

(1997) 04 PAT CK 0081
In the Patna High Court
Case No : C.W.J.C. No. 2176 of 1996 (R)

Dr. Radha Krishna Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Bihar State Universities Act, 1976 — Section 2, 2, 35
Constitution of India, 1950 — Article 14

Citation : (1998) 1 PLJR 23

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Advocate : Tapen Sen and T. Kabiraj, for the Appellant; V. Shivnath, Anita Sinha and R.C. Thakur, for the Respondent

Final Decision : Allowed

Judgement

Prasun Kumar Deb, J.—The Petitioners in this case are working in different constituent colleges under the Ranchi University as Laboratory Assistants/Incharge/Technician/Instructors since the dates of their appointments. The chart showing the list of the Petitioners with details of their qualifications, date of appointments and the post held are mentioned in Annexure-1 to this writ application.

2. Although they have been appointed long back and possessed the highest qualifications, they have not been promoted or given the scope of promotional avenues. According to them, although they were Laboratory instructors but they were doing the job of Laboratory Demonstrators since the dates of their appointments and, as such, prayer has been made for designating them as Demonstrators and to give all consequential monetary benefits together with the scope of promotional avenues. On earlier occasion also, the Petitioners came up before this Court in C.W.J.C. No. 387 of 1995 (R). All these Petitioners were the Petitioners in that case and they prayed in that writ petition for issuance of a writ of mandamus commanding upon the Respondents to re-designate them as

Demonstrators. Most of the Petitioners are having the highest degree of qualifications in their field of subjects and holding Ph.D. degree in different science subjects. It goes without saying that the Petitioners are the highly qualified persons. Before 1960, the post of Laboratory Assistants/Laboratory Incharge/Laboratory Technician and Laboratory Instructors were available and they were holding practical classes. Those who had the qualification of B.Sc, they were designated as Demonstrators with higher pay scales. The posts of Demonstrators are included within the definition of "Teacher" as defined u/s 2(v) of the Bihar State Universities Act, 1976. By a decision in 1981, the state Governments re-designated the Laboratory Assistants/Laboratory Instructors/Laboratory Technician/Laboratory Incharge as Demonstrators from time to time who were appointed before 1.4.1973 and the pay scales of Demonstrators were higher than the pay scale of the Laboratory Assistants. As the Petitioners were not designated as Demonstrators, as was done in the case of the appointees before 1.1.73, they are not getting the promotional avenues under the Act or the Statute and the persons who were appointed as such are going to retire on the same post.

3. The grievance of the Petitioners is that the State Government/University were bound to give promotional avenue to its employees as per the decision of the Supreme Court of India wherein it was held that in absence of promotional avenues, service of a person is bound to stagnate and causes the frustration on the person in the service to serve properly with devotion. The Petitioners have not only the reasonable qualification to be designated as Demonstrators, but they have improved their qualifications also by which they are even entitled to become Head of the Department of their subjects. But because of non-designation as Demonstrators, they were never considered for promotion to the posts of Lecturers and to the higher post in the hierarchy. If they are designated as Demonstrators then as per the decision of the State Government and that of the Ranchi University, they can be promoted as Lecturers. Instances have been shown wherein similarly situated persons, who were appointed before 1.1.73 have been designated as Demonstrators and then promoted to the post of Lecturers and in the hierarchy, they have gone even up to the post of Principal and Head of the Department of their subjects in different constituent colleges. In the year 1969, the University Service Commission issued letter to the Ranchi University to the effect that the Demonstrators in affiliated colleges have to be treated as "Teachers" within the meaning of Section 2(p) of the Bihar State Universities Act, 1960, and that the Graduate Laboratory Assistants in the colleges should be re-designated as Demonstrators with a further rider that the Laboratory Assistants with I.Sc. qualification cannot be absorbed as demonstrators in a college. In the said writ petition, the State Government did not contest but the Ranchi University contested the case and practically, supported the case of the Petitioners as Ranchi University at different stages was recommending the case of the Petitioners for their re-designation as Demonstrators. Similar position arose in respect of the Graduate Laboratory

Assistants in the Muzaffarpur Institute of Technology, Muzaffarpur. They came up before this Court in C.W.J.C. No. 522 of 1979 (R) with a prayer for issuance of writ of mandamus commanding upon the State Government to designate them as Demonstrators and implement the U.G.C. pay scale prescribed for the Demonstrators with effect from 1.4.1973. The case was highly contested by the State Government, but ultimately, it was held by this Court that the Petitioners in that case who were Laboratory Assistants should be re-designated as Demonstrators and they should be given the scale of pay of Demonstrators as per U.G.C. norms. Accordingly, Laboratory Assistants in the technical colleges, schools and Institutions had been re-designated as Demonstrators. The same analogy was prayed to be followed in the case of the Petitioners also and the said judgment of the Division Bench, as contained in Annexure-2/1, was also referred to in the earlier writ petition filed by the Petitioner. On the basis of the judgment in C.W.J.C. No. 522 of 1979, the State Government by letter dated 23.5.81 designated the Laboratory Assistants as Demonstrators working under the different constituent colleges of Ranchi University, but the same has not been followed in the case of the Petitioners. The same was reiterated by the State Government in the year 1983, but the Petitioners' cases have not been taken up in their proper perspective. In the year 1991, the Ranchi University took a decision that the Laboratory Incharge/Laboratory Technician are to take classes without any remuneration provided that they have the requisite qualification and as per that decision, the Petitioners are taking classes without pay scale of Demonstrators and certificates from different colleges by the Principal or by the Head of the Department have been filed showing that the Petitioners are taking regular classes in their subjects not only up to the B.Sc. level but up to the M.Sc. level also. Petitioners' several representation to the concerned authorities being recommended by the Ranchi University resulted in deaf ear by the State government and, as such, the Petitioners had to file the previous writ petition. Similar nature of case arose before the Calcutta High Court where Laboratory Assistants prayed for designation as Demonstrators. The prayers of the Laboratory Assistants were allowed by the Calcutta High Court, but the West Bengal Government went to the Supreme court in Civil Appeal No. 2530 of 1993, but the said appeal was dismissed and it was held that the action of the West Bengal Government in not conferring the status of teaching staff upon the Laboratory Instructors/Assistants who have got the requisite qualification to come within the purview of teaching staff is prima facie arbitrary and thereby violative of Article 14 of the Constitution of India. All these points were considered by the learned Single Judge in C.W.J.C. No. 387 of 1995 (R) and reference was also given in respect of the writ application filed by the Graduate Laboratory Assistants in C.W.J.C. No. 522 of 1979, as mentioned earlier, and on the analogy of the principle enunciated by the Division Bench and on the basis of the Calcutta High Court's judgment affirmed by the Apex Court, the writ petition was disposed of with the following direction and observation:

No counter affidavit has been filed by the State but counter affidavit has been

filed by the Ranchi University. According to the Ranchi University, the State Govt. has to take a decision in this regard. The University has referred to its recommendation to the Dept. of Human Resources Development, Govt. of Bihar, Vide letter dated 1.10.94. The State Government has not taken any final decision in the matter and the University has supported the case of the Petitioners. This writ application must succeed. Accordingly mandamus is issued to the Respondents 1 to 2 to pass appropriate orders on the representation of the Ranchi University in the light of the decision of the Supreme Court and the decision of this Court referred to above. They are given three months" time to pass final orders. There will be no order as to costs.

4. But the cases of the Petitioners were not considered in its proper perspective and the Secretary of the Higher Education Department, Bihar, under Human Resources Development had rejected the representation of the Petitioners by a cryptic order as contained in Annexure-10. When the Petitioners" grievance had not been redressed in its proper perspective, the Petitioner came up before this Court in a contempt petition being M.J.C. No. 508 of 1995 (R). Annexure-10 by which the representation of the Petitioners had been rejected on the basis of the mandamus being issued by this Court in C.W.J.C. No. 387 of 1995 (R) was considered by this Court and it was held that the judgment of this Court and observations were not considered by the Secretary, Higher Education, Human Resources and Development Department. The observations were made in the following manner:

It appears that there is total non-application of mind regarding the judgment arrived at by this Court. Practically, it was held that the Petitioners in the writ application were totally covered by the decision arrived at by a Division Bench of this Court and that of the Supreme Court. Only because they have come on a later date and their nature of work being the same although not designated, they are being deprived of the promotion, but in disposing of the representation, the relevant factors and the decisions of the courts have not been taken into consideration at all, rather it appears that the representation was disposed of mechanically by referring to the earlier notification of 1983. But from Annexure-3 series, it appears that Govt."s stand is not proper as several other persons have been given that benefit even after the notification of 1983. Thus, I find that the disposal of the representation was not only improper but unjustified too in view of the decision given by this Court in the order itself.

Hence, the decision given on the representation of the Petitioners had been set aside and the matter was sent back to the Secretary, Higher Education in the Department of Human Resources and Development to dispose of the matter on application of mind. Then Annexure-13 comes by which again the representation of the Petitioners have been disposed of. This time, it appears that the matters have been considered and then the representations have been rejected by referring to some letters of the State Government on different dates. The main ground of rejection is that as by the letter of 1969 University Grants Commission

had recommended for abolition of the posts of Demonstrators and the same had been done by making a cut off date on 1.1.73, the Petitioners being appointed after 1.1.73 can not be considered to be redesignated as Demonstrators as the post of Demonstrators are not there and if they are being designated as Demonstrators then the same would mean creation of some posts derogatory to the norms and recommendation made by the University Grants Commission. It has also been stated in Annexure-13 that the cases of the Petitioners do not stand on the same footing as that of the persons, who had been designated as demonstrators earlier by the State Government on the basis of the judgment given by this Court, as mentioned earlier, as their appointments were before 1.1.73. Moreover, the Petitioners' cases have been attempted to be differentiated from the cases of the Laboratory Assistants of Technical Institutions. It has also been stated that the persons if by mistake have been designated as Demonstrators even after the decision of abolition of the posts of Demonstrators after 1.1.73, those shall be considered for cancellation and orders would be passed accordingly.

5. Let me first of all consider the defence of the State Government in respect of abolition of the posts of Demonstrators from 1.1.1973. This defence for the first time is taken by the State Government when the contempt petition was filed by the Petitioner when the direction given by this Court in respect of C.W.J.C. No. 387 of 1995 (R) was allegedly violated. In the writ petition, the State Government kept silence and not filed any counter affidavit. Ranchi University contested the case, although the Ranchi University had practically supported the case of the Petitioners. On consideration of all the facts available on the record, the learned Single Judge of this Court had practically allowed, the contentions of the Petitioners that they should be designated as Demonstrators as they were imparting instructions to the students not only in the Laboratory but also in the theory classes. Such sort of new plea for the first time taken in the contempt petition has been deprecated by the Apex Court and in one of such cases (Reference 1996 SC 302 T.R. Dhananjay v. J. Vasudevan), when a new plea of Govt. letter or circular was taken as a defence in the contempt petition, the Hon'ble Apex Court by rejecting such plea imposed punishment holding contempt of court. Thus, such sort of belated plea can only be considered as an after thought by the State Government only to defeat the cause of the Petitioners. The submissions in that respect made by Mr. Tapen Sen are well founded. Mr. V. Shivnath, appearing for and on behalf of the State Government tried to impress upon this Court that such plea was always there and it was known to the Petitioners but they did not state so in their earlier writ petition. That such information of abolition of posts of Demonstrators were not known to the Petitioners and not even to the Ranchi University can be well inferred as there was not an iota of mention of such position in any of the earlier cases.

6. The second contention of Mr. Tapen Sen is that such sort of cut off date fixing 1.1.1973 by letter of 1975 by the State Government is not only illegal but such sort of taking away the rights already accrued to a person by a circular with

retrospective effect is against all norms. Regarding cut off date, Mr. V. Shivnath has referred to a decision of the Apex Court as reported in U.P. Kattha Factories Association Vs. State of U.P. and others, and submitted that for implementation of a policy, the Government has got every right to fix a cut off date and some persons may suffer from such fixing of cut off date and for such sufferance alone because of fixing of cut off date for the purpose of implementation of a policy decision of the Government can not be held to be ultra vires. It is true that the Govt. has got right to fix a cut off date, but whether such cut off date can have a retrospective effect is a matter to be considered in the circumstances of each particular case. In the present case, the Petitioners were appointed as Laboratory Instructors/Laboratory Technician etc. and there was circular by the State Government long back in the year 1962 that such employees have the qualification of Graduation in Science, they are to get the scale of Demonstrators and shall get all promotional avenues. In that view of the matter, when the Petitioners have been appointed in their posts having the qualification of Graduation in Science and even the higher than that, they have the legitimate expectation that the State Government policy would be applicable to them and they were making representations time and again and their cases were also being taken in all earnest by the Ranchi University in recommending their cases. Their legitimate expectation became more when the similarly situated persons had been given the promotional avenues and some of them have now become the Head of the Department or Principal of different colleges. In that view of the matter, such retrospective effect of the letter of 1975 have definitely, forestalled the vested right of legitimate expectation of the Petitioners and, as such, definitely bad in the eye of law. Moreover, it appears that this withdrawal of the posts of Demonstrators from 1.1.1973 was never acted upon because upto the year 1981 and even after that also not only the State Government but even the B.P.S.C. had also recommended for posting of several persons as Demonstrators. Now, in the counter affidavit, the State Government is coming with the plea in the following manner as enumerated in para 5 of the counter affidavit:

That the State Government has taken a decision vide issue of letter No. 198 dated 4.1.1981 that the cases of the Laboratory Assistant of C.M. Science College at Darbhanga and their absorption against the post of Demonstrators was against the decision of the State Government as contained in letter No. 1216 dated 18th September, 1975. All such absorptions vide various letters as enumerated from internal page 5 to internal page 12 were held to be against the decision of the State Government dated 18th September, 1975.

Thus, it is admitted from the side of the State Government that even after the abolition of the posts of Demonstrators long back in the year 1975 to be effective from 1.1.1973, in various colleges posts of Demonstrators have been created and filled up. Only with the plea that those are against the decision of the State Government, such sort of posting and filling up of the posts of Demonstrators can not be nullified by such statement alone. In the Annexure-13, which is impugned in this writ petition, it has been stated that steps are being taken for

making every thing straight. But what steps they have taken, have not been stated in clear terms. Thus, such plea has now been taken only for the purpose of defeating the cause of the Petitioners. By refereing to a decision of the Apex Court as reported in 1994 (3) Supp. SCC 661 (State of M.P and Ors. v. Ramesh Kr. Sharma) Mr. V. Shivnath submitted that if a wrong has been committed by the State the same can not be allowed to be continued and perpetuated again and again. But here the question of perpetuating wrong is not there, rather it is to be seen whether the policy decision of the Government was ever implemented or not. The circumstances and instances reveal that it was never implemented and after this Court's verdict, the State is coming with this plea of policy decision not only to frustrate the cause of the Petitioners but to evade court's verdict also.

7. Another plea has been taken that those who have been given the posts of Demonstrators were not like that of the Petitioners. Those graduate Laboratory Assistants who were treated as Teachers, they have been given the right of teachers and all consequential reliefs flow to them as teachers as stated in Para 9 of the counter affidavit. But the Petitioners are never considered as Teachers, but from the very beginning, the Petitioners were taking the plea that they are imparting instructions not only in laboratory but also in theory classes of the Science students and they have produced a huge number of documents by which it can be shown that they were for all practical purposes considered as teachers by the respective colleges where they are appointed and by the Ranchi University also. At this stage, when much water had flown, the State Government can not say that the Petitioners who are the Graduate Laboratory Assistants may not be considered as Teachers, when the definition of Teachers included their duties too. They are even considered as "Vocational Staff" which has been defined in Section 2(xix) of the Statute of 1980 as follows: "(xix) University servant entitled to vacation means teachers in the employment of the University," and, as such, the definition clearly indicates that the staff who are considered as "Vocational Staff" are the teachers under the employment of the University. It could be proved beyond all reasonable doubts that the Petitioners have been taking classes and have been imparting instructions not only in the laboratory but also in the theory classes and the Annexure-5 which was filed in C.W.J.C. No. 387 of 1995 (R) was taken into consideration by the learned Single Judge and the present Annexure-9 also clarified the position. Thus, for all purposes, the Petitioners were definitely, teachers as per the definition of the Universities Act. Even if they are not named so by the nomenclature of their posts but the duties discharged by them clearly show that they are the teachers for all practical purposes.

8. Another point has been raised by Mr. Sen that the instructions given by the U.G.C. for abolition of the posts of Demonstrators is beyond the jurisdiction of U.G.C. He has referred to the Preamble of the Universities Grants Commission Act, 1956. According to him, the Preamble signifies only to have an uniform teaching standard in all the Universities and for the purpose of co-ordination and

determination of standards in Universities and the U.G.C. have no right to interfere with the statutory provisions of Bihar State Universities Act. I am not going in that aspect of the matter. For uniform teaching standards, the University Grants Commission may give instructions to the different Universities for the purpose of abolition of the posts of Demonstrators, but whether that instruction has been acted upon or implemented or not is to be seen from the circumstances of the case. The State Government had taken that instruction and according to them, they have implemented it by the letter of 1975, but till today no steps have been taken from the side of the State Government to change the definition of teachers in the Universities Act, rather after that letter was issued, amended Act 1976 came in force and in that Act also, the definition of teachers included the Demonstrators and other persons imparting instructions in any department. So, there was no implementation of the letter of 1975 of the State Government and the said policy decision on the instruction of the Universities Grants Commission remained a paper transaction only. It has never been stated anywhere either in the counter affidavit or in the impugned Annexure-13 that the posts of Demonstrators have been deleted from definition of teachers in the Universities Act, rather not only Demonstrators but the persons imparting instructions in the Department remained as teachers under the Section of the Act itself and the name of the Demonstrators have been specifically included and hence there is no other alternative but to hold that the letter of 1975 of the State Government regarding abolition of the posts of Demonstrators have never been acted upon. Moreover, if the posts of Demonstrators is to be deleted as per the instructions of the Universities Grants Commission, then the said instructions must be there in all the States including the West Bengal. But from the judgment of the Supreme Court arising out of the West Bengal case, it appears that the posts of Demonstrators were still there in the State of West Bengal. So, the instructions of the Universities Grants Commission can not be effective only in the State of Bihar, when the State Act remained unamended even after the said instruction or after the acceptance thereof by the State of Bihar. Thus, the instructions of Universities Grants Commission for uniformity of all the Universities in the union territory had not been accepted and the State of Bihar from the circumstances, as stated earlier, had also not implemented that instructions (might be taken as a policy decision without its implementation whatsoever). Thus, such plea of abolition of the posts of Demonstrators from 1.1.1973 is only an afterthought from the side of the State Government only to defeat the cause of the Petitioners.

9. Let us now take the other view. Even if the post of Demonstrator is considered to be abolished, then also the Laboratory Assistants or Laboratory Instructors against which the Petitioners are serving are also included within the definition of teachers from the nature of their duties being discharged on imparted and, as such, they remained as teachers and, all avenues for promotion must flow thereof from the definition of teachers itself and they can not be avoided of getting benefits of all promotional avenues only because the nomenclature of the

posts of Demonstrators is being abolished. When the Petitioners remained as teachers from the nature of their duties, they should remain so for all consequential purposes also. They may not be entitled to get the designation of Demonstrators if the State Government, remains so adamant sticking to their so called policy decision, but they remained as teachers for all practical purposes.

10. The submission of Mr. V. Shivnath that the Petitioners are not stagnant in their posts as they were getting the promotional avenues of time bound promotions during their service career has got no substance at all because all the persons are entitled for these benefits and by giving the said benefit alone, the State Government can not debar the Petitioners in getting their promotional avenues as being included within the definition of teachers. It is true that in the writ petition, the main prayer is for re-designating the Petitioners as Demonstrators and some other consequential reliefs are being prayed but if the posts of Demonstrators is not in existence because of the abolition, as stated by the State Government, then they can not be re-designated so as Section 35 of the Bihar Universities Act would come as a barrier. But as the Laboratory Instructors or the Laboratory Assistants, Incharge and Technician are also having the requisite qualification of getting the posts of Lecturer and high up in the hierarchy, they can not be debarred so as they are the teachers within the definition of the Act and hence entitled to get all benefits thereof. The earlier writ petition was disposed off by giving mandamus for re-designating the Petitioners as Demonstrators and to take a final decision in that respect. But in the circumstances, if there is any difficulty from the side of the State Government because of their existing letter in the year 1975 for re-designating the Petitioners as Demonstrators, they must be considered as teachers as discussed earlier and they should be given all proper pay scales and chances of promotional avenues in the hierarchy within the Universities Act itself.

11. Thus, the writ petition is allowed. Annexure-13 is hereby quashed and the State Government is hereby asked by issuance of mandamus to treat the Petitioners as teachers and give them all consequential benefits including promotional avenues, if there remains any technical difficulty in designating the Petitioners as "Demonstrators".