

(2003) 03 PAT CK 0079

In the Patna High Court

Case No : C.W.J.C. Nos. 8377 of 2001, 11697 and 11837 of 2002

Dina Nath Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Citation : (2003) 03 PAT CK 0079

Judgement

S.N. Jha, J.—The dispute in these cases, relates to regularisation of services. There are 21 petitioners in all. They claim to be non-teaching employees of Shivdeni Ram Ayodhya Prasad College (SRAP College), Bara Chakia, district East Champaran (hereinafter referred to as "the College"). They seek quashing of the order, contained in Memo No. 573 dated 3-5-2001 of the Secretary, Higher Education Department, Government of Bihar, rejecting their claim for claim for regularisation of the services on Class III/IV posts, and the consequential letter of the Registrar, B.R. Ambedkar Bihar University dated 8-6-2001, and, further, a direction upon the respondents to absorb them in the service of the University.

2. The petitioners had approached this Court earlier too in different writ petitions which were disposed of with a direction to the State Government to consider their cases. The State Government in the Department of Higher Education by letter No. 532 dated 9-8-2000 constituted a three member committee headed by the Registrar of the University to make enquiry on the points mentioned therein after verifying the records of the College, and submit report to the Government. The committee accordingly examined the relevant records available in the college office and submitted its report on 31-3-2001. The report was forwarded by the University to the State Government on 19-4-2001. On 3-5-2001, by the impugned order, the State Government rejected the claim. It is relevant to mention here that the said order was passed without considering the findings of the enquiry committee. In fact, the Secretary, Higher Education Department, proceeded on the assumption that the report was not received in the Department, which does not appear to be correct. However it was stated that the Secretary later passed a supplementary order reiterating the previous one after

considering the report.

3. CWJC No. 11697 was argued as the leading case and therefore, the facts of the case may be noticed from the records of that case.

4. The case of the petitioners is that the College was established in 1969-70 and later affiliated with the then Bihar University. The Governing Body of the College created posts (Class III/IV posts) under resolution dated 25-5-1977. Appointments against those posts were made after advertisement on the Notice Board of the College, and by a Selection Committee constituted for this purpose. In this manner, Rajendra Kumar Singh and Dinesh Prasad, petitioners 3 and 5, were appointed on the post of Assistant and Peon respectively. In its meeting held on 16-3-1980 the Governing Body confirmed their appointments. Considering strength of the College, some more Class III/IV posts were created on 16-3-1980. Pursuant to creation of additional posts advertisements were published on 10-4-1980 and 7-5-1980 inviting applications for appointment. The rest of the petitioners along with others applied. On 25-5-1980 the selection committee considered their cases and resolved to appoint the remaining petitioners on different posts depending on their qualification.

5. It is relevant to mention here that, likewise, amongst the petitioners of other two cases, Daroga Prasad Yadav, Rama Nand Thakur, Nagendra Singh, Sheo Nath Prasad and Sarveshwar Prasad (petitioners in CWJC No. 8377/2001) claim to have been appointed between 1977-1978. While others claim to have been appointed against additional posts created on 16-3-1980 in July 1980 pursuant to the recommendation of the aforementioned selection committee.

6. The case of the petitioners is that their appointment was within the staffing pattern approved by the State Government and therefore, having continuously worked for long periods, in view of the decision of the Full Bench in Braj Kishore Singh and Others Vs. State of Bihar and Others, , they are entitled to be absorbed in the service of the University.

7. The claim of the petitioners has been rejected on the ground that they were appointed without proper advertisement and without following the norms of selection. Neither salary was paid regularly to most of them after their so called appointment nor. They were regular in attendance, violative of Articles 14 and 16 of the Constitution of India and not in accordance with the decision of the Full Bench.

8. At this stage it is relevant to mention here that the College was made constituent in the year 1980. From the report of the Enquiry Committee it appears that conversion as a constituent college took effect from 1-10-1980 but from para 17 of the writ petition (CWJC No. 11697/2002) it appears that the decision in this regard was communicated, by the University, on 19-4-1980. The notification of the University appears to have been issued on 19-7-1980 vide Annexure 14 of CWJC No. 8377/ 2001. It refers to Education Commissioner's Teleprinter message No. 133/C dated 15-7-1980. The period intervening appears

to have been spent in observing necessary formalities as the consent of the Government Bodies of the Colleges concerned had to be obtained before taking over the college as constituent college.

9. The bona fide of the appointments, particularly those made against the so called additional posts said to have been created by the Government Body on 16-3-1980, has to be considered in the background of imminent take over of the College as a constituent college. It need hardly be emphasised that once decision was taken to take over or convert the college into a constituent college, any action of the Governing Body in creating posts and making appointments would be highly suspect. May be, the college formally became constituent college with effect from 1-10-1980 but one can take judicial notice of the fact that such things do not happen overnight. Selection of the colleges for this purpose is itself a time consuming exercise and it can legitimately be inferred that when the College was about to be taken over or made constituent it must have become known to the management of the College by March 1980 when posts were created, selection committee was constituted on 16-3-1980 and advertisements were published on 10-4-1980 and 7-5-1980. While considering a similar situation and claim for absorption of the employees of Rai Bahadur Tunki Sah Homeopathic Medical College, Muzaffarpur - Which was taken over under the provisions of the Bihar Provincialisation of Roads and Hospitals Act, 1947 - in the case of Dr. Mohd. Mustaquim Ansari and Others Vs. The State of Bihar and Others, , a Division Bench of this Court noticed that "having come to know that the college in question was going to be taken over by the State Government, the then management of the College and the Hospital with ulterior motive and for extraneous considerations purported to appoint the petitioners against different posts without following the procedure prescribed for such appointments". The Court held that the appointments made by the Governing Body in the College/ Hospital after publication of the preliminary notification cannot be said to be in accordance with law and the State Government cannot, therefore, be directed to recognise their services.

10. The other aspect of the case is that as per the findings of the Enquiry Committee (and there is no dispute about it) no advertisement in any local/ district/ State, muchless national level, newspaper was made. Applications were invited for appointment on Class III and Class IV posts by displaying the notice on the college Notice Board on 10-4-1980 and 7-5-1980. This indeed is the case of the petitioners themselves. They have enclosed copies of the said advertisement/notice as Annexures 6 and 7 (in CWJC No. 11697/2002). These notices are hand written issued under the hand of the Principal Sri Gorakh Nath Prasad and Secretary (name illegible), respectively. By the former, applications were invited upto 20-6-1980 (though the advertisement was purportedly issued on 10-4-1980) and the candidates were asked to appear for the interview on 24-6-1980. By the latter advertisement/notice dated 7-5-1980, the aspirants were asked to apply by 20-5-1980 and appear for interview on 25-5-1980. The committee found that while records of the proceedings of the meeting of the

Selection Committee for appointment on Class III posts was available in the College no such record was available with respect to appointment on Class IV posts. All the appointments made pursuant to said advertisement and the said Selection Committee were finalised in or about July 1980 which is evident from the fact that the appointees including the petitioners submitted their joining no 7-7-1980.

11. Another aspect of the case is that all the 19 petitioners of CWJC No. 8377/2001 and CWJC No. 11697/2002 appear to have been paid salary Rs. 300 and Rs. 200 for Class III and Class IV posts respectively only for the months of July and August 1980 vide para Gha (iv) (a) of the report of the Enquiry Committee wherein they have been included in category II (at pages 194 and 195 of the brief in CWJC No. 11697/2002). From the next paragraph of the report it appears that some of them were paid sums of Rs. 150 or Rs. 100 or Rs. 75 respectively for the months of September 1993 out of the contingency grant by the Principal. A few others were again paid Rs. 25 and Rs. 20 for Class III and Class IV post respectively on 2-12-1993. This is the entire payment which the petitioners received as per the report of the Enquiry Committee. In fairness to the petitioners it may be stated here that the University had earlier taken decision to pay salary to the ten petitioners of CWJC No. 8377/2001 with effect from 1-1-1985 subject to approval of the Government. According to the petitioners salary was thus paid to them which was, however, stopped in 1993. According to them, all the ten petitioners of CWJC No. 8377/2001 received salary regularly from 1985 which continued upto 1993.

12. It is well settled that appointment to any public office must be consistent with Articles 14 and 16 of the Constitution. Where appointment is made without proper advertisement by taking recourse to a method which smacks of favouritism, the services of the person concerned cannot be regularised. According to the petitioners they have remained in service for long period. Admittedly they are not being paid salary at least since 1993. In the case of E. Ramakrishnan and Others Vs. State of Kerala and Others, , it has been held by the Apex Court that where appointment has been made de hors the rules, no direction for regularisation can be given even though the persons appointed continued for long period- 14 years in that case. In Ashwani Kumar and Others Vs. State of Bihar and Others, , the Apex Court observed that regularisation should not be used as a seal to cover illegal and void action and to perpetuate the same.

13. Section 35 of the Bihar State Universities Act, 1976 creates injunction against creation of teaching or non-teaching posts involving financial liabilities, increase of pay and allowances as well as appointment on any post etc. without prior approval of the State Government. In the case of Braj Kishore Singh v. State of Bihar (supra) a Full Bench of this Court held that approval of the staffing pattern would amount to creation of posts and therefore, prior approval u/s 35 (2) of the Act shall not be necessary. But it does not mean that the appointments

made without following the norms in violation of the mandate of Articles 14 and 16 of the Constitution should also be regularised.

14. In the instant case apart from the manner in which the selection/appointments were made, the fact that most of the appointments which are subject matter in these cases were made on the eve of take of the College as constituent College, creates serious doubt about the bona fide of the appointments. No doubt some of the petitioners such as Daroga Prasad Yadav, Ramanand Thakur, Nagendra Singh, Sheo Nath Prasad, Sarveshwar Prasad (in CWJC No. 8377/2001) and Rajendra Kumar & Dinesh Prasad (in CWJC No. 11697/2002) are said to have been appointed between 1976 - 1978 i.e. much before the process of conversion as a constituent college commenced. However they too have been placed in the same category i.e. Category II in the report of the Enquiry Committee. Thus though they are said to have been appointed earlier they too were paid salary only for few months until 1985 when pursuant to decision of the University they were paid salary regularly with effect from 1-1-1985 till 1993 along with five others who were appointed in 1980 namely Dina Nath Prasad, Raj Kishore Prasad Yadav, Vijay Kumar Yadav, Dwarika Prasad and Gopal Prasad- all petitioners in CWJC No. 8377/2001.

15. In the facts and circumstances, I am of the view that distinction can be made between the cases of five petitioners of CWJC No. 8377/2001 namely Daroga Prasad Yadav, Nagendra Singh, Rama Nand Thakur, Sarveshwar Prasad and Sheo Nath Prasad and two petitioner of CWJC No. 11697/2002 namely, Rajendra Kumar Singh and Dinesh Prasad who were appointed between 1976-1978 i.e. much prior to the process of conversion of the College as constituent College began. Not only they were appointed earlier, except Rajendra Kumar Singh and Dinesh Prasad, others were also paid salary regularly from 1-1-1985 till 1993. In their case, it cannot be said that salary payment was irregular a ground on which the claim of others has been negated by the Government. Though alongwith Daroga Prasad Yadav, Nagendra Singh, Ramanand Thakur, Sarveshwar Prasad and Sheo Nath Prasad, five others who are petitioners in CWJC No. 8377/2001 were also paid salary from 1-1-1985, their cases stand on different footing as they were appointed on the eve of conversion of the College as constituent College and therefore, their appointment cannot be said to be bona fide as held above.

16. in the above premises, I am of the view that the State Government should reconsider the cases of Daroga Prasad Yadav, Nagendra Singh, Ram Nath Thakur, Sarveshwar Prasad and Sheo Nath Prasad (petitioners in CWJC No. 8377/2001) and Rajendra Kumar Singh and Dinesh Prasad (petitioners in CWJC No. 11697/2002), and I direct accordingly. The claim of rest of the petitioners is rejected.

17. In the result, CWJC Nos. 8377/2001 and 11697/2002 are allowed in part to the extent mentioned above, while CWJC No. 11837/2002 is dismissed.

CWJC No. 8377 of 2001 and 11697 of 2002 partly allowed, CWJC No. 11837 of

2002 dismissed