

(1995) 02 PAT CK 0007
In the Patna High Court
Case No : C.W.J.C. No. 8170 of 1995

Dr. Ram Chandra Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-02-1995

Acts Referred:

Citation : (1996) 1 PLJR 849

Hon'ble Judges : Shashank Kr. Singh, J

Bench : Single Bench

Advocate : Hemant Kumar Jha, for the Appellant; Yugal Kishore, for State and P.N. Jha, for University, for the Respondent

Final Decision : Allowed

Judgement

Shashank Kr. Singh, J.—By the present application, the Petitioner has challenged the notification of the State Govt. dated 27.7.95 as contained in Annexure 18, by which the Petitioner has been posted as Assistant Regional Deputy Director and his services is to be treated in the Bihar Education Services Class II from that date.

2. The contention of the learned Counsel for the Petitioner is that the Petitioner was initially appointed as lecturer in English with effect from 25.3.1972 under Mithila Sanskrit Research Institute, Darbhanga and the said post belongs to the Bihar Education Service-II and he was confirmed in Bihar Education Service-II (hereinafter referred to as the "BES-II", with effect from 25.3.1972.

3. Subsequently, it has been stated that as the said Institute had been taken over as a unit of the Kameshwar Singh Darbhanga Sanskrit University, the Petitioner filed a representation before the authorities requesting them that his service should be recalled from the Institute and he be posted in the Department reckoning his seniority from the date of his initial appointment.

4. Learned Counsel appearing on behalf of the University has also stated that the Petitioner continued to be in BES-II, as the Institute has never been taken over

by the University, though according to him the said Institute should have been a part of the Sanskrit University.

5. Learned Counsel appearing on behalf of the State has filed a counter-affidavit and stated that the Institute had already been taken over by the Sanskrit University and, as such, the Petitioner being an employee of the said Institute, he also became an employee of the University.

6. My attention has been drawn towards certain paragraphs in the writ petition, specifically paragraphs 4 to 7 and 48, which goes to show that earlier the persons, who were also employee of the Institute has been taken over by the University as such, they being the employees of the University the benefit, which was applicable to the employees of the Universities, should be given to them and they should be made to retire after completing 62 years of age. The stand of the State in the said writ petition was that the Institute still continues to be under the control of the State Govt. and as the Petitioners of the said writ petition were appointed by the State Govt., they continued to be the employees of the Stated Government and being so would superannuate after completing 58 years of service. Subsequent thereto other writ petitions have also been filed and the stand of the State has been similar as stated earlier. The said writ petition being C.W.J.C. No. 4237/93 is still pending disposal. The State Govt. cannot be allowed to take different stands as per their desire in different cases as it is the consistent stand of the State Govt. that the Institute has not been taken over and is still being controlled by the State Government.

7. The submission of the learned Counsel for the University is that though the University wants to treat the Institute as their unit but so far the stand of the Stated Govt. is that the same continues to be under the State Government.

8. Learned Counsel for the State could not bring on record any document to show that the Petitioner's service has been transferred to the Sanskrit University and as it is the accepted case of the parties that the Petitioner was initially appointed on 25.3.1972 in the Bihar Education Service-II, as such, the State Govt. cannot re-determine the seniority of the Petitioner and the same has to be reckoned from the date of initial appointment of the Petitioner, i.e. 25.3.1972.

9. In the facts and circumstances stated above, the notification of the State Govt. dated 27.7.95, as contained in annexure-18, is quashed and the Respondents are directed to pass a fresh order after reckoning the seniority of the Petitioner with effect from 25.3.1972. It goes without saying that consequential benefit, if any, is to be granted to the Petitioner.

10. In the result, this application is allowed to the extent indicated above.