

(1996) 12 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. Nos. 5900 and 6078 of 1994

Dr. (Mrs.) Annapurna Devi and Others

APPELLANT

Vs

The State of Bihar and Others
 Dr. Kamaldeo Narain
Singh Vs Bihar State University (Constituent Colleges)
Service Commission and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Citation : (1996) 12 PAT CK 0004

Judgement

B.P. Singh, J.—These two writ petitions were heard by a Division Bench of this Court. The Petitioners in both the writ petitions had challenged the corrigenda issued by the Bihar State University (Constituent Colleges) Service Commission dated 5th May, 1994 (hereinafter referred to as the first corrigendum), and 23rd May, 1994 (hereinafter referred to as the second corrigendum). These corrigenda related to the advertisement issued by the Respondent-Commission on 16-12-1989 inviting application for appointment to eight posts of Principal in the different faculties under the Patna University. The Petitioners challenged these two corrigenda on several grounds. The learned Judges, who heard the writ petitions, were agreed that the second corrigendum deserved to be struck down as illegal and invalid, though for different reasons. They, however, differed on the question of validity of the first corrigendum. While Aftab Alam, J., held the same to be invalid and illegal and quashed the same, Asthana, J., held that the same was in accordance with law and warranted no interference by this Court. On a difference of opinion between two learned Judges of this Court, for whom I have great respect, the writ petitions have been placed before me for disposal.

2. As noticed earlier, the learned Judges have differed only on the question as to whether the first corrigendum was valid and in accordance with law and, therefore, it is not necessary for me to consider other questions urged before the Division Bench, on which there is no difference of opinion. I may only notice that the other submission urged in both the writ petitions, that in view of issuance of the advertisement on 16-12-1989 inviting applications for appointment to the

eight posts of Principal, the corrigendum could not be issued so as to bring about any change in the process of selection already initiated, has been rejected by both the learned Judges.

3. The relevant provisions of law as also the relevant facts have been set out in detail in the judgment of Asthana, J. Aftab Alam, J., has also noticed the relevant facts in his judgment and, therefore, it is not necessary for me to refer to all the facts and provisions of law which have been noticed by them with a view to avoid prolixity. The Respondent-Commission had issued an advertisement on 16-12-1989 inviting applications for appointment to eight posts of Principal in the different faculties of the Patna University which were sanctioned in the scales of University Professor/Reader. The posts were advertised faculty-wise, and not College-wise. One Post each in the Science Faculty, Humanities and Social Sciences Faculty, Law Faculty and Engineering Faculty were advertised. Two posts each in the Science or Social Sciences or Humanities Faculties and Education Faculty were advertised. The candidates (with the exception of category relating to Engineering Faculty) were required to possess a first or high second class Master's degree or equivalent degree of a foreign University with consistently good academic record, and not less than 12 years teaching experience at least as a Lecturer in a Degree College/University Department. The eligibility conditions for the post of Principal in the Engineering faculty were separately prescribed in the advertisement. Pursuant to the advertisement, the Petitioners as also Ors. had applied, but even after passage of about four and a half years selection of candidates had not been made by the Commission and the matter remained pending. On 5-5-1994 the first corrigendum was issued purportedly in the light of the new reservation policy. Apart from increasing the number of vacancies from eight to nine, it fixed quota for different reserved categories. Four of the posts were to be filled up by candidates belonging to general category, while one each were to be filled up by candidates belonging to Scheduled Triba Scheduled Caste and Backward-class category, while two posts were reserved for extremely Backward class category. The corrigendum, therefore, reserved five out of the nine posts for being filled up by candidates belonging to different reserved categories.

4. On 23-5-1994 the second corrigendum was issued and significant change brought about by second corrigendum was to reserve five of the posts of Principal in the different named Colleges of the Patna University for being filled up by candidates belonging to reserved category, whereas the posts of Principal of four named Colleges were to be filled up by candidates belonging to general category. The second corrigendum, accordingly, provided that the posts of Principal of the Science College, Patna, B.N. College, Patna, Patna College, Patna, and Vanijya Mahavidyalay, Patna, were to be filled up by candidates belonging to general category. The posts of Principal of Patna Training College and Women Training College, Patna, were to be filled up by candidates belonging to Scheduled Caste, while the post of Principal of Bihar College of Engineering was to be filled up by a Candidate belonging to Scheduled Tribe. Similarly, the post of

Principal of Patna Law College was to be filled up by a candidate belonging to Extremely Backward-class, and the post of Principal of Magadh Mahila College, Patna, was to be filled up by a candidate belonging to a Backward class.

5. It was urged on behalf of the Petitioners that the posts of Principal of different Colleges could not be grouped together for the purpose of reservation. Each post of Principal was an isolated post which could not be subjected to reservation, as that would amount to hundred percent reservation. In substance, it was sought to be urged that each post being an isolated post, the State could not directly provide for reservation against such posts in view of the law laid down by the Supreme Court. However, the same objective was sought to be achieved indirectly by purporting to constitute a cadre of such isolated posts in an arbitrary, unreasonable and unfair manner unwarranted by law. Aftab Alam, J., held that the submission must be upheld because each post of Principal was an isolated post. A Principal of a College is also a teacher, and his appointment as principal of a particular College is necessarily correlated to his educational qualification and teaching experience in the concerned subject. The Principal had a two fold relationship with the faculty; one in his capacity as a teacher and the other as the administrative head of the College. He, therefore, held:

The legal position that emerges, thus, is that for being appointed as the Principal of a College a person must possess the requisite qualifications and the necessary experience as a teacher in one of the subjects assigned to the faculty to which the college belongs or in other words in one of the subjects being taught in the college. For example, a person must possess the requisite qualifications and the necessary experience as a teacher in a science subject for being appointed as Principal of the Patna Science College and in law for being appointed as Principal of the Patna Law College.

He further held that the posts of Principal in different faculties of Colleges of Patna University were dissimilar and separate, and, if any of those posts was reserved for any reserved category, the result would be that the general category candidates for that faculty would be completely ousted, and there would be hundred percent reservation in favour of that reserved category and against the general category, which is not permissible in view of the law clearly laid down by the Supreme Court in Chakradhar Paswan Vs. State of Bihar and Ors, The law as laid down in the aforesaid decision has been reiterated in subsequent decisions of the Supreme Court noticed by the learned Judge.

6. On the other hand, Asthana, J., has succinctly summarised his conclusion in the following words:

Here the existing Colleges of Graduate standard were brought under control of Patna University and thus the posts of Principal of those (old existing) Colleges were included in Patna University Act. Under this Act teaching has been allotted to the Lecturers, Readers and Professors/University Professors. The posts of the Principal is the post with the duties of management, control and administration

(and not as a Rule for teaching). Thus, it cannot be said that the post of Principal of the Colleges under Patna University is the solitary (unique) post. Looking to the nature of duties, similar pay scales and service conditions, the State Authorities had the justification to pool these posts of the Principal of the Colleges for making reservation of posts to end inequalities as desired in Clause (4) of Article 16 of the Constitution.

He has noticed the provisions of Sections 2, 4, 7 and 27 of the Patna University Act and has held that since Section 7 does not expressly provide that the teaching work shall be conducted in the University and its Colleges by the Principal, though it refers to University Professors/Professors, Readers, Lecturers and Teachers, the Principal of the College need not be there for teaching work. He has also held that though Section 2(r) of the Act defines a teacher to include the Principal of a College, such inclusion is only for the purpose of conferring benefit of general service conditions and such other similar purpose. In his view, Section 2(k) defines a Principal to mean a Head of the College without prescribing any qualification. Obviously, therefore the Principal is not a pillar in teaching, and really the post of Principal in the College under the Act is a post for the management, control and administration of the College. Referring to Sub-section (5) of Section 27, which deals with the appointment of a Dean of a faculty, he has concluded that even if a Principal was not appointed a Dean of a faculty, that will not make Sub-section (5)(a) of Section 27 non-workable. For these reasons he has held that the post of principal of a College cannot be said to be a solitary (unique) post, and looking to the nature of duties, similar pay-scales and service conditions, the State authorities were justified in pooling the posts of Principal of the Colleges for the purpose of reservation.

7. It is necessary to consider the various provisions of the Act. Section 2(k) of the Patna University Act provides as follows: "Principal" means the head of a College. Section 2(r) defines a teacher in the following words:

"Teacher" includes Principal, University Professor, College Professor, Reader, Lecturer, Demonstrator and other persons imparting instructions in any department or in any college or Institute maintained by the University; Section 7 of the Act which relates to teaching of the University provides as follows:

Teaching of the University.--(1) All recognised teaching in connection with the University courses shall be conducted through the colleges and through departments maintained by the University, subject to general control of the Vice-Chancellor and shall include lecturing, work in laboratories or workshops, and other teaching work conducted in the University and the colleges by the University Professors, professors readers, lecturers and the teachers in accordance with any syllabus prescribed by the Regulations.

(2) The authorities responsible for organising such teaching shall be prescribed by the Statutes.

(3) The courses and curricula shall be prescribed by the Regulations.

(4) In addition to recognised teaching, tutorial and other supplementary instruction shall be given in the colleges subject to the control of the University, or in the department maintained by the University.

(5)(i) It shall not be lawful for the University or for any college to maintain classes for the purposes of preparing students for admission to the University.

(ii) In the Faculties of Arts, Science and Commerce, the University shall prescribe the Syllabus, conduct teaching, hold examinations and publish results of Graduate and above standards :

Provided that until separate arrangement for Intermediate Education is made, the College shall, under the general direction of the Bihar Intermediate Education Council continue the teaching work etc., of this standard.

(iii) the graduate course shall be of three years" duration.

8. It is no doubt that a Principal has been defined to mean the Head of a College. But, it is equally true that the Act envisages a teacher to include the Principal of a College. Sections 2(k) and (r) must be read with Section 7 which provides that teaching in connection with the University courses shall be conducted through the Colleges and through Departments maintained by University by the University Professors, Professors, Readers, Lecturers and Teachers in accordance with any syllabus prescribed by the regulations. (Emphasis supplied). Reading the provisions together I have no doubt that though the Principal is a Head of a College, he is also a teacher, and as such, he is entitled to conduct teaching work in the College/faculty of which he is the Principal. There is no reason to give a restricted meaning to the definition of the term "teacher" in Section 2(r) of the Act, because to me it appears that there is nothing in the context which may compel one to give to the definition of teacher a restricted meaning and to conclude that though a Principal is also a teacher, his inclusion as a teacher is only for the limited purpose of granting to him the benefit of general service conditions and such other similar purpose only. In my view, Section 2(r) as well as Section 7 make it quite clear that a teacher, which includes a Principal, may impart instructions in the College maintained by the University, and is entitled to engage classes and conduct teaching work. Similarly, I am of the view that Section 2(k) which defines a Principal to mean the head of a College, without laying down the qualification for such post, does not automatically lead to the conclusion that he is not required to do teaching work under the Act. The aforesaid view overlooks the fact that a Principal, is appointed under the Act in the sanctioned scales of University Professor/Reader and, therefore, the person so appointed must possess the requisite qualification for being appointed as University Professor/Reader. It was, therefore, not necessary to prescribe the qualification while defining the post of Principal u/s 2(r). In fact the advertisement issued by the Commission itself provided that the posts advertised were sanctioned in the scales of University Professor/Reader. The advertisement in terms prescribed the qualification and experience which made a person eligible

for appointment as Principal. It was provided that the candidate must possess a first or high second class Master's degree or equivalent degree of a foreign University with consistently good academic record, and not less than 12 years' teaching experience at least as a Lecturer in a Degree College/University Department. The insistence on 12 years teaching experience as Lecturer in a Degree College/University Department itself emphasises the fact that in order to become a Principal of a College, the candidate must first be an experienced lecturer with long teaching experience. If the post of Principal was merely an administrative post unrelated to teaching, such a qualification would not have been prescribed. It must, therefore, be held that the University itself recognised the fact that the Principal of a College must also be an experienced teacher. On appointment as Principal of the College, he acquires the status of a University Professor/ Reader, as the case may be. The provisions of the Act leave no room for doubt that a Principal is also a teacher and the provisions affirmatively provide that he may conduct teaching work. As against this there is nothing in the Act or the statutes which prohibits a Principal from conducting teaching work.

9. Section 27(5) of the Act provides that Dean of a faculty shall be appointed from amongst University Professors or Principals in the rank of University Professor. No doubt, the proviso permits appointment of a Head of Department in the rank of reader as a Dean of a faculty if there be no University Professor or Principal in the rank of University Professor available in the faculty concerned. Asthana, J., has observed that non-inclusion of Principals in appointing Dean of a faculty will not make Sub-section (5)(a) of a Section 27 non-workable. In my view, the scheme of Section 27(5)(a) is that the Dean of a faculty shall be appointed from amongst University Professors or Principals in the rank of University Professor of the concerned faculty. Only in the event such University Professor or Principal in the concerned faculty is not available, a Head of Department in the rank of Reader may be appointed a Dean of the faculty. This does not mean that a Principal of a College having the requisite qualification in the concerned faculty can be excluded from consideration. It is only when such a qualified Professor or Principal is not available that the proviso operates, enabling the Vice-Chancellor to appoint a Head of a University Department in the rank of Reader as Dean of a faculty.

10. I have, therefore, no hesitation in agreeing with Aftab Alam, J., that a Principal of a College is also a teacher. He is authorised by the Act to conduct teaching work which obviously must be in the subject of his specialisation, but as a Principal of the College he is also the Head of the College. In other words, a Principal is also a teacher, but with added administrative responsibilities as head of a College.

11. The learned Advocate General very candidly and unhesitatingly submitted that a person could not be appointed the Principal of a College which conducted teaching in a particular subject only, unless he had the requisite qualification and experience of teaching that very subject. Accordingly, he submitted that the

Principal of a Law College must be a teacher, who had the requisite educational qualification in law as a subject, and also experience of teaching that subject. A person who had the requisite qualification and experience in Anr. subject, such as History or Physics could not be appointed a Principal of the Law College. The submission itself highlights the fact that the post of Principal is not a mere administrative post, but is connected with the knowledge and teaching of that subject. It is, therefore, that the Principal of a Law College must be a teacher of Law and not a teacher of any other subject. One cannot also ignore the realities of the situation. Even for the discharge of administrative duties, knowledge of the subject is essential, and a Principal of a Law College, without any knowledge of the subject, and obviously without any teaching experience in that subject, cannot effectively discharge his duties as a Principal of the College. The same can be said of other faculties. It is no doubt true that this will not hold good in the case of institutions where more than one subject is taught and in such cases the Principal must possess the requisite qualification and experience in any of the subjects taught in the College. Aftab Alam, J., has rightly emphasised this aspect of the matter in his opinion, and I find myself in complete agreement with him. It is difficult to conceive of a Principal of a College who has no knowledge of the subject taught in the College of which he is the Principal. It was, perhaps, for this reason that the advertisement issued by the Commission referred to the posts of Principal faculty-wise and not College-wise.

12. I, therefore, find myself in agreement with Aftab Alam, J. and I hold that the Principal of a College must possess the requisite qualification and experience as a teacher in one of the subjects assigned to the faculty to which the College belongs. He is not a mere administrative head, but is also a teacher and authorised by law to conduct teaching work and engage classes and otherwise impart instruction in the College. This he cannot do unless he is eligible and qualified to teach the subject taught in the College of which he is the Principal. In the cases of Colleges where more than one subject is taught, a person appointed as a Principal must possess the requisite qualification and experience in any of the subjects taught in the College. However, in Colleges where only one subject is taught, he must have the necessary qualification and experience to teach that subject. In other words, a person cannot be eligible or qualified to hold the post of Principal, if he does not possess the requisite qualification and experience in any of the subjects taught in that College/faculty.

13. Once it is held that the Principal of a College is also a teacher, it follows therefrom that he must be a teacher having the requisite qualification and experience to teach the subject taught in the College of which he is appointed as a Principal. By the very nature of things the same teacher may not be eligible for appointment as Principal in all the Colleges. Each post must, therefore, be considered to be an isolated post. A Law teacher cannot be appointed the Principal of the Science College, and similarly a teacher of History cannot be appointed the Principal of an Engineering College. Such being the position, it would not be permissible to create a cadre of isolated posts of Principal. The

learned Judges have referred to several decisions of the Supreme Court which lay down the law in clear terms. If it is not permissible to provide for reservation where there is only an isolated post, the same cannot be achieved indirectly by creating a cadre of isolated posts. It is well-settled that what cannot be done directly cannot be done indirectly.

14. I, therefore, find myself in complete agreement with Aftab Alam, J. that these writ petitions should be allowed. I also fully subscribe to the observations contained in paragraph No. 108 of the opinion of Aftab Alam, J. as these writ petitions have been decided in the light of the facts and circumstances as they obtain in the Patna University and its Colleges/faculties. Accordingly, C.W.J.C. Nos. 5900 and 6078 of 1994 are allowed and Annexures 2 and 3 and Annexures 1-A and 1-B respectively, are quashed. The Commission shall now proceed to finalise the selection ignoring the aforesaid corrigenda.