
(1998) 02 PAT CK 0077
In the Patna High Court
Case No : C.W.J.C. No. 9373 of 1996

Dr. Srikant Sharma and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-1998

Acts Referred:

Citation : (1998) 2 BLJR 1406 : (1998) 2 PLJR 252

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioners, all principals of different Colleges under the Magadh University (University for short) have challenged the notice contained in letter dated 31st July, 1996 by which it has been intimated that the constitution of Commission having been declared illegal by the High Court and Supreme Court, appointment of the petitioners made on recommendation of such illegally constituted Commission is illegal and so why their services be not terminated.

2. At the time of hearing of the case the counsel for the University raised a preliminary objection and submitted that the Court should not interfere in the matter, as merely a show cause notice has been issued to the petitioners and no final decision has been taken, which I will discuss at an appropriate stage.

3. The admitted fact show that the University through the Bihar State University (Constituent Colleges) Service Commission (Commission for short) came out with Advertisement No. I/U.S.C./92 in the newspaper on 27th July, 1992 calling for application for appointment against 14 posts of Principals in different Colleges Under the University. The petitioners being eligible, alongwith others, applied in pursuance of said advertisement.

4. The petitioners and others were called for interview, which was scheduled to be held between 19th and 25th March, 1994. However, just before such

interview, the State of Bihar re-constituted the Commission by a notification dated 15th/16th March, 1994.

5. The petitioners and others appeared before the Commission and interview was conducted by such re-constituted Commission. After preparation of a merit list, the name of the petitioners were recommended by Commission on 16th April, 1994 where in after they were appointed to the post of Principal on 21st April, 1994 in different Colleges under the Magadh University.

6. Since the appointment of the petitioners they are continuing in service however, in the meantime, certain development took place with regard to the constitution of the Commission.

7. After the appointment of the petitioners the Commission came out with another advertisement on 23rd April, 1994 for appointment to the post of Principals of different Colleges under the Bihar University and Bhagalpur University, The aforesaid advertisement was challenged before this Court in two writ petitions C.W.J.C. Nos 5854 and 8221, both of 1994. The re-constitution of the Commission made on 16th March, 1994 as well as the reservation shown in the advertisement were also challenged therein.

8. A Division Bench of this Court allowed both the aforesaid writ petitions by its judgment dated 26th May, 1995 in the case of Dr. Ratneshwar Prasad Singh and analogous cases reported in 1996 (Vol. 1) PLJR 351. This Court held that the two members of the Commission (Professor B.P. Yadav and Professor Suresh Prasad Singh) having no requisite qualification, the constitution of Commission as made by notification dated 16th March, 1994 as illegal. This Court further held that any selection on of Principal by the Commission and any appointment made on the basis of such selection are equally invalid, in-operative and void.

9. Against the Division Bench judgment of this Court in Dr. Ratneshwar Prasad Singh (supra), two Special Leave petitions being SLP (Civil) Nos. 13722-13723/95 were preferred by Dr. B.P. Yadav and Anr. and Dr. Ratneshwar Prasad Singh and Ors. The Supreme Court granted leave and S.L.Ps. were converted as Civil Appeal No. 4284-85 of 1996 and by its judgment dated 11th March, 1996 dismissed the appeal with costs and up-held the Division Bench decision.

10. In the meantime, in pursuance of an interim stay by the Supreme Court, the reconstituted Commission continued to function, though the State Government issued another notification on 13th June, 1995 re-constituting another Commission, excluding Dr. B.P. Yadav and Shri Suresh Prasad Singh, from the said Commission in the light of decision of this Court in the case of Dr. Ratneshwar Prasad Singh (supra). The said earlier constituted Commission (constituted on 16th March 1994) with the help of Dr. B.P. Yadav and Shri Suresh Prasad Singh made a recommendation on 16th January, 1996 on the basis of which certain persons were appointed indifferent Colleges as Principal under the B.R.A. Bihar University. Those subsequent appointments of Principal under the

B.R.A. Bihar University made in pursuance of advertisement dated 23rd April, 1994 were challenged before this Court in another writ petition CWJC No. 4511 of 1996, by Shrikant Prasad Srivastava and Ors. reported in 1997 (Vol. 1) PLJR 214.

In the said case, a plea was taken on behalf of the newly appointed principals that their appointment cannot be held to be illegal as de-facto doctrine applies which saves the acts of earlier constituted Commission. Even if the appointment of two members of the Commission was declared to be illegal, their appointment being saved under de-facto doctrine should not be quashed.

The learned Single Judge of this Court in the case of Shrikant Prasad Srivastava and Ors. (Supra) rejected the aforesaid submission and held the appointments of such Principals as illegal. The Court held that the Commission which ceased to exist in law has functioned and a Commission, which has been re-constituted in accordance with statute and in obedience to a judgment of the High Court has not been allowed to function and so the de-facto doctrine was not applicable in those cases.

11. Before the Patna High Court, the Principal, who lost before the learned Single Judge in the case of Shrikant Prasad Srivastava and Ors. (supra) preferred two L.P.A. Nos. 1160 and 1157 both of 1996. A Division Bench in those two appeals in the case of Suniti Pandey and Ors. and analogous cases reported in 1997 (1) All PLR 336, held that once the person concerned retired and ceased to hold the office, the de-facto doctrine can have no application. The de-facto doctrine cannot apply to an Usurper, an Intruder or total stranger to the office, It further held that the action of the other two so called members being under Eclipse since after the Division Bench judgment of this Court till the final verdict of the Supreme Court where they lost, de-facto doctrine was not applicable.

12. As admittedly in the case of these petitioners, the appointments were made on the recommendation of re-constituted Commission (re-constituted on 15th/16th March, 1994) in which Dr. B.P. Yadav and Shri Suresh Prasad Singh were members, in the light of the aforesaid decisions, impugned notice dated 31st July, 1996 has been issued by the Magadh University holding the appointments of the petitioners as illegal and they have been asked to show cause as to why their appointments be not cancelled.

13. According to the counsel for the petitioners, the aforesaid decisions rendered by this Court and Supreme Court cannot be made applicable in the case of these petitioners as their appointments were made prior to the filing of the writ petition C.W.J.C. Nos. 5854 and 8221, both of 1994 i.e. the case of Dr. Ratneshwar Prasad Singh and analogous case (supra). Further, according to him, the de-facto doctrine will be applicable in the present case as the appointments of two members of the Commission were declared to be illegal much after the appointment of the petitioner. He relied on Supreme Court decision in the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, .

14. On the other hand, according to the counsel for the University in the light of decision of this Court in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra), the services of the petitioners are liable to be cancelled. In the said case, this Court held that any selection of the Principal by the said Commission or any appointment made on the basis of such selection are equally invalid, inoperative and void. He further relied on decision of learned Single Judge in the case of Shrikant Prasad Srivastava (supra) and Division Bench decision of this "Court in the case of Suniti Pandey and Ors. (supra) and submitted that the petitioners" appointment cannot be saved, on the basis of de-facto doctrine.

15. The question of applicability of de-facto doctrine fell for consideration before the Supreme Court in the case of Gokaraju Rangaraju (supra). That was a case relating to appointment of a Sessions Judge, which was subsequently declared invalid. The Supreme Court held that though the appointment was subsequently declared invalid, judgment pronounced by the Judge concerned prior to such declaration are not void as the de-facto doctrine applies and it saves such acts.

16. In the present case admittedly, the advertisement was published before re-constitution of Commission, on 27th July 1992. However, the names of the petitioners were recommended by re-constituted Commission on 16th, April, 1994 and they were appointed on such recommendation on 21st April, 1994. The advertisement for appointment to the post of Principal under Magadh University or the recommendation of the petitioners made on 10th April, 1994 or their appointments made on 21st April, 1994 were never challenged by any person before any authority or Court of law, not even till date.

The question relating to constitution of Commission fell for consideration for the first time after the appointment of the petitioners (after April, 1994) in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra). The petitioners of those cases challenged the advertisement for appointment to the post of Principals which to be made in different Colleges under Bhagalpur University or the B.R.A. Bihar University. Those cases were not related to any appointment made in the Magadh University. This Court by its judgment dated 26th May, 1995 in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra) held for the first time that the constitution of Commission, made on 16th March 1994, was illegal. Thereby, it is clear that the constitution of Commission has been held to be illegal much after the appointments of the petitioners made on the recommendation of such Commission. Further, as neither the advertisement nor the selection and appointment of the petitioners were the subject matter in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra), according to me, the aforesaid judgment in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra) is not binding in the case of these petitioners nor the appointment of the petitioners can be declared to be void on the basis of the aforesaid decision.

17. So far as the case of Shrikant Prasad Sriuastava (supra) is concerned, in that case also, the question of legality of advertisement, recommendation and

appointment of the petitioners under the Magadh University were not under challenge. The appointment made under B.R.A. Bihar University, was the subject concerned. Accordingly, I hold that the said decision is also not binding in the case of these petitioners no the appointment of the petitioners can be held to be void on the basis of such decision.

The judgments rendered in the aforesaid cases, thus cannot be made applicable to suo motu declare the appointment of the petitioners as illegal or void.

18. So far as the question of saving the acts of appointment of the petitioners on the principle of de facto doctrine if concerned, I have pointed out that the appointments of the petitioners were made much prior to declaration of constitution of Commission as illegal.

The learned Single Judge in the case Shrikant Prasad Srivastava (supra) did not give the benefit of such de-facto doctrine to save the appointments of principal of B.R.A. Bihar University. As admittedly in their cases, the recommendations were made on 15th January, 1996 i.e. much after the declaration of constitution of Commission as illegal. As in the eye of law, the Commission constituted on 16th March, 1994 ceased to function since the judgment delivered on 26th May, 1995 in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra), the Division Bench of this Court in the

case of Dr. Suniti Pandey and ors. and analogous case (supra) held that once person concerned ceased to hold the office, the de-facto doctrine can have no application. Such de-facto doctrine cannot apply to one Usurper, an Intruder or total stranger to the office.

19. In the present case of the petitioners, when the recommendation was made on 16th April, 1994 and the appointments were made on 21st April, 1994, the re-constituted Commission (Constituted on 16th March, 1994), was well within jurisdiction to make a recommendation for appointment. The said Commission was not held to be illegal by those dates. It was subsequently, declared illegal in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra) on 26th May, 1995. Thereby, it cannot be stated that the members of the Commission ceased to hold the office or were Usurper or intruder or total stranger to the office on the date of recommendation and appointment made in favour of the petitioners. In the aforesaid circumstances, I hold that the act of such Commission, including its recommendation dated 16th April, 1994 stand saved on the principle of de-facto doctrine

20. Accordingly, I hold that the petitioners' appointment cannot be declared to be illegal on the basis of decision of this Court in the case of Dr. Ratneshwar Prasad Singh and analogous case (supra) or Dr. Suniti Pandey and ors. and analogous case (supra) or Shrikant Prasad Srivastava and Ors. (supra) nor on the basis of Supreme Court decision in the case of Dr. B.P. Yadav and Anr. (supra). There being no other illegality shown in the matter of appointments of petitioners, I am not inclined to accept the preliminary objection raised on behalf

of the Magadh University to remit the matter for a decision from their end. In the light of the aforesaid finding the Magadh University is directed not to take any action on the basis of the impugned notice dated 31st July, 1996.

21. The writ petition stands allowed with the aforesaid observations and directions. However, on the facts and circumstances of the case, there shall be no order as to costs.