

(1992) 02 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 7091 of 1991

Dr. Krishna Kumar Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Bihar Private Medical Colleges (Taking Over) Act, 1977 — Section 6

Citation : (1992) 1 PLJR 661

Hon'ble Judges : S. Roy, J; R.N. Prasad, J

Bench : Division Bench

Judgement

1. In view of the facts involved in this application, we allow the Petitioner to add Bihar Public Service Commission Patna as Respondent No. 29.

2. Heard learned Counsel for the Petitioner and learned Counsel for Respondent Nos. 10, 14, 15 to 19, 23, 24, 28 and G.P.7.

3. It was submitted on behalf of the Petitioners that all the private Respondents were at the relevant time working in the Private Medical Colleges, which were taken over under the Bihar Private Medical Colleges (Taking Over) Act, 1978 (hereinafter called as "the Act"). In view of this position, it was urged that unless a notification in terms of Section 6 of that Act was published with regard to the private Respondents, their names could not have been included in the gradation list of teachers in medical colleges.

4. This submission was challenged on behalf of some of the Respondents urging that they were appointed in Health Service long before these colleges were taken over. On behalf of the Respondents it was also submitted that in view of the fact that the names of these Respondents appear either in Annexure-7 series or in annexure-10 series or in both (some are tentative gradation list and some are final gradation list), the Petitioners cannot be allowed to submit that they cannot be treated as borne in the cadre of State Health Service.

5. The Petitioners have annexed two gradation lists, namely annexure-7/A dated

28.2.84 of the department of Orthopaedics and 7/B dated 30.4.84 of the department of Surgery. These are the tentative gradation lists. By both the Annexures, objections were invited for the purpose of publication of final gradation list. So far Surgery department is concerned, the Petitioners have annexed annexure-7/C, the final gradation list dated 3.4.1986. They have not filed final gradation list so far the department of Orthopaedics is concerned. The Petitioners have not filed either the tentative gradation list or the final gradation list of the department of Gynaecology or Obstetrics. We may mention that some of the parties to this case are of department of Orthopaedics, some of the department of Surgery and some of the department of Gynaecology and Obstetrics. So far the department of Gynaecology and Obstetrics is concerned, the Petitioners have filed annexure-7 dated 10.3.1983, by which the teachers mentioned therein were directed to appear in the office of the Health Commissioner for giving their consent for being considered for promotion from the post of Assistant Professor to the post of Associate Professor.

6. So far the contention of the Petitioners that as no final order in terms of Section 6 of the Act has yet been published, the private Respondents cannot be said to have been absorbed in the service of the State Government and consequently their cases cannot be considered for the purpose of promotion to the post of Associate Professor.

7. There is no dispute that the Petitioner and the Private Respondents are all working as Assistant Professor in different departments. We have already noticed that the relevant annexures were issued as far back as in 1983, 1984 or 1986. In paragraph 39 of writ application it has been stated that after the issuance of annexure-10 series of August/September, 1991 the Petitioners came to know about the inclusion of the names of the private respondents and on enquiry they came to know that no final order on the report of the Screening Committee, as envisaged in Section 6 of the Act has yet been passed and all those private Respondents should be treated as working in the State Government on ad hoc basis. So far paragraph 39 is concerned, it has been stated by the Petitioners that the statement made therein was based on information (sic) from the relevant records.

8. We have already noticed the date of the relevant annexures. In view of the fact that some were issued in 1983, 1984 and 1985 and in view of the statement made in paragraph 39 of the writ application, read with the affidavit the Petitioners cannot be allowed not to contend that the private Respondent are working on ad hoc basis.

9. The Petitioners have brought to our notice the decision in Dr. Akhil Saran v. (sic) Bihari Sinha and Ors. in L.P.A. 88/87 and analogous cases and submitted that unless the State Government took a final decision in terms of Section 6 of the Act, the private respondents have no right to claim that they must be treated in regular cadre of the Health Services vices of the Government of Bihar.

10. So far the L.P.A. 88/87 (supra) is concerned, one of the points formulated therein on which the Petitioners have relied, was who there the writ Petitioner of that appeal have been able to show existence of a legal right in themselves for obtaining a writ of mandamus from this court.

11. From the point formulated, it is clear that the teachers working in Private Medical Colleges, which were taken over under the Act, had moved this Court for issuance of an appropriate writ in their favour. In that situation it was held in those cases that no such writ could be issued as they had no legal right. We are of the opinion that the law laid down in those cases have no application to the facts of this case.

12. There is no dispute that the tentative gradation list has been issued by the State Government with regard to the aforesaid three departments, as contained in Annexures 10, 10/A and 10/B. The final gradation list, as published in April, 1986 with regard to the department of Surgery is annexure 7/C. From annexure 7/C it appears that Petitioner No. 1 is placed at Serial No. 31 Respondent No. 14 at serial No. 29 and Respondent No. 10 at serial No. 30. Respondent Nos. 10 and 14 therefore were treated senior to Petitioner No. 1 as far back as in April, 1986. At least with regard to those Respondents the Petitioners cannot make any grievance.

13. We are disposing of this writ application in the following terms:

(a) The State Government shall be entitled to consider the cases of teachers for promotion to superior posts, for instance a teacher from the post of Assistant Professor to the post of Associate Professor on the basis of the finally published gradation list one of which is annexure 7/C to this writ application. This shall be applicable to other departments of Medical Colleges for which gradation lists were finally

(b) So far the tentative gradation lists which are at annexure-10 Series are concerned, we have noticed that objections have been called for by the State Government. It is common knowledge that promotions are effected from the tentative gradation list which gives rise to avoidable litigation. The State Government shall finalise the gradation lists by 31st of May, 1992. In order to obviate litigations, we are of the opinion that the State Government fix a fresh date for filing objections, if any. It is therefore, ordered that the State Government shall publish in news papers a notice inviting objections by 10.3.1992 with regard to the tentative gradation lists as contained in annexures 10, 10/A and 10/B, which have been issued keeping in view annexure-8 to the writ application. The State Government shall be at liberty to promote such teachers with regard to whom there is no dispute regarding seniority.

(c) That State Government shall consult the Public Service Commission as required under law.

14. With the observations and directions, this application is disposed of. Let a copy of this order be given to G.P.7.