
(2005) 03 PAT CK 0096
In the Patna High Court
Case No : CWJC No. 10301 of 2003

Dr. Satyadeo Pandey and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-03-2005

Acts Referred:

Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985 —
Section 3, 6, 6(2), 6(3)

Citation : (2005) 2 PLJR 399

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : B.S. Tiwary, in 10301, 10262, 10410, 10574, 1983 and 886; Mr. Anil Kumar Dwivedi in 6636; M/s. Ambar Nath Banerjee, Bimlendu Shekhar Thakur in 9657; M/s. Abhay Kumar Singh, Shailesh Kumar Singh in 10025, 10254; M/s. Ganpati Trivedi, Prabhakar Kumar and Rafi Ahmad in 11414; M/s. Ganesh Prasad Singh and Santosh Kumar Sinha in 12105 and 12783, for the Appellant; Ashok Kumar Singh, Prabhat Kumar Singh and Kumar Priyaranjan, for the Respondent

Judgement

Shiva Kirti Singh, J.—All the 12 writ petitions and one contempt petition have been heard together because all the petitioners claim to be teaching or non-teaching employees of Shri Dhanvantri Ayurvedic College, Buxar at Ahirauli (hereinafter referred to as "the College"), from various dates prior to taking over of the College by the State of Bihar u/s 6 of the Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985 (hereinafter referred to as "the Act"). Petitioners are aggrieved by the report dated 18.6.1999 of Committee constituted under sub-section (2) read with sub-section (4) of section 6 of the Act and also with the decision of the State Government dated 29.8.2003 on receipt of the report of the Committee taken under subsection (3) read with sub-section (4) of section 6 of the Act. As the facts of various writ petitions would disclose, petitioners are aggrieved largely on account of not being permitted to continue in the service of the taken over College and in some cases due to re-determination of their rank in lower categories. The cases were heard in detail at

the stage of admission itself and are being disposed of by this common judgment and order. For the sake of convenience reference to facts have been made mainly from the records of CWJC No. 10301 of 2003 which was argued as the leading case and in which the State had filed a common supplementary counter affidavit copies whereof were served on Learned Counsel appearing for the petitioners in other analogous writ petitions. That has been used for arguments in all the cases without any objection. Relevant facts of other writ petitions and contempt petition will be referred to at appropriate places wherever found necessary.

2. Before coming to the facts it is deemed necessary to consider substitution petitions filed in respect of petitioner to. 1, Ravindra Kumar Pandey of CWJC No. 10254 of 2003 who died on 11.8.2004 and petitioner No. 3, Balmiki Pandey of CWJC No. 10574 of 2003 died on 15.9.2004. Both of them died during the pendency of the writ petitions in this Court. Their widows Smt. Raj Kishori Devi and Smt. Usha Devi respectively have appeared through their counsel and have prayed to be substituted. The prayer for substitution in both the cases is allowed.

3. The relevant common facts may first be noticed in brief. The College was established by private individuals in the year 1972. It was affiliated to Bihar University, Muzaffarpur on 13.11.1975. After promulgation of the Act in the year 1985 the College was taken over by notification dated 6.12.1986 (Annexure-1) with effect from 1.3.1983. Subsequently as per judgment and order dated 12.7.1988 in writ petition bearing CWJC No. 992/87 the date of take over was modified and changed to 1.6.1986 in place of 1.3.1983.

4. At this stage it is relevant to notice that the Act (Bihar Act 10/85) was preceded by Ordinances with similar provisions. Section 3 of the Act empowers the State Government to take over a private Medical College of Indian System of Medicines defined under the Act by issuing a notification. For deciding the issues in these cases Section 6 is of substantial significance:- It reads as follows:

"Determination of terms of the teaching staff and other employees of the College.--(1) From the date of the notified order, all the staff employed in the College shall cease to be the employees of the college body:

Provided that they shall continue to serve the College on ad hoc basis till a decision under sub-section (3) and (4) of the section is taken by the State" Government.

(2) The State Government will set up one or more committees of experts and knowledgeable persons which will examine the bio-data of each member of the teaching staff and ascertain whether appointment, promotion or confirmation was made in accordance with the Act, Statute or regulations of the University concerned and in keeping with the guidelines laid down by the Indian Medical Council of India and take into the consideration all other relevant materials including length of his service in the College, and submit its report to the State Government.

(3) The State Government on receipt of the report of the Committee or Committees, as the case may be, will decide in respect of each member of teaching staff on the merits of each case whether to absorb him in Government service or terminate his service or to allow him to continue on an ad hoc basis for a fixed term on contract and shall, where necessary, redetermine the rank, pay, allowances and other conditions of service.

(4) The State Government shall similarly determine the terms of appointment and other conditions of service of other categories of staff of the College on the basis of facts ascertained either by a Committee or by an officer entrusted with the task and the provisions of sub-sections (2) and (3) of this section shall apply mutatis mutandis to such cases".

5. From a Gazette notification dated 29th January, 1991 containing Government notification dated 17.11.1990 as contained in Annexure 3 it appears that in the light of earlier date of take over i.e. 1.3.1983 a Committee examined the bio-data of teaching and non-teaching employees and on the basis of its report services of 103 employees of the College were approved by the State Government and ultimately notified on 2.1.1992. After the date of take over was re-notified as 1.6.1986 in the light of a judgment of this Court in a writ petition filed by Dr. Satyadeo Pandey and 38 others then steps were taken by the State Government and 39 further employees were accepted to be in service under the College. For their absorption, it appears that screening committee was reconstituted vide notification No. 413 dated 12.4.91 in view of Government's decision contained in annexure-3. The report of the Screening Committee said to be dated 7.12.1991 as contained in annexure-4 discloses that since the decision of the Government in favour of 39 such employees was already taken hence the Screening Committee refrained from examining and commenting upon the issue whether the appointments were regular or not. The Committee reported only in respect of their educational/technical qualifications. The said report only was notified vide gazette notification dated 2.1.1992 contained in annexure-5. Thus, 39 more persons claim to have been absorbed in the college besides 103 employees who were absorbed vide notification dated 2.1.92. The petitioners of C.W.J.C. No. 10301/03 belong to the aforesaid group of 39 employees.

6. Several writ petitions and Letters Patent Appeals by persons claiming to be employees of the College find a bare mention in an earlier judgment dated 12.5.1995 (Annexure-8) but none of the parties have given the facts and fates of those cases. The records disclose that in the year 1988 several persons approached this Court by filing writ petitions bearing C.W.J.C. Nos. 738, 929 and 2963 of 1988 claiming themselves to be validly appointed employees of the College since prior to its take over with effect from 1.6.1986 and raising a grievance that Principal of the College had illegally omitted their names from the list of teachers and non-teaching staff as a result whereof they could not be absorbed in service of the College after its take over by the State. It further appears from order dated 29.1.1992 passed by a Bench of this Court in a

contempt petition bearing M.J.C. No. 529/90 contained in annexure-7 that the writ petitions were disposed of on 27.10.1988 directing the respondents to constitute a committee of more than one responsible officer to look into the correctness or otherwise of allegations of the petitioners of those writ petitions and whether they were entitled to continue on their posts after take over of the College. Vide order contained in annexure-7 the contempt petition was disposed of directing the Chief Secretary of the Government of Bihar to constitute a Committee in accordance with order of the writ court within three weeks. The State Government was further directed to take a decision on the basis of report to be submitted by the Committee in accordance with the provisions of the Act within one month from the date of submission of the report. Annexure-7 further discloses that in fact a fresh Screening Committee was ordered to be constituted by the State Government consisting of Secretary-cum-Health Commissioner, Department of Health, and one more I.A.S. Officer holding a responsible post under different department of the State Government and any member of Central Council of Indigenous Medicine. This Committee was directed to examine the cases of the employees of the College appointed till 1.6.1986 and working in the College on that date and to submit a report to the State Government within six months from the date of constitution of the Committee.

7. It further transpires that some of the employees of the College filed two writ petitions bearing C.W.J.C. No. 4486/91 and C.W.J.C. No. 4212 of 1992 which were disposed of by judgment and order dated 12.5.95 contained in annexure-8. From that judgment it appears that petitioners in those two writ petitions raised two fold grievances. One was against subjecting them to a fresh scrutiny in compliance of order passed in M.J.C. No. 529/90 on the ground that they had already been absorbed in Government Service after scrutiny of their cases under the Act and that the order in the contempt case was not binding on them. The other grievance of some of the petitioners was that they had been wrongly absorbed on the post of Medical officer vide notification dated 2.1.92 when they are eligible for the higher post of Demonstrator. After considering their grievances in detail, as appears from paragraph-7 of the judgment the court found difficulty in accepting that there was a proper order for absorbing the employees belonging to the group of 39 in the service of college after its take over. In paragraph-8 of the judgment further reason was recorded as to why the court was not inclined to stall fresh scrutiny of the cases of the petitioners. It was noticed that there had been piecemeal scrutiny of the teachers and non-teaching staff of the College at different stages after consideration of cases of 102 and 39 persons and cases of 84 other persons were also considered subsequently who had filed different writ petitions. In such circumstances the court held in Annexure-8 that in the facts of the case it is only just and proper that fresh scrutiny is made and appropriate decision taken regarding absorption or otherwise of the persons concerned. The grievance of some employees that they had been wrongly not absorbed as demonstrators although they had requisite qualification was left to be decided by another Screening Committee which was

said to have been constituted in the light of direction in M.J.C. No. 529 of 1990. The court observed that report of the Screening Committee dated 2nd January, 1992 does not show that the provisions of the take over Act, Statutes and regulations of the University and guidelines laid down by Central Council of Indian Medicines were taken into consideration, as per the mandate of Section 6(2) of the Act. The writ petitions were disposed of with a direction to the State Government to get the cases of the petitioners alongwith others scrutinised afresh according to the provisions of section 6(2) of the Act and to take a fresh decision regarding their absorption in Government service in accordance with law at an early date preferably within six months.

8. In order to comply with the various orders of this Court passed in writ petitions/contempt petition the State Government resolved vide resolution dated 7.8.98 contained in annexure-9 to constitute a three Members Screening Committee to scrutinise the case of teaching and non-teaching employees appointed till 1.6.86. The said Screening Committee submitted its report dated 18.6.99 which has been annexed as Annexure-C to the counter affidavit filed on behalf of respondent-State. It appears that in the light of the said report the concerned department of the State Government issued notices to the concerned employees communicating to them the comments of the Screening Committee relevant for the concerned employees and inviting explanation. Some such notices and explanations have been annexed to the writ petition. Thereafter show cause notices were issued asking the petitioners as to why their services be not terminated. Petitioners in receipt of such notices submitted their show cause and a writ petition bearing C.W.J.C. No. 3469/99 was filed by one Dr. Brahameshwar Nath Tiwary and others, employees of the College for a direction to the respondents to act in the matter on the basis of materials permitted u/s 6 of the Act and in the same manner and on the same criteria as was applied in the case of two other similar colleges taken over by the State namely Yatindra Narain Astang Ayurved Mahavidyalaya, Nath Nagar, Bhagalpur and Maharani Rameshwari Bhartiya Chikitsa Vigyan Sansthan, Mohanpur, Darbhanga. To demonstrate the criteria adopted for the purpose of absorption of employees for two other colleges, petitioners have placed reliance upon Annexure-24, a resolution of Government of Bihar in the concerned department dated 21.1.89 and the recommendations of the Screening Committee in respect of teaching employees of those two colleges. A copy of order dated 22.6.2000 disposing of C.W.J.C. No. 3469/99 has been annexed as annexure-20.

9. By that order this Court permitted the petitioners to raise their objection to the effect that the Screening Committee had adopted the criteria beyond the scope of section-6 of the Act, to the State authorities and such objection was to be decided taking into consideration the recommendation of the Screening Committee and provisions of Section-6 of the Act. It was further observed that the Screening Committee shall act strictly in accordance with the provisions of Section-6 of the Act without being influenced by any other guidelines, except law, if any, laid down by the Central Council of Indian Medicines and law laid

down by the Court of Law. The screening was also, as per that order, required to be done in similar manner as made in respect of other similarly situated taken over colleges.

10. Contempt petition bearing M.J.C. No. 986 of 2001 has been filed on the allegations that the order contained in annexure-20 has not been given effect to. That matter also has been heard as an analogous matter and is to be governed by this judgment and order.

11. The Screening Committee constituted by the State Government submitted its report dated 18.6.99 contained in Annexure-C to the counter affidavit of State. A Review Committee constituted by the State Government considered the report of the Screening Committee and agreeing with the same accepted the recommendation of the Committee for absorption of 23 teaching employees out of 84. No non-teaching employees out of 167 whose cases were considered were found fit for absorption in accordance with recommendation of the Screening Committee which recorded that it had also considered the comments of all the employees. The aforesaid proceeding of the Screening Committee dated 12.12.2000 has been annexed as Annexure-D to the counter affidavit of the State. The State Government finally issued the impugned order dated 29.8.2003 (Annexure-26) in accordance with recommendations of the Screening Committee and decision of the Review Committee. The list of 229 persons is enclosed with the said decision stating that their services were not found fit for absorption.

12. In some of the writ petitions arguments were advanced on the basis of certain facts peculiar to some of the petitioners but going by nature of reliefs claimed, this Court finds that only CWJC Nos. 12105 and 12783 of 2003 are of entirely different nature, confined to claims for higher teaching posts. The remaining 10 writ petitions challenge the recommendations of the Screening Committee (Annexure C) and decision of the State Government dated 29.8.2003 (Annexure 26). It is found appropriate to first consider the issue raised in these 10 writ petitions.

13. The most important issue raised on behalf of the petitioners is:--whether cases of those who were absorbed under orders of the State Government notified in exercise of powers under sections 6(3) and (4) of the Act or of those who claimed to have been absorbed (group of 39 employees) could be again scrutinised by a Screening Committee constituted by the State Government u/s 6 of the Act so as to enable it to annul the earlier orders and issue fresh orders? According to Learned Counsel for the petitioners there was no power or any occasion for exercise of such power. On the other hand, learned Standing Counsel Nos. 3, arguing on behalf of the State submitted that the State Government had no option in the matter but to constitute afresh Screening Committee for fresh scrutiny of all the cases of all the claimants in view of large number of orders passed by different Benches of this Court, particularly the order dated 27.10.1988 passed in CWJC Nos. 748, 929 and 2963 of 1988, order dated 29.1.1992 passed in contempt petition bearing MJC No. 529/90 contained

in Annexure-7 and order dated 12.5.1995 passed in CWJC Nos. 4486/91 and 4212 of 1992, contained in Annexure-8.

14. On careful perusal of orders contained in Annexures 7 and 8 and other related facts this Court finds merit in the submission of Learned Counsel for the State. The petitioners or the State have not brought on record copy of order dated 27.10.1988 but from its discussion in Annexure-7 for disposal of contempt case arising out of that very order it is found that instead of deciding the case of the petitioners of those writ petitions that they be accepted as employees of the College fit for absorption, the Writ Court directed the State Government to constitute a Committee for enquiry into the truth and otherwise of the allegations of the petitioners and further whether they were qualified and were validly appointed and entitled in terms of provisions of the Act to continue on their posts. By Annexure-7 another Bench of this Court noticed the rival contentions and thereafter passed a consent order directing for constitution of a fresh Screening Committee as specified in that order. The Committee was required to examine the cases of the employees of the College appointed till 1.6.1986 and working in the College on that date. The State Government was directed to take a final decision on the basis of report of the Screening Committee in accordance with the provisions of the Act within a fixed time. By judgment and order dated 12.5.1995 (Annexure 8) a Bench of this Court rejected the prayer made in one of the writ petitions to hold that since the petitioners of that writ petition had already been absorbed in Government service hence they cannot be subjected to afresh scrutiny. In paragraph 8 of that judgment the Court rejected the plea of some of the absorbed employees that orders in earlier cases cannot be applied to them as they were not parties to the earlier cases. The Court in that paragraph gave its own reasons for fresh scrutiny and held that it is only just and proper that fresh scrutiny is made and appropriate decision taken regarding absorption or otherwise of the persons concerned.

15. A similar plea was raised on behalf of the petitioners in these writ petitions. The same has to be rejected for the reasons given in Annexure-8. That judgment and order has attained finality and only because some employees were not parties to the writ petitions decided by Annexure-8, they cannot be afforded by the State a different treatment than the petitioners herein. The State is obliged to treat the petitioners of case decided by Annexure 8 as the petitioners herein. The judgment contained in Annexure-8 deciding the very issue which is being considered, has to be respected by the State by way of sound public policy although it may not constitute res judicata.

16. Even on independent consideration of relevant facts this Court is of the view that piecemeal consideration of claims for regularisation in different batches through different reports of Screening Committees would be against the scheme of section 6 of the Act and it would not be a just and proper course of action.

17. Here, it is relevant to point out that at the initial stage, as would appear from condition (gha) of the notification for taking over dated 9.12.86 (Annexure-1),

the State Government made it clear that gazetted and non-gazetted posts shall be created by the State Government as per yardstick of Central Council of Indian Medicine of India (hereinafter referred to as CCIM) and till then the employees working in the College shall get their pay as existing on the date of take over. In view of such condition of take over the State Government before taking a final decision in the matter of absorption must create posts with appropriate pay and emoluments against which only employees can be absorbed in the service of the State Government as a result of take over. The Screening Committees were therefore not required to be concerned with existence of sanctioned posts in respect of the erstwhile employees of the college. This is clear from the impugned report of the Screening Committee dated 18.6.99 contained in Annexure-C. The impugned decision of the State Government also does not disclose that the State Government has taken any decision to create required number of posts as per yardstick of CCIM. This exercise was necessary to avoid legal complications and undue burden upon the State in case number of employees eligible for absorption becomes larger than the number of posts which could be sanctioned on the basis of facts existing on the date of take over in accordance with yardstick of CCIM. There is no material to show that such exercise has been done by the State Government so far.

18. In view of aforesaid discussions one of the main issue noticed earlier is decided against the petitioner and in favour of the State.

19. The next important issue is whether the Screening Committee has adopted impermissible criteria beyond the statutory provisions in Section 6(2) of the Act. Learned Counsel for the petitioners took a stand that in spite of the criteria mentioned in Section 6(2) of the Act for ascertaining whether appointment, promotion or confirmation was made in accordance with the University Acts, Statutes or Regulations and in keeping with the guidelines laid down by the Medical Council of India or not, the State Government and the Screening Committee constituted by it was under legal obligations to confine the enquiry only to find out whether the employees had the minimum eligibility and required educational qualification or not. The validity of appointment, according to petitioners, could not be enquired into.

20. This submission has to be rejected in view of clear stipulation in clause (ga) of annexure-1 that the Screening Committee has to "verify" the list of employees working on the cut-off date. The literal meaning of word verify is to justify/to ascertain/to prove to be true. Hence before verifying minimum eligibility and teaching qualifications of individual employees it would be obligatory for the Screening Committee to satisfy itself regarding validity of appointment of the claimant employee and that he was still in service on the relevant date. Otherwise the result of scrutiny is likely to lead to most undesirable situation where persons who may not have been employees of the College would be absorbed in Government series as employees of the college. Hence such contention of petitioners deserves no further serious consideration.

21. On this issue it was further submitted on behalf of the petitioners with pointed reference to contents of the report of the Screening Committee in Annexure-C that the Screening Committee committed error in law and exceeded its jurisdiction in referring to:--(i) Provisions of Bihar Indigenous Medical Educational Institution (Regulation and Control)-Act, 1982 (Bihar Act 20 of 1982), (ii) Section 59 of Bihar State Universities Act, 1976, (iii) the Employment Exchange (Compulsory Notification of Vacancy) Act, 1959 and Rules framed thereunder (iv) various resolutions of the Governing Body and alleged irregularities by the Governing Body or its Secretary. According to petitioners the Screening Committee could have referred only to the Act, Statutes or Regulation of the University and the guidelines of CCIM for determining minimum eligibility and qualification to ascertain whether the claimed appointment or promotion was valid or not. On the issue of required experience for a particular post such as that of lecturer, Reader and Professor, according to petitioners the Screening Committee, should have adopted the same liberal approach as adopted in the case of other two similarly taken over Medical Colleges of Indian System of Medicines as would be evident from Annexure-24 and as ordered by a judgment of this Court vide Annexure-20.

22. On behalf of State learned Standing counsel took pains to refer to history of legislation in Bihar to emphasize that initially the field was occupied by Bihar Development of Ayurvedic and Yunani System of Medicine Act, 1951 under which regulations of 1959 were framed laying down qualifications for Principal and teachers. After enactment of Indian Medicine Central Council Act, 1970 CCIM became the legal authority to lay down courses of study and all relevant matters relating to imparting of teaching in Ayurvedic and Yunani System of Medicine. This Central Act also provides for recognition of Medical qualifications granted by Medical Institutions. Learned State counsel placed special emphasis upon the purpose of Bihar Indigenous Medical Educational Institutions (Regulation and Control) Act, 1982 by referring to the preamble in the Bihar Ordinance No. 200 of 1981 which was succeeded by the 1982 Act. That preamble which is quoted in paragraph-9 of judgment of this Court in the case of Dr. Sudhir Kumar Singh and Others Vs. State of Bihar and Others , shows that the Ordinance was issued to check mushroom growth of Indigenous Medical Educational Institutions in the State without providing for adequate teaching facilities which was detrimental to the interest of students. He submitted that in such a situation a college which is decided to be taken over under the Act cannot be presumed to have appointed all employees teaching or non-teaching as per legal norms and hence under the Act the employees of such college were not taken over as Government Employees. For the purpose of absorption in government service of persons employed in such college as per section 6 of the Act a proper scrutiny was necessary particularly in respect of appointment, promotion and confirmation with special emphasis as to whether they satisfied the minimum eligibility criteria for appointment and had the requisite qualification which would include minimum required experience.

23. He further submitted that Annexure 24 would show that in other two taken over colleges the number of teaching employees for scrutiny was only 13 and 26 respectively and Screening Committee suggested to redetermine their ranks on the basis of experience they had till the cut-off date. He emphasised that in case of those two colleges the Screening Committee was not called upon to determine the correctness of claim of appointment by large number of persons under orders of this Court as in case of this college nor the Committee found materials raising suspicion in respect of appointments in those colleges. On the basis of Annexure-C, the report of the Screening Committee, he submitted that in this college the situation was different and alarming due to large number of claimants. He referred to those parts of the report of the Screening Committee particularly to paragraphs 3 and 5 of the report wherein the Committee noticed on the basis of proceeding book of the governing body that after 27.4.84 the proceeding book was never signed by the President of the governing body but by another person; the proceedings were written by one typist clerk on the dictation of Secretary and the decision taken by the governing body in respect of appointment after 27.4.84 were suspicious. Paragraph-3 of the report was referred with special emphasis to show that according to resolution of the governing body dated 25.3.84, for further appointments the Principal was required to inform the governing body of necessity of appointment so that advertisement may be issued in Daily Newspapers such as Aaj, Indian Nation and Aryavert for calling candidates for interview and selection. According to the Committee further appointments were made in spite of bad financial condition of college and the appointees could not prove advertisement in any of the aforesaid Daily Newspapers. The photocopies of advertisement produced by the concerned employees was in respect of an unknown daily and the photocopies appeared to be fraudulently prepared. In the light of such report of the Screening Committee Learned Counsel for the State submitted that the State Government rightly decided not to absorb services of large number of claimants whose appointments appear to be illegal and tainted with fraud.

24. On a careful consideration of rival contentions on the issue whether the Screening Committee took into consideration yardsticks and criteria beyond the scope of Section 6 of the Act while determining the validity of appointments of persons claiming to be employees of the college and on consideration of relevant facts noticed earlier, this Court finds that to an extent the Screening Committee committed error of law and exceeded its jurisdiction in laying down several criteria beyond law. The Screening Committee found that while the college was under private control the management was not wholly up to the mark, the college was not in healthy financial condition and a number of illegal appointments were made without proper advertisement in prominent newspapers of Bihar. The Screening Committee has, on that account and on account of alleged violation of the Employment Exchange (Compulsory Notification of Vacancy) Act, 1959 and on account of certain irregularities in the constitution and functioning of the Governing Body in context of provisions of Bihar

Indigenous Medical Educational Institutions (Regulation and Control) Act, 1982 held most of the appointments of teaching and non-teaching employees to be illegal.

25. On going through the report of the Screening Committee in Annexure-C and through the alleged irregularities and provisions of various Acts noticed above this Court is of the considered view that the Screening Committee failed to see that some of such violations and irregularities by the erstwhile management and the governing body of the private affiliated college would not render the appointments illegal and void ab initio so as to disable the appointees from being treated as employees of the college on the cut-off date i.e. 1.6.1986. There is merit in the submissions of the petitioners that in absence of any statutory obligation the governing body of the private college had the power to make appointments even without resorting to newspaper advertisements. But as would appear from later discussions, the Governing Body itself chose to create an obligation by a valid and subsisting resolution dated 25.3.84 requiring newspaper advertisements for further appointments. It is also found that the obligation of notifying the vacancy to the Employment Exchange under the relevant Act and Rules framed thereunder was not applicable to the college when it, was under private management. Unless the irregularities of the Governing Body are found to be of such a nature so as to amount to fraud in making appointments by violating the basic norms set by itself in earlier resolutions or by ignoring the requirement of basic qualification, the irregularities would not affect the validity of appointment of employees who continued in service of the college till its take over.

26. The aforesaid view, however, requires further clarification in the light of facts emerging from the report of the Screening Committee and in the light of submissions advanced on behalf of the State. The Screening Committee has found in paragraphs 3 and 5 of its report contained in Annexure-C that the proceeding book after 27.4.1984 was never signed by the President and he never attended the subsequent meetings in which another persons acted as President without any resolution of the Governing Body. The minutes of subsequent meeting was found to have been recorded on the orders of the Secretary as admitted by a clerk of the College. The resolution of the Governing Body dated 25.3.1984 laid down the requirement of future appointments only after advertisement in specified Daily Newspapers which was not followed. Photocopies of advertisement produced by claimants appointed after 25.3.1984 were found to be forged. Obviously appointments made after 25.3.1984 have been found, on proper consideration of relevant facts not only to be against resolution of the Governing Body but also tainted with fraud. Such appointments have rightly been treated as invalid for the purpose of absorption of employees by the State Government. Obviously such illegal appointments made after 25.3.1984 when the issuance of Ordinance No. 1/85 was imminent or already done led to unusual increase in the number of persons claiming to be employees of the College for the purpose of absorption of their services under the State Government. The

whole transaction of appointments after 25.3.1984 appears to be mala fide, for extraneous reasons and tainted with fraud. this Court is not persuaded to issue any Writ/Order or direction to the respondents for reconsideration of cases of petitioners appointed after 25.3.1984. Their writ petitions are, therefore, dismissed.

27. So far as petitioners who were appointed prior to 25.3.1984 are concerned, this Court finds that on account of erroneous approach of the Screening Committee which took into consideration certain irrelevant materials and provisions of law as noticed earlier, beyond the permissible limits under law, their cases require reconsideration by the State Government. Since the facts collected by the Screening Committee can be safely used by the State Government or any Review Committee which may be appointed by it for the purpose, this Court is of the view that no useful purpose will be served by remitting the matter in respect of employees appointed prior to 25.3.1984 for re-examination by the Screening Committee. The report submitted by the Screening Committee shall be used by the State Government or any Review Committee that may be constituted by the State Government to help it to come to a proper decision, by keeping in mind the findings of this Court recorded earlier in this judgment pointing out the illegalities in the approach of the Screening Committee. Such illegalities must be avoided by treating that the offending parts of the report of the Screening Committee in respect of such employees has been quashed by this Court. Only the balance part of the report of the Screening Committee shall be used by the State Government or the Review Committee for coming to a just and proper decision in respect of absorption of employees of-the college appointed prior to 25.3.1984. For this purpose the cases of all such petitioners is remitted back to the State Government. It can look into validity of appointment in any particular case on ground of fraud or appointment being void ab initio for lack of basic academic qualification or into facts showing termination/cessation of service before the date 25.3.1984 or the cut-off date etc. But none of the criteria disapproved earlier by this order shall be applied for this purpose.

28. Since large number of persons have joined together as petitioners in one or the other writ petitions under consideration hence this Court is faced with great difficulty in examining their individual grievances of the nature that:

(i) they must be absorbed against the posts which they held before the take over because they have the requisite qualification for such posts, and

(ii) they have the requisite experience for absorption on the post to which they were appointed/promoted by the Governing Body. Such grievances of individual employees which may have been raised by them in their comments to the show cause notice should be considered by the concerned authorities in accordance with law. For the purpose of general guidance in this matter on account of submissions advanced in some of the writ petitions it is indicated that for the purpose of qualification and experience of teachers guidance should be taken from the guidelines laid down by the C.C.I.M. which have been annexed with the

supplementary counter affidavit of the State. Even the earlier guidelines in this matter have been already noticed and set out in paragraph 9 of the judgment and order dated 12.5.1995 contained in Annexure-8. These qualifications for teaching staff is applicable even to the basic post of Demonstrator which was then in existence. For the higher posts of Professor, Reader and Lecturer the admitted teaching experience required is laid down as 10 years, 5 years and 3 years respectively.

29. In fairness to Mr. B.S. Tiwary, Learned Counsel for the petitioners in several cases, it is indicated that he objected to use of certain parts of report of Screening Committee on the ground that it was an extraneous material for the State Government and it was not disclosed in full to the petitioners. The report is statutory and hence its use is required under law. Moreover, its relevant extracts relating to individual employees were disclose to them. Further, in view of proposed directions the validly appointed employees of College will not suffer any prejudice on this account.

CWJC No. 11414 of 2003

30. In some of the writ petitions, particularly in CWJC No. 11414/03 (and also in CWJC No. 12105/03 and CWJC No. 12783/03) a controversy has arisen as to what should be the criteria and cut-off date for determining necessary experience of teaching staff to examine the validity of their claims for higher teaching posts of Lecturer, Reader and Professor. According to the sole petitioner of CWJC No. 11414/ 03 he was validly appointed on 14.3.1978 in accordance with the terms and conditions in Newspaper advertisement dated 9.3.1978 on the post of Lecturer. Admittedly he was tacking in experience of three years at the time of initial appointment but according to his show cause there was no such experience required under advertisement and on the date of confirmation on 23.4.1984 he had completed more than three years of teaching experience. The other ground for not accepting his claim for absorption was the fact that the Governing" Body did not seek approval of appointment from, the University. As held earlier every fault of the Governing Body will not go to the root of validity of appointments made. It is further made clear that not seeking the approval of appointment or confirmation would not go to the root of the validity of this petitioner's service after he had completed the required three years of experience by the date of confirmation. In such cases, the yardsticks adopted in other two colleges appearing from Annexure-24 show that absorption was permitted on the basis of experience as per requirement of post on the date of take over (the cut-off date). In case of shortfall of experience the absorption in those two colleges was made against the lower post or another post as per qualification and experience till the cutoff date. In case of validly appointed employees of the college the same criteria deserve to be followed on account of enquiry, principle of fairness and earlier judgment and order of a Bench of this Court dated 22.6.2000 passed in CWJC No. 3469 of 1999 contained in Annexure-20. Further case of petitioners of CWJC Nos. 12105 and 12783 of 2003

shall be taken up separately because the petitioners in those two writ petitions are teachers whose services have been absorbed and their limited grievance is that they have not been absorbed on the higher posts of teachers on which they were working on the date of take over.

CWJC No. 1983 of 2001

31. In CWJC No. 1983/2001 the sole petitioner Ganeshji Pandey was denied absorption on the ground that he did not fulfil the qualifications laid down by the State Government for the post of laboratory technician. The petitioner has shown on the basis of Annexure-9 that persons having qualification of I.Sc. which petitioner has, are working as laboratory technician in Magadh University. Petitioner was appointed in the year 1981 whereas Annexure-9 is of a later date. According to the counter affidavit of respondent No. 4 essential qualification for medical laboratory technician has been fixed by the State Government because the C.C.I.M, does not fix qualifications for non-teaching staff. It has been asserted that the necessary qualification for the post is I.Sc. with two years training as Lab Technician. It further appears that petitioner was a party to CWJC No. 11673/ 95 which was disposed of by remitting their case for decision by the Health Commissioner but ultimately the same was rejected by the State Government on the report of the Screening Committee. Neither the report of the Screening Committee nor the counter affidavit discloses when the State Government prescribed the qualification claimed by the State. It is also not clear how the State Government could prescribe qualification for the College when ordinarily it should have been done by the Bihar University to which the college was affiliated. Petitioner has a good case on the basis of order of Magadh University contained in Annexure-9 but since the Bihar University is not a party to the writ petition, there is nothing on record to show whether Bihar University had laid down qualification for the post of Lab Technician for affiliated Colleges or not. If the Bihar University at the relevant time had laid down qualification for the post in question the same should be made the yardstick for deciding the claim of laboratory technicians otherwise the State Government will be at liberty to apply the qualification laid down by it if such decision was in existence at the time of appointment of petitioner in the year 1981 as Laboratory Technician. This may be treated as a further direction for deciding claims of laboratory technicians in addition to general directions given by this Court earlier in this order.

CWJC No. 10025 of 2003

32. In CWJC No. 10025/03 the sole petitioner Radha Mohan Rai has come against the order of the State Government dated 29.8.2003 by which in paragraph 6 it has been specified that petitioner's name is at serial No. 22 of list of employees who have not been found fit for absorption as he has already been dismissed from service by departmental order dated 7.7.2003 on account of proved charges. The materials on record, particularly the relevant part of report of the Screening Committee in respect of this petitioner which is part of Annexure-6 discloses that besides pointing out usual defect in grant of

promotions in spite of lack of requisite experience, it was found that petitioner never produced original marksheet of higher secondary examination for verification by the Screening Committee. It was also noticed that petitioner claimed to have passed the B.Sc. Examination as an independent candidate although there is no provision in law for taking B.Sc. Examination as private candidate. On that score his basic qualifications were doubted. Further various other action and omissions were noticed in respect of his conduct while working in the College.

33. From the records of CWJC No. 10048/03 it appears that it was dismissed as withdrawn on 20.1.05 since he wanted to pursue his representation/appeal before the Chief Minister submitted against order of termination dated 7.7.03. The impugned order of termination in that writ petition shows that one of the charges which was found correct was that there is no provision for taking B.Sc. Examination as an independent candidate as claimed by the petitioner and in the same year he also claimed to have passed the professional degree of B.A.M.S. from another University which was also not permissible. In these facts and circumstances, this Court finds no good ground to interfere with report of the Screening Committee and the decision of the State Government in respect of this petitioner. His writ petition is, therefore, dismissed.

CWJC Nos. 12105 and 12783 of 2003

34. So far as C.W.J.C. Nos. 12105 and 12783 of 2003 are concerned, it has been noticed earlier that grievance of the petitioners is that they have been wrongly absorbed on lower posts. Their prayer is that the State Government should absorb them on the higher posts of lecturer or Reader to which they had been promoted prior to cut-off date of 1.6.1986. It has been shown by all the petitioners of C.W.J.C. No. 12105/03 that they were appointed for the first time as demonstrators or lecturers in the year 1981-82 and on the cut-off date i.e. 1.6.86 the petitioners had more than three years of teaching experience which entitled them to be absorbed at least as lecturers. It was further submitted that they were promoted as lecturers and Readers by the Governing Body and even if some of them acquired the required teaching experience subsequent to take over but before the scrutiny of their cases by the Screening Committee, such experience should have been taken into consideration and they should have been absorbed as Readers. For this purpose reliance was placed upon judgments of the Supreme Court in the case of (i) Ram Sarup Vs. State of Haryana and Others, , and (2) Arivazhagan Vs. State, Represented by Inspector of Police, . The aforesaid judgments dealt with the issue of validity of initial appointment where necessary qualification of experience was lacking at the time of initial appointment. Principle of equity was applied to uphold such appointments which were irregular on the equitable ground that subsequently the concerned employee had gained the required experience or considerable experience on account of long service. Whether to save or not an irregular appointment on equitable consideration is not an issue in the present case. The petitioners have

been absorbed in service under the State Government and the basic issue is whether the Screening Committee should confine itself to scrutiny of facts as existing on the cut-off date fixed by the statutory notification of the State Government or it may transgress that date and make screening on the basis of subsequent experience. In such circumstances the principle of equity is not attracted. The Governing Body attempted to give wrongful advantage to the concerned petitioners by awarding promotions before the take over of the college by the State ignoring the requirement of minimum experience for higher teaching posts. In such cases the Screening Committee must confine itself to the Statutory scheme of take over and it cannot take into consideration the teaching experience gained by the employees after the cut-off date.

34A. In CWJC No. 12783/03 both the petitioners have been absorbed on the post of Lecturers but the impugned order of the State Government dated 29.8.2003 shows that they have been absorbed only as ad hoc Lecturers. There is no legal justification for same. The petitioners and similarly situated employees should have been, on absorption allowed the status of permanent Lecturers/teachers on appropriate post.

35. For examining the facts to ascertain the actual length of teaching experience earned by the petitioners of these two writ petitions in the light of earlier discussions, their cases are also remitted back to the State Government which will decide their cases afresh keeping in mind the directions in this judgment and the cases of teaching employees of other two taken over colleges as discussed earlier. The claims of these petitioners shall also be decided on the basis of their teaching experience till the cut-off dated i.e. 1.6.1986. When a teacher had completed three years of teaching experience as Demonstrator prior to the cut-off date but had been promoted to the post of Lecturer before acquiring such experience then he should be absorbed as Lecturer as was done in the case of other taken over colleges. The same principle shall be kept in mind for deciding claims for higher posts of Reader or Professor. Further, the absorption should be as regular teachers and not on ad hoc basis.

36. Reverting back to general discussion, as noticed earlier, the Screening Committee has not considered an important aspect as to how many sanctioned posts were available in the College. The notification of take over in Annexure-1 contains an important condition that before absorption of employees of the College the State Government shall create admissible gazetted and non-gazetted posts as per yardsticks of C.C.I.M. It has also been noticed that there is no material to indicate that such exercise has been done by the State Government. In order to avoid any delay and legal complications in future, the State Government is hereby directed to first complete the exercise of creating the admissible posts as per condition (Gha) of Annexure-1 before notifying its final decision in respect of absorption of the petitioners in accordance with this judgment and order. In case the number of posts is more than number of employees ultimately found eligible for absorption then there shall be no problem

but if the case is reverse then absorption in various posts shall normally be on the basis of length of service of the eligible employees or such similar relevant consideration depending upon relevant facts, as appears to have been done in other two taken over colleges. The rank and other conditions of service of eligible employees may be suitably altered if such redefinition can accommodate eligible employees for absorption as per their qualification and experience against available vacancies created by the Government as per C.C.I.M, norms. Such course of action shall be in accordance with discretion vested in the State Government by section 6(3) of the Act. After remand the entire exercise should be completed by the State Government at an early date preferably within four months and in any case within six months because the matter has become quite old.

MJC No. 886 of 2001

37. So far as MJC No. 886 of 2001 is concerned, this Court has already taken note of the relevant facts and directed the State Government to keep in mind the relevant principles as appearing in the order of the Writ Court dated 22.6.2000 contained in Annexure-20. The facts do not show any deliberate disregard of the said order and hence, the contempt petition is disposed of in terms of directions given earlier in this order. In the facts of the case, there shall be no order as to costs in any of the cases.