petitioner had been working "as lecturer-cum-Lab. Assistant in the Department of Psychology for the last nine months during the session 1960-61". Annexure L/1 is another testimonial dated 13-5-61 of Sri Hiranand Jha, Head of the Department of Psychology of the Samastipur College, to the same effect, Annexure L/2 is a copy of the letter dated 20th September, 1962, written by the Secretary of the Governing Body of the College to the Chancellor, Bihar University, forwarding the representation submitted by the petitioner, in which letter it has been stated,

"... the representations was appointed as a Lab. Assistant in the Department of Psychology and worked satisfactorily. He used to discharge both the functions of a Lab. Asst. as well as that of a lecturer for 1 1/2 years and his works were found satisfactory both the ways."

13. It must, therefore, be held that the petitioner, as a matter of fact, was imparting instruction in the Samastipur College and engaging classes in Psychology even before his appointment as a lecturer, hence he was a teacher within the meaning of the University Act and the Statutes, and was eligible to be appointed as a lecturer by promotion in accordance with Clause (b) of Article 4 (1) Statute XVI of read with Clause (c) of the said Article, which provides :--

"(1) All appointments of teachers in admitted colleges shall be made by the Governing Body of the College concerned and shall be subject to the approval of the Syndicate. No such appointment shall be approved unless

(a) the post existed at the time of the commencement of the Statutes of this Chapter or has been created after that date with the sanction of the Syndicate;

(b) the claim of teachers serving in a lower grade in the college for promotion has been examined and rejected;

(c) the vacancy was duly advertised, except where promotion was recommended;

(d) the person appointed possesses the minimum qualifications as prescribed for the post, and

(e) the appointment was made by the Governing Body at its meeting".

14. Coming now to the second reason given in the order of the Chancellor contained in annexure F, I am constrained to observe that it is neither factually correct nor legally sound. It is undisputed that the petitioner was working as a Laboratory Assistant from the 1st of September, 1960, and also as a teacher, as held by me above, during the said period. In face of the admitted fact it is an apparent error to say that the promotion of the petitioner "after four months of service is not justified". In paragraph 14 of the counter-affidavit filed on behalf of the University Service Commission, it is alleged that the petitioner had stated before the Chancellor when he met him on the 3rd April, 1963, that he was appointed in 1960 as Laboratory Assistant and further stated that he was made permanent as Laboratory Assistant on 19-11-61. Even assuming that allegation to be correct, it is to be noted that the said statement is said to have been made before the Chancellor after the impugned order contained in annexure F was passed and, even if it was so, in January, 1962, when the petitioner was appointed on promotion as a lecturer he was working as a permanent Laboratory Assistant for a period of two months but the total period of his working was, about a year and a half.

For the purpose of counting the experience of a teacher working in low grade, it is manifest that his experience both as temporary and permanent hands has got to be taken into account. Moreover, I do not find anything in the University Act or the Statutes to sustain the view of University Service Commission and Chancellor expressed in the Order (annexure F) that promotion of a teacher from a lower grade only after four months of service is not justified. I am therefore, of the opinion that even the second reason mentioned in the Chancellor's impugned

order cannot be sustained either on fact or in law.

15. On a careful consideration of the matter, I have come to the conclusion that the two reasons mentioned in the speaking order of the Chancellor contained in annexure F are such as must be held to be erroneous, irrelevant and illegal on the face of the order and the records of the case. Consequently the order of the Secretary of the College dated 28th February, 1962, as later on approved by the Governing Body must also be held to be bad. The application is accordingly allowed and the said orders of the Chancellor of the University of Bihar, respondent No. 1, and the Governing Body of the Samastipur College, respondent No. 4, must be called up and quashed by grant of a writ in the nature of certiorari. In the circumstances of the case, I would make no order as to costs.

Ramaswami, C.J.

16. I agree.