
(2010) 11 PAT CK 0109
In the Patna High Court
Case No : CWJC No. 17706 of 2010

Dr. (Mrs.) Neelam Kumari @ Neelam Kumari	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 10-11-2010

Acts Referred:

Bihar Agricultural University (Amendment) Act, 2010 — Section 1(3), 46(4)
Bihar Agriculture University Act, 1987 — Section 3(1)

Citation : (2011) 59 BLJR 1217 : (2011) 1 PLJR 790

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—Counter affidavit has been filed with reply thereto by the Petitioner. With consent of parties the writ petition was finally heard for disposal at this stage itself.

2. The Petitioner challenges the Office Order No. 517 of Rajendra Agricultural University dated 30.7.2010, issued under the orders of Vice-Chancellor of Rajendra Agricultural University, (Pusa) Samastipur, in so far as, it transfers, the Petitioner who is a subject matter specialist from Krishi Vigyan Kendra, Saraiya, District-Muzaffarpur to Krishi Vigyan Kendra, Harnaut in the district of Nalanda, on the ground that the same though being within the competence of the said Vice-Chancellor is a colorable exercise of power and lacks in bona fide. Sh. Anand Kumar Ojha, learned Counsel for the Petitioner brings to the notice of the Court, the provisions of the Bihar Agriculture University Act, 2010 (Bihar Act 12 of 2010) (hereinafter referred to as the new Act for brevity) to which I would refer as those provisions are material for resolution of the present dispute.

3. Earlier there existed the Bihar Agriculture University Act, 1987 (Bihar Act, 8 of. 1988). Under the said Act there were two Universities incorporated and established by virtue of Section 3(1) thereof. The first was the Rajendra Agriculture University with its headquarters at Pusa in the district of Samastipur which had the jurisdiction over whole of the State of Bihar as it then existed

except areas falling within the Division of North and South Chhotanagpur and Santhal Parganas for which area there was Birsa Agriculture University with its headquarters at Ranchi. Upon bifurcation of the State of Bihar, so far as the Birsa Agriculture University is concerned, it fully went to the State of Jharkhand leaving Rajendra Agriculture University at Pusa within the State of Bihar. Rajendra Agriculture University included as its constituent unit, the Bihar Agriculture College, Sabour, Bhagalpur as also the Bihar Veterinary College, Patna and various other Krishi Vigyan Kendras (K.V.K).

4. On 16.4.2010, the State legislature enacted the Bihar Agriculture University Act, 2010 (Bihar Act 12 of 2010) and the same was notified in the Official Gazette on the same day. The Act substantially modified the earlier Bihar Agriculture University Act, 1987 which as noted earlier operated for all Agricultural Colleges and other establishments in Bihar. This new Act enacted on 16.4.2010, incorporated and established the Bihar Agriculture University with its headquarters at Sabour in the district of Bhagalpur. By virtue of Section (3)(1)(ii) all Colleges, Research and Experimental Stations including Krishi Vigyan Kendras as mentioned in Schedule-I of this new Act became a constituent unit under the full management and control of the Bihar Agriculture University. A reference to Schedule-I of the new Act would show that, inter alia, Krishi Vigyan Kendra, Hamaut in the district of Nalanda, which was hitherto under the Rajendra Agriculture University now falls under the newly created Bihar Agriculture University, Sabour in the district of Bhagalpur. At the same time, it would be seen that Krishi Vigyan Kendra, Saraiya in the district of Muzaffarpur is not mentioned in Schedule-I of the new Act and thus would continue to be in the Rajendra Agriculture University.

5. The effect of this bifurcation, so far as the Petitioner is concerned would be that if she was to continue at Krishi Vigyan Kendra, Saraiya in the district of Muzaffarpur, she would continue to be in Rajendra Agriculture University but by virtue of the impugned transfer order dated 30.7.2010, she is now being shifted to Hamaut, her cadre would also stand changed to the Bihar Agriculture University at Sabour in the district of Bhagalpur from Rajendra Agriculture University, Pusa Samastipur. It is this change and the effect it has on the Petitioner that has brought the Petitioner to this Court. What is of importance is the timing of the change.

6. As noted above, this new Act was notified in the Official Gazette on 16.4.2010, when the provisions of the Act and its implications of bifurcating and creating new University became known to all. As the effect of the provisions with regard to creation of new Agriculture University was bifurcation of the Cadre as well, the Legislatures made provisions in relation thereto inter alia in terms of Section 46(4) of the new Act which is quoted hereunder:

(4) All employees of any College, Research Institute or other officers & Institutions mentioned in Schedule-I shall be the employee of the University and shall cease to be the employee of Rajendra Agriculture University:

Provided that they shall give written notice to the Rajendra Agricultural University within one year of publication of Notification of the Act in the Bihar Gazette. They may be permitted to be retained in the service of and to be posed on equivalent post within the jurisdiction of the Rajendra Agricultural University. Likewise the employees of Rajendra Agricultural University, if they so desire, may give written notice to the State Government for their absorption in the Bihar Agricultural University, Sabour. The State Government will intimate its decision to the University.

(emphasis supplied).

7. From the provision of Section 46(4) and in particular the proviso thereto, it is clear that from the date of publication of the new Act in the Official Gazette i.e 16.4.2010, the legislatures gave a right to the effected employees to exercise their option as to which University they would like to continue in, which option was to be decided by the State Government. The Universities or for that matter the Rajendra Agriculture University was given no option to effect any change that would effect the cadre as notified to be bifurcated.

8. Section 1(3) of the new Act provided that the Act shall come into force on such day as the Government may appoint by notification in the Government Gazette. As noted earlier, the Act was notified in the Gazette on 16.4.2010, but the decision to enforce the provisions of the Act got delayed. It is not in dispute that on 19.7.2010, the State Government took a decision to enforce the provisions of the Act w.e.f. the date of publication of the decision in the Official Gazette. This decision was sent for gazette notification immediately but for some unexplained reasons its publication in the Gazette got delayed. It was ultimately published in the Bihar Gazette extraordinary on 2.8.2010 (Annexure-A to the counter affidavit). The impugned order of transfer was issued on 30.7.2010, just two days before the publication of enforcement notification and eleven days after the Government decisions to enforce the provisions of the Act.

9. On behalf of Petitioner with reference to the aforesaid sequence of events, it is submitted that once everybody came to know that the new Act had been promulgated and decision to enforce it had been taken, surreptitiously, taking advantage of the delayed publication of the notification of enforcement, large scale transfers were ordered by the Vice Chancellor of Rajendra Agriculture University on the penultimate day which is a colorable exercise of power especially as the effect of Section 46(4) of the new Act read with its proviso leaves it to the consideration of the State Government with regard to adjustment of cadre which option could be exercised by the party within one year "the publication of the Act in the Gazette which is 16.4.2010 to 16.4.2011". It is further pointed out with reference to transfer notification dated 30.7.2010, that some persons have been moved from stations which would go (sic--with?) Bihar Agriculture University, Sabour (Bhagalpur) to stations which would be retained under the Rajendra Agriculture University, Pusa (Samastipur), whereas some persons like the Petitioner were moved to stations which would go out of

Rajendra Agriculture University and would fall within the jurisdiction of Bihar Agriculture University, Sabour (Bhagalpur). It is submitted that this was a calculated move to harm Petitioner and benefit some others and as such was the exercise of power lacking in bona fide and as such a colorable exercise of power.

10. In the counter affidavit filed by the Rajendra Agriculture University a bald statement has been made that as per policy decision of the Rajendra Agriculture University, transfers are generally made in June/July of every year and this year also accordingly transfers were made. They do not lack in bona fide. It is further stated, that vide Memo No. 1700 dated 4.10.2010, Rajendra Agriculture University had already invited options of the willing employees for retaining their service in either of the Universities. The said letter of Rajendra Agriculture University dated 4.10.2010, is appended as Annexure-B to the counter affidavit. Petitioner could accordingly exercise option.

11. It is thus, submitted on behalf of University that the enforcement of the Act being with effect from 2.8.2010 (enforcement notification being Annexure-A to the counter affidavit), the Vice-Chancellor of the Rajendra Agriculture University, in regular course ordered transfer of the Petitioner and further by communication dated 4.10.2010, gave option of being retained in either Universities to the employees. Thus, there was nothing wrong in the action taken.

12. Here, I would like to point out two things. Firstly, the enforcement notification (Annexure-A to the counter affidavit) shows that the Government decision to enforce the Act was taken on 19.7.2010, which is prior to the transfer order, though notified on 2.8.2010. The second is that a reference to the communication of the Rajendra Agriculture University dated 4.8.2010, (Annexure-B to the counter affidavit) would show firstly that it was addressed to officers of the Rajendra Agriculture University alone and has no application to the Petitioner because by 4.10.2010, the enforcement notification having come into force, the Vice-Chancellor of Rajendra Agriculture University had a curtailed jurisdiction and a curtailed mandate not extending to areas which now fell under the Bihar Agriculture University, Sabour (Bhagalpur) to which jurisdiction Petitioner has been transferred. Further, in this regard this letter refers to State Government letter under Memo No. 5208 dated 6.9.2010, which letter has not been appended to the counter affidavit, the reason is obvious. The Petitioner has appended the same as Annexure-A/1 to the reply to the counter affidavit. The said communication of the State Government dated 6.9.2010, clearly referred to the provision of Section 46(4) of the new Act and in particular to the proviso thereof and stated that the concerned employees can make their representations upto one year of the notification of the new Act in the Gazette specifying the last date as 16.4.2011. This clearly showed that the intention of the legislature and the State was that upon the Act being notified, there should be no transfers except upon consideration of representations by the State Government. In my view, Petitioner rightly submit that it was to frustrate this legislative mandate that surreptitiously after decision to enforce the Act was taken, the Vice-Chancellor on

knowing the delaying in publication of the decision enforcing the Act passed the transfer orders.

13. It may also be noticed here that in support of past practice of transfers in the month of June/July every year and that too at this scale of which is now done, except for bald statement, no contemporaneous document has been annexed much-less referred.

14. Thus in my view, the transfer order of the Petitioner depriving her of her right to continue at her station under Rajendra Agriculture University was not a bona fide exercise of power by the Vice-Chancellor of the Rajendra Agriculture University. The timing and the manner in which it has been done, it can only be termed as colorable exercise of power. Heavens would not have fallen, had he awaited for the decisions of the State Government, which had already taken decision to notify enforcement of the new Act on 19.7.2010 but he seems to be in hurry and passed the impugned order on 30.7.2010 to avoid the notification. This cannot be upheld by this Court and it is accordingly held.

15. But the question is what has to be done now because pursuant to the transfer order as impugned several people have moved though the Petitioner asserts that she has not acted pursuant to the impugned transfer notification. In my view, the solution in this exceptional case can be found in Section 46(4) read with proviso of the new Act itself. I accordingly, direct the State Government to immediately reconsider the transfer order as impugned and in particular the grievance of the Petitioner and pass suitable orders with regard to her posting including her reinstatement at her original place of posting at the earliest not later than one month from the date of production of a copy of this order before the Agriculture Production Commissioner, Department of Agriculture, Government of Bihar, who may also consider notifying all other persons likely to be affected before taking such a decision. Upon the decision being taken particularly in respect of Petitioner, the Petitioner would be deemed to continue at the place as designated by the State Government and would accordingly be entitled to receive her past and future remunerations.

16. With these observation and direction, the writ petition stand disposed of.