
(2003) 09 JH CK 0039
In the Jharkhand High Court
Case No : CWJC No. 7163 of 2000 (P)

Dr. Mahendra Prasad Sah

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Bihar State Universities Act, 1976 — Section 35(3), 4(14)

Citation : (2004) 52 BLJR 365 : (2004) 1 JCR 399

Hon'ble Judges : P.K. Balasubramanyan, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : P.K. Prasad, for the Appellant; M.S. Anwar, Rajesh Kumar and N. Hoda, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The petitioner was appointed a lecturer in Economics on 19.1.1975 by the Governing Body of Millat College, Parsa. According to him, he joined that post as Lecturer in the Department of Economics on 23.11.1975. He was appointed on the first sanctioned post. He was only a graduate at the time of his appointment. He did not possess a Postgraduate Degree at all; leave alone, a Postgraduate Degree with high second class. On 24.2.1977, he got a Master's degree, not in high second class, but in second class. On 6.2.1978, the Governing Body of the College forwarded a proposal to the Bihar Universities Service Commission to give a concurrence for his temporary appointment. On 30.9.1978, concurrence for temporary appointment was given. According to the petitioner, the Chancellor wrote to the Vice-Chancellor of the Bhagalpur University by communication dated 21.3.1983; approving the absorption of 20 temporary lecturers including the petitioner. On 19.8.1983, the Governing Body of the College confirmed the appointment of the petitioner.

2. While the petitioner was thus working in the College, the College became a constituent College with effect from 30.8.1988. There were other colleges also

which acquired the states of constituent colleges. An inquiry was set up to decide who were the persons qualified to be appointed. Apparently, anticipating trouble, the Association of Lecturers filed a writ petition in the High Court of Patna. By judgment dated 31.1.1997 reported in Bihar Rajya M.S.A.S.K.K Mahasangh v. State of Bihar 1997 (1) PLJR 533, the High Court directed the maintenance of the status quo regarding the working lecturers until completion of the inquiry initiated regarding the validity of their appointments. The State of Bihar filed an appeal against the said decision in the Supreme Court of India. The Supreme Court, by judgment in the State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, , appointed Mr. Justice S.C. Agrawal, a retired Judge of the Supreme Court to inquire into the number of sanctioned posts of teachers and non-teaching staff available in 40 colleges which were converted into constituent colleges pursuant to the sanction letter dated 19.8.1986; how many proposals with regard to the creation of posts had been submitted to the Education Department before the cut-off date, 30.4.1986; how many teachers and non-teaching staff seeking their absorption were not appointed through the selection made by the Bihar State Universities (Constituent Colleges) Service Commission and whether they possessed the basic qualifications prescribed by the Act and the statutes and how many teachers and non-teaching employees would be entitled to be absorbed on the basis of the Government Letter dated 19.8.1986. The Supreme Court kept the appeal pending and ordered that during the pendency of the appeal, the concerned teachers and others who would be affected by the ultimate outcome of the proceeding will get their full salaries along with admissible allowances and other benefits subject to any other order made by that Court. It was made clear that the services of the teaching and non-teaching staff should not be disturbed during the pendency of the proceedings. It may be noted that this order was passed by the Supreme Court on 12.10.2001.

3. Unfortunately, for the petitioner, after the inquiry as contemplated by the second proviso to Section 4 (14) and as empowered by Section 35(3) of the Bihar State Universities Act, the petitioner's services were terminated on 10.6.2000. The petitioner filed a writ petition before the Patna High Court. The same was referred to a Division Bench and it was ordered on 8.8.2000 that the petitioner will not be disturbed pursuant to Annexure-10 notification informing the Sidhu Kanhu University that it was found that the petitioner did not possess the requisite qualifications for being appointed as a lecturer (sic) of this, the Vice-Chancellor has been pleased to terminate the services of the petitioner as a lecturer. The petitioner could continue only on the basis of this Interim order, which has necessarily to be subject to the final result of the writ petition. The writ petition has subsequently been made over to this Court and that is how it has come up before us for final disposal.

4. Counsel for the petitioner argued that in view of the order of the Supreme Court dated 12.10.2001 above referred to, the petitioner was entitled to continue until a decision was taken by the Supreme Court based on the report to be submitted by Mr. Justice S.C. Agarwal. Counsel referred to certain orders passed

by a Single Judge of this Court permitting such continuance by accepting such an argument. But on scrutiny of those orders of the learned Single Judge, we find that those orders have not considered the effect of the inquiry made by the University, which it was entitled to do in terms of the second proviso to Section 4 (14) and Section 35 (3) of the Bihar State Universities Act, 1976 and the finding therein that the petitioner did not possess the requisite qualification for being appointed as lecturer when he was appointed by the Governing Body of the private college. We are, therefore, not persuaded to follow the course adopted by two of the learned Single Judges of this Court relating to some persons similarly situated. After all, it is not as if a Division Bench, is bound by those orders as such. If we are persuaded otherwise, we are entitled to differ from them, though, normally, to maintain uniformity, we would have tried to adopt the (sic) that the same was permissible in law.

5. It is clear from the statutes relating to the mode of appointment, pay scales and qualifications for the posts of teachers of the University approved by the chancellor on 1.7.1977, that for the post of a lecturer, the minimum qualification prescribed was a first or high second class Master's degree. On the day he joined temporarily, the petitioner did not even have a Master's degree. He acquired the same only on 24.2.1977 while he was allegedly working as a lecturer in the college. But he did not get a high second class Master's degree and managed to obtain only a second class Master's degree. Therefore, on the day he was directed to be absorbed, namely 21.3.1983, the petitioner did not possess the requisite qualifications for being appointed a lecturer in the college. It can also be seen that the Statute for regularization of the services of the purely temporary lecturers appointed on or before 28.2.1982 as approved by the Chancellor also insisted that the appointment should have been made on the basis of an advertisement for the post in certain newspapers. This requirement was also there in the Statute regarding regularization of the services of the purely temporary lecturers as approved by the Chancellor, and notified on 18.11.1980. Thus there was the insistence that the appointment should have been made pursuant to a selection after the issuance of a notification in that behalf in the newspapers referred to therein. There is nothing to show that the petitioner was appointed by a regular process of selection after issuing a notice inviting applications as prescribed. It was, therefore, open to the Vice Chancellor in terms of the power available to him under the second proviso to Section 4(14) and Section 35 (3) of the Bihar State Universities Act, 1976 to conduct an inquiry and come to the conclusion that the petitioner was not qualified to be appointed a lecturer under the relevant Statutes. The Patna High Court in its judgment dated 31.3.1997, had not interdicted the University from conducting such an investigation or undertaking such an inquiry. It had ordered the status quo to be maintained only until such inquiry was completed. The inquiry had been completed and orders of termination were issued on 10.6.2000 even before the Supreme Court on 12.10.2001 ordered the status quo to be maintained. According to us, the order of the Supreme Court cannot come to the rescue of

the writ petitioner, since we find that his services had been validly terminated by the Vice Chancellor on 10.6.2000 on the ground that he did not possess the requisite qualifications. It was not shown before us that there was anything illegal or improper in the inquiry conducted. Nor was it established that the petitioner did possess the requisite qualifications at the time of his appointment, or at the time of his absorption.

6. The interim order granted in the writ petition has necessarily to be subject to the final result of the writ petition. We have decided the writ petition which has come up before us for final arguments. On the basis of the Statutes and the relevant facts, we have come to the conclusion that the writ petitioner cannot successfully challenge the order of termination dated 10.6.2000. The necessary consequence would be to hold that the termination of the petitioner on 10.6.2000 was perfectly valid. Once that is so held, necessarily, the order has to come into effect and, in our view, the order of the Supreme Court does not stand in the way of the order dated 10.6.2000 coming into effect or coming out of the eclipse brought about by the terms of the interim order passed in the present writ petition. As we have noticed, this aspect as to the power of the University and the need for possessing the requisite qualifications for being appointed or absorbed, has not been considered by the learned Single Judge while directing the maintenance of the status quo in two or three other cases. It is in that situation that we find it not possible to adopt the course adopted by him.

7. We, therefore, dismiss the writ petition. The interim order will stand vacated and the order dated 10.6.2000 passed by the Vice-Chancellor will stand.

R.K. Merathia, J.

8. I agree.