
(2008) 07 JH CK 0180

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2324 of 2007

Chandra Mohan Bhandari

APPELLANT

Vs

Sido Kanhu Murmu University and Others

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Bihar Intermediate Education Council Act, 1992 — Section 41, 41(1), 41(2), 41(3), 44

Citation : (2009) 57 BLJR 321 : (2008) 4 JCR 525 : (2009) 5 SLR 266

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : S.K. Pandey, for the Appellant; S. Anwar, S. Piparwall and A.K. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—Whether the petitioner is the Principal-in-charge or the Respondent No. 5 is the Principal-in-charge of Sidhu Kanhu Memorial College, Maheshpur Raj, District Pakur (hereinafter to be referred as the "College") is an old dispute. This writ petition emerged out of the said controversy.

2. Sidhu Kanhu Memorial College, Maheshpur Raj, District Pakur (hereinafter to be referred as the "College") was established in the year 1982. The Sub Divisional Officer and the Local M.L.A. were made President and Secretary, respectively, of the Managing Committee.

3. By the said Managing Committee, teachers and non-teaching staffs were appointed on the basis of interview held on several dates, ranging from 1983 to 1993. Pursuant to the letter of the State Government dated 8th February, 1990, the teachers working against first sanctioned post and non-teaching employees against available sanctioned posts were absorbed as per their seniority on the basis of date of joining.

4. All the appointments made through Notification Nos. 43/92 and 31/93 between 1998 and 2000 by the Managing Committee were held invalid by the

Bihar Intermediate Council by its letter dated 31st December, 1993 on the ground that the appointments were made by a Managing Committee, which was illegally constituted. The University by its Letter No. SKU/920-931/92 dated 17th August, 1992 had constituted the valid Managing Committee on 31st December, 1993. The Bihar Intermediate Education Council, Patna also disapproved the appointments, so made, by its notification dated 4th December, 2004. The petitioner, Chandra Mohan Bhandari, claimed to be the Professor-in-charge of the degree college. The Respondent No. 5, Stephen Murmu, on the other hand, claimed to be the Professor-in-charge of intermediate college. That gives rise to the dispute.

5. The petitioner complained to the authorities of the University. The University called for a report from the Ad hoc Committee. When there was undue delay in shorting out the controversy, the petitioner had approached this Court in W.P.(S) No. 5203 of 2006, seeking a direction to declare him (Chandra Mohan Bhandari) as the Principal of the said College. After hearing the concerned parties, the said writ petition was disposed of, remitting the matter to the Registrar, Sidhu Kanhu Murmu University, Dumka to consider the petitioner's claim and pass a reasoned order in accordance with law.

6. The Registrar of the University, thereafter, passed order dated 24th March, 2007 giving following findings:

On the perusal of records and as per report of the Enquiry Committee dated 28.01.2004, it is obvious that Sri Chandra Mohan Bhandari, Lecturer in Bengali is the Prof.-in-charge of the Degree College. Sri Murmu does not possess requisite qualifications for appointment to the post of Lecturer in a Degree College. His degree of Santhali is not valid and authentic where as the Degree of M.A. in Sociology is authentic and acceptable. The application of Sri Murmu dated 17.11.1994 clarifies that he is a teacher of Intermediate College. Degree and Intermediate Colleges in Theory have already been bifurcated by the then Governing Body on 11.11.1996. A fresh bifurcation along with the list of teachers and Non-teaching staffs, assets and liabilities requires to be made and the Prof.-in-charge of Intermediate College is also to be appointed by the Governing body as per seniority in terms of concurrence of the INTERMEDIATE COUNCIL. The dispute may be settled amicably by the opposite parties for the purpose of which the college was established.

7. After the said finding of the Registrar of the University that the petitioner-Chandra Mohan Bhandari is the Professor-in-charge, he had been discharging his duty as such. Suddenly, the Registrar of the University issued impugned order dated 9th April, 2007 (Annexure-10). Relevant portion of the order is reproduced herein below:

Keeping in view of the representation of Sri Stephen Murmu dated 09.04.2007 and the disputes between two parties, the Reasoned Order dated 24.03.2007 passed in the light of direction of the Hon'ble High Court of Jharkhand in W.P.(S)

No. 5203/2006 dated 21.09.2006 is kept in abeyance till further order. A fresh Reasoned Order shall be passed later on.

Sd/- Registrar S.K.M. Univ. dumka. 09.04.2007

8. The petitioner is aggrieved by the said order dated 9th April, 2007 (Annexure-10). It has been submitted, inter alia, that the said order is illegal, arbitrary and malicious. The order dated 24th March, 2007 was passed pursuant to the direction of this Court in W.P.(S) No. 5203 of 2006. The respondents have no jurisdiction to keep effect of the order in abeyance and as such, the impugned order is wholly illegal and arbitrary. It has been further contended on behalf of the petitioner that the order dated 24th March, 2007 is a reasoned order passed after due consideration of all the relevant facts and materials on record. The said order is legal and perfect.

9. The Registrar after due consideration of all the relevant facts and materials on record found that the petitioner is the senior most teacher and is the Professor-in-charge of the College. He possesses the required qualification and eligibility, whereas the Respondent No. 5 does not possess the requisite qualification for the post of Lecturer in a Degree College. His degree of Santhali is not valid and authentic. It was further found that in principle there was a bifurcation of Intermediate College from Degree College by the decision of the then Governing Body dated 11th November, 1996. The bifurcation requires to be made and the Professor-in-charge of Intermediate College is to be appointed by the Governing Body as per the seniority in terms of concurrence of the Intermediate Council.

10. It has been submitted that the Registrar has passed the order also after taking into consideration the claim of the Respondent No. 5 and there was no occasion for entertaining the representation of the Respondent No. 5 afresh and staying the order dated 24th March, 2007. If the Respondent No. 5 was aggrieved by the order, he should have assailed the same. However, the Registrar, who passed the order finally after considering all aspects of the matter, facts and circumstances, becomes functus officio and he has no jurisdiction to keep the order in abeyance. The reason for passing the impugned order dated 9th April, 2007 is not speaking one and the order is cryptic and laconic. The same has created a state of confusion in the due administration of the College. When the Registrar after considering all the relevant facts and materials on record once came to the conclusion that the petitioner is the senior most teacher and is Professor-in-charge of the College and that the Respondent No. 5 is not found qualified to be appointed as Lecturer in Degree College. There was no occasion to keep the said order dated 24th March, 2007 inoperative or in abeyance. It has been submitted that the impugned order dated 9th April, 2007 (Annexure-10) is wholly uncalled for, unwarranted and improper and the same is liable to be quashed.

11. Though the University and the Jharkhand Academic Council appeared to support the impugned order, the writ petition was mainly contested by the

Respondent No. 5. In his counter affidavit, the Respondent No. 5 asserted that he is the Principal-in-charge of the College. It has been further stated that the College has been recognized by the Jharkhand Academic Council and is being run and managed through the duly elected Governing Body, as would be evident from the letter dated 12th February, 2007 issued by the Secretary, Jharkhand Academic Council, Ranchi. It has been stated that the said College has no affiliation for degree level by the Human Resources Development Department, Government of Jharkhand. The affiliation of the College was extended only till the session 2003-06. Thereafter, there was no approval of the Government. The Respondent No. 5 has been made the in-charge of the intermediate level of the said College. The Managing Committee had taken resolution dated 18th July, 2001 to separate Intermediate Section. Since thereafter the Respondent No. 5 has been discharging his duty as Professor-in-charge of the College. He has Master Degree in Sociology and he is eligible to become Lecturer. On that basis, he was made Professor-in-charge-cum-Head of the Department of Sociology as far back as in the year 1998.

12. It has been stated that the Bihar Intermediate Education Council came into existence in the year 1992. The Council was empowered to constitute the Governing Body of the recognized college u/s 44 of the Bihar Intermediate Education Council Act. In view of the above, the University had no role in the matter of the said College. The College was under the direct control of the Bihar Intermediate Education Council.

13. Respondent No. 5 further contended that the Registrar without considering the said aspect passed the order dated 24th March, 2007. The Respondent No. 5 filed representation against the said order. The Registrar realized the mistake and passed the impugned order dated 9th April, 2007, keeping the said order in abeyance. There is no illegality, arbitrariness or mala fide in the impugned order dated 9th April, 2007.

14. I have heard learned Counsel for the parties and considered their submissions, facts and materials on record. The petitioner has claimed that he is the senior most teacher of the College and is Professor-in-charge, whereas the Respondent No. 5 has himself claimed that he is the Professor-in-charge of Inter College.

15. From the admitted facts, it has emerged that the College was established in the year 1982 and was initially granted affiliation up to Degree level by the University for the Session 1987-88. The affiliation was extended from time to time up to the year 2006. At the relevant time, one Sri V.P. Singh was the Professor-in-charge of the College. He had subsequently resigned. The Governing Body by resolution decided to give to the petitioner the charge of the Principal of the College. The said decision was confirmed by the resolution of the Governing Body dated 18th December, 1998. The Respondent No. 5 ignoring the said decision started claiming himself as the Professor-in-charge of the College. He also tried to put obstructions in smooth running of the College. The dispute led to

an enquiry by the Ad hoc Governing Body of the College. The said Governing Body submitted its report dated 1st May, 1999 with finding that the petitioner was appointed as Principal-in-charge of the College and his claim on the post is valid. The Respondent No. 5 even thereafter went on with the dispute. The matter was placed before the University. But no order was passed. The petitioner then moved before this Court in W.P.(S) No. 5203 of 2006. The said case was disposed of, directing the Registrar to consider the claim of the petitioner after hearing the parties and pass a reasoned order. The Registrar of the University heard the parties and passed a speaking order, giving the finding that the petitioner is the Professor-in-charge of the College and the Respondent No. 5 does not even possess the requisite qualification for the post of Lecturer of a Degree College. His degree in Santhali subject is not valid. However, the impugned order dated 9th April, 2007 (Annexure-10) followed thereafter, whereby the order dated 24th March, 2007 has been sought to be kept in abeyance. The impugned order is said to have been passed on the representation of the Respondent No. 5.

16. The claim of the Respondent No. 5 is that he is Professor-in-charge of the Inter College. He claims to have been appointed under the provision of the Bihar Intermediate Education Council Act, 1992. The purpose of the Act is to establish Intermediate Education Council for bringing uniformity in Intermediate Education for coordination between different institutions and separating Intermediate Education from the Universities and for proper conduct, management and control of educational institutions of that standard.

17. Section 41 of the said Act provides for establishment and recognition of Institution of Intermediate (+2) Education. Section 41 of the said Act runs as follows:

41. Establishment and recognition of Institution of Intermediate (+2) Education.-
(1) No Institution imparting Intermediate (+2) Education shall be established or run unless prior approval of the Council has been obtained for the purpose.

(2) The Council shall maintain a register of Institution imparting Intermediate (+2) Education in accordance with the provisions of this Act. The Register shall contain such entries as may be prescribed by the Council.

(3) Every recognized Institution imparting Intermediate (+2) Education shall be given a certificate of registration in the form prescribed by the Council.

(4) Institutions other than recognized Institutions imparting Intermediate (+2) Education shall not send up students in the Examinations conducted by the Bihar Intermediate Education Council.

(5) The Council may give approval for the establishment of Institution imparting Intermediate (+2) Education under conditions prescribed by the Council in this behalf.

(6) Any Institution imparting Intermediate (+2) Education desiring to impart

education of Intermediate (+2) standard may apply for recognition on the form and on payment of the fee, prescribed by the Council.

(7) (a) The Council may grant recognition to any Institution under prescribed conditions in respect of the following:

(1) Building, Land, Playground, furniture and other facilities.

(2) Number of teachers and their qualifications.

(3) Amount to be deposited in general and reserve funds.

(4) Number of students.

(5) Library and Laboratories.

(6) Other conditions as may be prescribed by the State Government.

(b) If the Council refuses to grant recognition to any Institution imparting education of Intermediate (+2) standard any person or Institution dissatisfied with the decision may appeal to the State Government within 30 days and the decision of the State Government shall be final.

18. On reading of the said provision of Section 41(1) of the said Act, it is clear that no Institution imparting Intermediate (+2) Education shall be established or shall run without prior approval of the Council. Sub-section (2) of Section 41 provides that the Council shall maintain a register of Institution imparting Intermediate (+2) Education in accordance with the provisions of this Act. Sub-section (3) of Section 41 provides that every recognized Institution imparting Intermediate (+2) Education shall be given a certificate of registration in the form prescribed by the Council.

19. In the case, in hand, the Respondent No. 5 has claimed that the Intermediate Section was separated from the Degree level and, in fact, the College itself has been recognized as Intermediate College. However, no certificate of registration in the prescribed form, as given by the Council under the provision of Sub-section (3) of Section 41, to the recognized Institution imparting Intermediate (+2) Education has been brought on record. In course of hearing, when this Court enquired about the certificate of registration, learned Counsel for the Respondent No. 5 fairly admitted that no such certificate has been granted to the institution. In absence of certificate of registration, as required under Sub-section (3) of Section 41, the claim of the Respondent No. 5 that the College is the Intermediate College and has been recognized by the Intermediate Council has no legal basis and the same cannot be upheld. The claim of the Respondent No. 5 that he is the Professor-in-charge of the Intermediate College, recognized by the Intermediate Education Council is thus not supported by any cogent and legal document/material on the record. On the other hand, the Registrar of the University by his reasoned order dated 24th March, 2007 has found that Chandra Mohan Bhandari (petitioner) is the Professor-in-charge of the Degree College. There was no occasion or justification

for entertaining the objection of the Respondent No. 5 after passing the said final order by the Registrar of the University.

20. The impugned order dated 9th April, 2007, staying the reasoned order dated 24th March, 2007 is not based on any legal ground. The same is unwarranted, uncalled for and unsustainable. The impugned order passed surprisingly, even without giving any opportunity of hearing to the petitioner, is also violative of rule of fair play and natural justice and is vitiated in law.

21. For the reasons aforesaid, the impugned order dated 9th April, 2007 (Annexure-10) passed by the Registrar of the University is quashed. The writ petition is allowed.

There is no order as to costs.