
(1988) 07 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 992 of 1987

Dr. Satyadeo Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-07-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1989) 37 BLJR 102 : (1989) PLJR 280

Hon'ble Judges : P.S. Mishra, J;B.N. Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

P.S. Mishra and B.N. Sinha, JJ.—This application has been placed before us for disposal in view of the order dated 5-2-1988 to interpret Sections 3 and 6 of the Bihar Private Medical (Indian System of Medicine) College (Taking over) Act, 1985 (hereinafter referred to as "Act").

2. The petitioners herein claim to be the teachers and non-teaching staff appointed by the erstwhile Managing Committee of Shri Dhanwantri Ayurvedic College, Buxar (hereinafter referred to as College) According to them they were all brought in the college as teachers and non-teaching staff of the college, as they were qualified for such appointments and the then Managing Committee selected them and gave appointments accordingly The legislature of Bihar in the 36th year of Republic of India adopted the Act (Bihar Act No. 10 of 1985) for taking over the Private Medical (Indian System of Medicine) Colleges of the State of Bihar by the Government of Bihar. By a notification as contained in memo No. 840 dated 9-12-86 is provided in Section 3 of the Act the State Government notified 1-6-86 as the date of taking over the college and the Management and control thereof In the said notification, however, it introduced as one of the conditions a cut off date as on 1-3-83 for taking over the services of teachers and non-teaching staff of the college. The notification stated, inter alia, that the department concerned of the State Government would appoint a committee to

examine whether the teachers and non-teaching staff appointed in the college until 1-3-83 possess minimum qualification and satisfy eligibility conditions for appointment or not and accordingly takeover their respective services. The petitioners have questioned the validity of the said condition. Some other persons have chosen to intervene but they have supported the petitioners.

3. The petitioners have alleged that the condition as aforesaid has been introduced for the teachers and non-teaching staff of the college and a cut-off date since been introduced, in so far as they are concerned, to be much beyond the date of taking over the college but no such condition has been applied in the case of other Private Medical College taken over by the State Government. According to them the cut-off date, apart from being ultra vires, is in the teeth of the petitioners' right under Articles 14 and 16(1) of the Constitution of India.

4. Many other facts are stated in the writ application repeated and multiplied in the affidavits filed on behalf of the petitioners as also on behalf of the intervenors but except the facts noticed above other facts are not relevant. The Act u/s 3 has provided, inter alia, that the State Government by a notified order and from the date mentioned therein would take over the college and the management and control thereof would thereupon be exercised by the State Government in such manner as specified in the said order. Section 6 of the Act, inter alia, provides for determination of terms and conditions of the teaching staff and other employees of the college and says that from the date of notified order, all the staff employed in the college shall cease to be the employees of the college body and continue to serve the college on an ad-hoc basis till a decision after examining the bio-data of each member of the teaching staff and other categories of the staff is taken and service conditions altered and the rank, pay and allowances and other conditions of service are determined. Until such determination the services of the teachers and non-teaching staff are transferred from the control of the previous management to the State Government with effect from the date mentioned in the notified order for taking over the college and they continue as servants of the State on some terms and conditions as before.

5. Section 3 of the Act which says that the management and control upon the college shall on such taking over be exercised by the State Government in such manner as specified in the said order, in our view, cannot be extended to a period prior to the transfer of services of the teaching and non-teaching staff of the college to the State Government as in terms of Section 6 of the Act such employees cease to be the employees of the college only from the date of the notified order and not a date prior to that. That being the position, there could hardly be any justification for treating the services of those who could have ceased to be the employees of the college only after taking over of the college to be of no consequence for the period between 1-3-83 and 1-6-86. This amounts to derecognising their appointments made by a competent management of the college during the said period. Such determination will be violative of express command of the provision as contained in Sections 3 and 6 of the Act.

6. An attempt has been made to suggest that the cut-off date of 1-3-83 has been adopted in the notification of the State Government for the reasons that the college had been inspected by the committee appointed by the State Government for the purpose of taking over on the said date, although the notified take over date is 1-6-86. The Act came into force* on 7-8-85. No order could be made, in the absence of any provision of law either for taking over the college and the management and control thereof or the services of the employees of the college, from a date earlier than the date on which the Act was enforced.

7. Since taking over of the college could be effected only prospectively the State Government could not cease the employment of any staff of the college from a date prior to taking over. That would amount to giving to the provisions under Sections 3 and 6 introspective operation. It is well settled that a law applies only prospectively more so when it determines the rights or interests unless specifically made retrospective. Since the provisions as contained in Sections 3 and 6 of the Act intend on the one hand to determine the rights of the previous management of the college and Section 6 confers upon the teachers the rights of a Government servant any retrospective operation given to them by exercising executive discretion of the State Government's bad in law. Any thing of this kind could not be done in the garb of taking notice of certain administrative acts like the inspection of the college. For the said reasons, in our view, the cut-off date introduced in the notified order as contained in Annexure-6 is ultra vires and without jurisdiction.

8. Since we are satisfied that the said condition has to be quashed for the reason as above, we do not feel any necessity to go into the question of violation of Articles 14 and 16(1) of the Constitution of India.

9. In the result, the application is allowed. The cut-off date as contained in Annexure-6 and conditions enumerated therein as to the services of the teachers and non-teaching staff of the college are quashed. The respondents are directed to proceed to take the service of the teachers on and from the date in the notified order namely 1-6-86. The petitioners shall be accordingly entitled to enforce their rights in accordance with law. Petitioners and other teachers and non-teaching staff are entitled to reckon their services in accordance with the provision u/s 6 of the Act.