

(2003) 06 PAT CK 0007

In the Patna High Court

Case No : C.W.J.C. Nos. 9222 of 1991 and 5814 of 1995

Bihar Sanskrit Mahavidyalaya Pradryapak Karamchari
Mahasangh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2003

Acts Referred:

Citation : (2003) 06 PAT CK 0007

Judgement

S.N. Jha and A.K. Verma, JJ.—These six cases have been heard together and are disposed of by this common order.

2. The Petitioners, in effect and substance, seek direction upon the Respondents to regularise their services on non-teaching posts. In CWJC No. 9222 of 1991, besides a self styled Employees Association, the Petitioners are non-teaching employees of different affiliated Sanskrit Colleges, namely, Dr. Jagannath Mishra Sanskrit Mahavidyalaya, Paston, Navtoli, Kirti Narain Kamakhya Sanskrit College, Mahralli, Vidyanand Mithila Sanskrit College, Sankat Mochan Dham, Darbhanga, Rajeshwar Thakur Sanskrit College, Gorhiyari, Brahamdeo Muni Udasin Sanskrit Mahavidyalaya, Hajipur, and Satyanarain Sanskrit College, Chatauni. In CWJC No. 5814/95, besides the Employees Association, the Petitioners are non-teaching employees of different constituent colleges, namely, Adinath Madhusudan Parasmani Sanskrit Mahavidyalaya, Rahua Sangram, Lakshmi Narayan Sanskrit Mahavidyalaya, Jaideo Patti, Ghanshyampur, Lakshmipur Pratap Narain Sanskrit College, Baunsi District Banka and Ramautar Gautam Sanskrit College, Ahilya Asthan, Kamtaul. In CWJC No. 5820 of 1992 the Petitioners are non-teaching employees of T.P. Verma College, Narkatiaganj. In CWJC No. 11562 of 1994 the Petitioners are non-teaching employees of Raj Narayan College, Hajipur CWJC No. 1729 of 1995 and CWJC No. 10703 of 1994 and Petitioners are nonteaching employees of Shri Narayan Singh College, Motihari and Jaglal College and Ram Jaipal College, Chapra.

3. It would appear that the Institution of which the Petitioners claim to be

employees are different but the cases were tagged for analogous hearing as the point involved was the same, namely, absorptioin/regularisation of their services. The hearing of this case was adjourned earlier to enable the counsel for the State to file comprehensive affidavit with respect to the Petitioners. When the hearing was taken up day before yesterday, on 23.6.2003, it was stated on behalf of the State that reference has been made to different Universities seeking particulars with respect to various petitioned but no response has come and thus on account of their non-cooperative attitude the State Government has not been able to take decision. However, in course of hearing counsel for the State as well as the Petitioners generally agreed that the point at issue is covered by decision of the Full Bench of this Court in Braj Kishore Singh and Others Vs. State of Bihar and Others, and therefore, while the Respondents are required to take decision on the point of regularisation of the Petitioners in the light of the said decision, the cases may not b(sic) kept pending for this purpose. Coun(sic) agreed that direction may be issued to the University and the State Government (sic) take decision on the point of regularisation For this purpose a time frame may be fi(sic) for the University to send the necessary particulars, and for the State to take regularisation decision in the matter.

4. Counsel for the Petitioners nev(sic) theless made submissions in individuality cases. The thrust of the Petitioner's case that the State Government has laid down guidelines vide resolution of the Human Resources Development Department contained in memo No. 989 dated 10.5.91, and the Respondents are therefore required to take a decision in the light of those guidelines. It was pointed out that as per the said resolution the benefit of regularisation is available to those appointed prior to 10.5.86 against available vacancies keeping in view the reservation roster. Those who can not be adjusted for want of vacancies may also be allowed to continue in service so that they may be adjusted against further vacancies. The services of those appointed after 10.5.86 are to be terminated. It was stated that ali the Petitioners herein are pre-10.5.86 appointee and therefore they are entitled to remain in service.

5. At this stage it may be mentioned that the stand of the State has been that appointment of Class III employees was not in accordance with law in view of the provisions of Section 35 of the Bihar State Universities Act which provides for prior sanction of the State Government. This stand of the State was rejected by the Full Bench in the case of Braj Kishore Singh v. State of Bihar (supra) wherein the Court noticed that State Government had already fixed the staffing pattern, approved by the Inter University Board, which may be treated as sanction/creation of posts. In other words, appointment made against posts within staffing pattern cannot be thrown out on the ground that prior sanction of the Government was not obtained. The Court however, left it open to the Government to consider the individual cases as to whether the appointments were in conformity with Articles 14 and 16 of the Constitution. In other words further, the appointment of persons cannot be questioned on the ground that the posts have not been sanctioned provided the post(s) in question are in

conformity with the staffing pattern but the State Government has liberty to examine the validity of appointments in individual cases.

6. It was submitted that the appointment of the concerned Petitioner was upheld by the Full Bench on the ground that he had remained in service for 17 years. According to the counsel, in these cases too, those who remained in employment for a long period, should be regularised in service.

7. In view of the authentic pronouncement of the Full Bench it is needless to embark upon de novo adjudication of the point at issue. The Government has already fixed staffing pattern and appointments have to be made in conformity with it. It has also issued guidelines, and it goes without saying that scrutiny of individual cases has to be made in accordance with the guidelines dated 10.5.91 and other guidelines provided that they are not inconsistent with Articles 14 and 16 of the Constitution. We may however, observe that while making scrutiny of the individual cases the authorities would be well advised to keep in mind the question as to whether the person concerned possessing the requisite qualification for the post on which they were appointed and seek regularisation. Secondly, whether the sanctioned post/recommended posts within the staffing pattern are available against which their cases can be considered. The Government would also be at liberty to take into consideration the quality of performance of the persons concerned. Merely because they hold appointment on sanctioned post would not confer any right to regularisation if their conduct has not been found to be satisfactory. The Government would further be at liberty to consider whether they have been actually working on the post in question. Those who worked for few months, did not continue thereafter and remained out of job for years together, may not be considered, for regularisation. In other words those who have not been in continuous employment may not be regularised. We are conscious of the fact that possibility of each and every claimant taking the plea of continuous employment throughout cannot be ruled out. This however, is a matter which can be sorted out by verification of the records.

8. We are of the view that the concerned Universities which are involved in these cases should submit particulars with respect to different Petitioners within two months of receipt of a copy of this order to the State Government in the Higher Education Department, whereafter the State Government would make its own scrutiny and take final decision within four months. It would be open to the State Government to send for the records of the concerned colleges/Universities before taking final decision in the matter. The observations made hereinabove should not be construed as direction to regularise the services of the Petitioners. That is for the State Government to decide though on the basis of records. We direct accordingly.

9. The petitions stand disposed of in the above terms. There will be no order as to costs.