

(1989) 07 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5277 of 1985

Dr. Tara Kant Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-1989

Acts Referred:

Bihar Private Medical Colleges (Taking Over) Act, 1977 — Section 12, 3, 6, 6(1), 6(2)
Constitution of India, 1950 — Article 14, 141, 16, 213(1)
Indian Medical Council Act, 1956 — Section 33(J)

Citation : (1990) 2 PLJR 119

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

Bench : Division Bench

Advocate : Basudeva Prasad and Sunil Kumar, for the Appellant; Ram Balak Mahto, Advocate, General and M/s. Abhay Singh and G.S. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—These two writ applications involving common questions of law and fact were heard together and are being disposed of by this common judgment. The petitioners in these writ applications inter alia pray for issuance of a writ of or in the nature of mandamus to absorb them in the posts of Associate Professor since the date they have been working in the said post and for considering their cases for promotion in the posts of Professors and for issuance of a writ to quash the panel of Associate Professors wherein the names of the petitioners do not figure. (Annexure 6 to C.W.J.C. No. 5277 of 1985) as also for quashing the gradation list wherein the petitioners have been shown as Assistant Professors (Annexure 8 to C.W.J.C. No. 52/7 of 1985).

2. Facts relating to C.W.J.C. No. 5277 of 1985.

The petitioner has all along been a Government servant. He was appointed in the year 1958 in the Bihar State Medical Service and allegedly acquired certain teaching experiences in an institution situated in foreign countries, namely, Royal

Infirmity University, University of Manchester, in the year 1963-64 he allegedly acquired foreign teaching experience at Bith Hill Hospital University of Manchester.

3. In the year 1972-1975, the petitioner while posted as a physician in the Sadar Hospital of Muzaffarpur, allegedly, performed clinical job and other teaching work under Governmental directions in Sri Krishna Medical College, Muzaffarpur. The said direction is contained in Annexure 13 to the reply filed on behalf of the petitioner to the counter affidavit filed on behalf of the respondent no. 1.

4. The petitioner, however, was appointed as Reader by the Department of Medicine, as it appears from a letter dated 20.1.1975 addressed by the Principal of the aforementioned college. The said order of appointment is contained as Annexure 1 to the writ application.

5. According to the petitioner he was appointed by the Government council of the aforementioned Medical College, in accordance with the guideline of the Medical Council of India as contained in 1974 Regulation.

6. By a notification dated 30th September 1975 and as contained in Annexure 2 to the writ application the petitioner was deputed by the Health Department of the State of Bihar to the aforementioned Sri Krishna Medical College, Muzaffarpur in the Department of Medicine from the date of his joining. The said letter is contained in Annexure 2 to the writ application.

7. It has been contended by the petitioner that the Inspectors of the Medical Council of India inspected the said college from time to time and found that the petitioner was qualified to hold the post of Reader and Head of Unit.

8. In the year 1976 the Governor of Bihar in exercise of his power conferred upon him under Article 213(1) of the Constitution of India promulgated an Ordinance known as the Bihar Private Medical Colleges (Taking over of Management) Ordinance 1976 (Bihar Ordinance No. 131 of 1976) whereby and whereunder the Management of some private Medical Colleges named therein was taken over for a limited period in order to secure the proper management thereof. The said ordinance was kept alive by promulgation of successive ordinances.

9. The Governor of Bihar thereafter issued an Ordinance known as the Bihar Private Medical Colleges (Taking over of Management) Ordinance, 1978 (Bihar Ordinance No. 62 of 1978) whereby and where under the private medical colleges in the State of Bihar were taken over. The said Ordinance was later on repealed and replaced by a legislative Act known as the Bihar Private Medical Colleges (Taking over) Act, 1978 (Bihar Act No. 5 of 1978) which received the assent of the Governor of Bihar on 24.8.1978 (hereinafter called and referred to for the sake of the brevity as "the said Act").

10. On or about 30.10.1978, the Principal of the aforementioned Medical College in a letter addressed to the Director of the Medical Services informed him about

the existing vacancies for the said college and it was Inter alia also stated therein that the petitioner was holding on the posts of Readers/Associate Professors in the said college. The aforementioned letter dated 30.10.1978 is contained in Annexure 15 to an affidavit filed by the petitioner.

11. The petitioner's name was again shown in one of the three posts of Associate Professors in Medicine by the inspector appointed by the Indian Medical Council in his inspection report, which is contained in Annexure 9 to the writ application. The said report was allegedly submitted in February 1979. According to the petitioner he had all along been drawing the salary of Associate Professor by the State of Bihar from the date of taking over of the aforementioned institution.

12. On or about 4.8.1989, the petitioner filed a representation to the State of Bihar for his promotion as a Professor and thereupon the Principal of the said college recommended his name for the post of Reader/Associate Professor. By reason of a letter dated 29th June, 1982 (Annexure 5) addressed to the Health Commissioner, Patna the petitioner was permitted to appear in the interview which was to be held on 1st and 2nd July, 1982 for the post of professorship.

13. In the meanwhile, a Screening Committee was constituted in terms of section 6(2) of the said Act, which submitted its report to the State of Bihar. In the said report the petitioner's name find place in Annexure 2 thereof showing therein that he was eligible to hold the post of Assistant Professor since 1975. The State of Bihar while accepting the said report issued a resolution dated 3.8.1982 whereby and whereunder the representations received by it by then and/or to be received by it in future were referred to a three man Committee consisting of the Health Commissioner as its Chairman, Additional Director/Joint Director of Medical Services as its Member and Deputy Director, Medical Services as its Member Secretary. In terms of the said resolution, the petitioner submitted a representation against the decision of the Screening Committee and contended therein that he is suitable for the post of Reader/Associate Professor and not in the post of Assistant Professor as was recommended by the Screening Committee. The said representation is contained in Annexure 7 to the writ application.

14. The said college was again inspected by the Medical Council of India for the purpose of granting permanent recognition and in the inspection report which was submitted by the inspection team which is contained in Annexure 10 to the writ application the petitioner's name has been shown therein as holding one of the posts of Associate Professor. According to the petitioner, he made a further representation before the Committee constituted under the aforementioned resolution dated 3.8.1982 wherein it was inter alia pointed out that one Dr. B.N. Paul, Reader in the department of Anaesthesia and who was similarly situated, had been promoted to the post of Professor.

15. The petitioner further brought to the notice of this Court that similarly one

Dr. R.D Kumar, who was Reader in E.N.T. Department of the aforementioned college and was also deputed by the Government as is the case of the petitioner, was also promoted to the post of Professor of E.N.T.

16. On or about 1.2.1985, the State of Bihar issued a seniority list containing a Panel of Associate Professors wherein the petitioner's name did not find place. The petitioner again filed a representation on 22.5.1985 for his promotion in the post of Professor. However, the Committee constituted by the State in terms of its resolution dated 3.8.1982 also recommended that the petitioner's name should be shown in the panel of Associate Professor and thus his case should be recommended for consideration for promotion to the post of Professor.

17. Dispite thereof the State on 21.9.1988 issued the impugned gradation list containing the names of the persons holding the post of Assistant Professor wherein the petitioner's name finds place at serial no. 3 thereof. The said impugned gradation list is contained in Annexure 8 to the writ application. The petitioner again filed a representation for including his name in the gradation list of Associate Professor and for consideration of his case for promotion to the post of Professor.

18. In the supplementary affidavit the petitioner has given out his qualifications, which are as follows :--

?Academic Qualification.

Teaching works

M.B.B.S. 1956

As Reader of Medicine in S.K. Medical College since 1972 up to date.

O.T.M. (H) 1961 (England)

M.R.C.P. (Edin) 1964

F.R.C.P. (U.S.A.) 1970

F.I.C.A. (U.S.A) 1974

F.R.S.T.M. (London) 1981.

(Fellow Royal Society of Tropical Medicine)

2. Research Publications. Original Papers Published in international journals of repute.

3. Invited to chair the international conference.

4. Invited to deliver lecture at international conference of Manola 1980 organised by W.H.O.

5. Work has been quoted in worked Medical India.

19. According to the petitioner even if his case is considered in terms of recommendation of the Screening Committee as also in terms of the recommendation of the Committee constituted by the Cabinet of the State Government in terms of its aforementioned resolution dated 3.8.1982 he would be found to be qualified to hold the post of Professor.

20. Facts relating to C.W.J.C. No. 5307 of 1985.

In this case also the petitioner was a Government servant and was deputed by the State of Bihar in the aforementioned Sri Krishna Medical College, Muzaffarpur in the year 1975. The petitioner was appointed as an Assistant Professor by the Managing Committee of the said college on or about 1.11.1975. The petitioner was promoted to the post of Reader/Associate Professor in the Department of Medicine.

However, the petitioner submitted his resignation from the government services on 1.8.1976 and became a fullfledged employee of the private Medical College. The aforementioned resignation was accepted by The State of Bihar on 7.1.1978 with effect from 1.8.1976 as it is evident from annexure 4 to the said writ application.

After take over of the college similar to the case of the writ petitioner of C.W.J.C. No, 5277 of 1985, the petitioner was also recommended by the Screening Committee as being fit for holding the post of Assistant Professor only although he had been working in the post of Associate Professor since 1975.

21. The other facts involved in this writ application being similar to the case of Dr. Tarakant Jha i.e. petitioner in C.W.J.C. No. 5277 of 1985 need not be stated again.

22. Mr. Basudev Prasad, the learned counsel appearing on behalf of the petitioners submitted that the statutory Screening Committee constituted u/s 6(2) of the said Act, considered the case of the petitioners of these two writ applications in Annexure 2 of its report i.e. in the list of Teachers, who have been found eligible for the posts indicated against their names with date but for their claim of teaching experience outside India, the matter has been referred to the Medical Council of India for advice. The Screening Committee found Dr. C.M. Jha fit for the post of Reader/ Assistant Professor since November 1975 and Dr. T.K. Jha since August 1975.

23. According to the learned counsel the post of Reader was equivalent to the post of Associate Professor in terms of the guidelines issued by the Medical Council of India in the year 1974 and as such the Screening Committee committed an illegality in treating the post of Reader as equivalent to Assistant Professor. The learned Counsel further contended that even if the petitioners of these writ applications were considered fit for the post of Assistant Professor in the year 1975, they would be eligible for promotion to the post of Associate Professor in the year 1978 and in the post of Professor in 1983 and on that basis

they could be and were rightly directed to appear in the interview held by the Selection Committee for considering the cases of eligible candidates including the writ petitioners for promotion to the post of the Professor but not only the petitioners were not allowed to appear before the Selection Committee for consideration of their case for promotion to the post of Professor but also as indicated hereinbefore they were later on designated as Assistant Professor only which amounts to their demotion.

24. The learned counsel further drew our attention to the fact that several persons similarly situated namely Dr. B.N. Paul and Dr. R.D. Kumar were promoted to the post of Professor in the year 1983, some of whom were also deputed like the petitioners as it appears from Annexure 18 series, Although they were also appointed as Readers but in their case it was considered by the Government that the posts of Readers were equivalent to the post of Associate Professors.

25. It appears from Annexure 18 series that apart from persons named hereinbefore there were various other persons who were similarly situated to the petitioners had also been promoted to the posts of Professor. According to the petitioners in some cases the State has accepted guidelines issued by the Medical Council of India in the year 1974 with regard to the staffing pattern but with regard to the petitioners they have been acting upon guidelines of the Medical Council of India issued in the year 1971.

26. The petitioners have further brought to our notice that various persons who were similarly situated filed writ petitions in this Court and in terms of the judgments of this court, have been directed to be promoted to the post of Associate Professor/Professor by the State of Bihar.

27. Thus, according to the writ petitioners there had been a clear violation of equality before law and equal protection of law as envisaged under Articles 14 and 16 of the Constitution.

28. It was further contended on behalf of the petitioners that in view of the decisions in C.W.J.C. No. 5004 of 1976 and other cases reported in 1981 B.B.C.J. 510 wherein consent order was passed, the State is bound to implement the promises made therein in respect of the teachers engaged in a Private Medical College without any discrimination whatsoever.

It was further submitted that in any event the three man Committee although illegally constituted in terms of the Government Resolution dated 2.8.1982 also found that the petitioners should have been promoted to the post of Associate Professor and thus were eligible to be considered for promotion to the post of Professor. Alternatively it was submitted that as the State had accepted the appointment of the petitioners in the post of Associate Professor for a long time, it is estopped and precluded from contending that the petitioners were not qualified to hold the post of Associate Professor.

29. The learned Advocate General who appearing on behalf of the State as also Mr. G.S. Sharma, appearing on behalf of some of the private respondents on the other hand, contended that by reason of the policy decisions of the State as also the judgment of this Court in C.W.J.C. No. 6005 of 1983 disposed of on 3.8.1987 and as contained in Annexure A/11 to the counter affidavit the petitioners were not qualified to hold the post of Associate Professor in the year 1975 as they did not have the requisite qualifications therefor.

30. According to the learned Advocate General the petitioners were not even qualified to hold the post of Assistant Professor in the year 1975 as they did not have the requisite teaching experience of three years in a junior teaching post in a recognized teaching institution. The learned Advocate General further submitted that so far as the staffing pattern is concerned, the State is not bound by the guidelines issued by the Medical Council of India and is bound by its own policy decision which was adopted in the year 1976 in terms whereof the posts of Reader have been made equivalent to that of the Assistant Professor.

31. The learned counsel appearing on behalf of the respondents further submitted that in any event, as no final order has been passed by the State of Bihar in terms of sub-section 3 of section 6 of the said Act, the petitioners cannot be said to have acquired any legal right whatsoever for obtaining a writ of or in the nature of mandamus, as has been sought for in the instant case.

32. In view of the rival contentions raised on behalf of the parties the following questions arise for consideration in these writ applications :--

(a) Whether there has been a discrimination made by the State by and between the petitioners and other persons similarly situated.

(b) Whether the State was bound to follow the staffing pattern in terms of the guidelines issued by the Medical Council of India in the years 1974 treating the post of Reader as equivalent to the post of Associate Professor.

(c) Whether the State was bound to give effect to the judgment of this court in C.W.J.C. No. 5004 of 1982 and other analogous cases ?

(d) Whether the petitioners were bound to be considered for the post of Professor in terms of Annexure 5 of the writ application ?

(e) Whether the petitioners have any legal right to obtain the relief as prayed for although no order has been passed by the State of Bihar in terms of section 6(3) of the said Act.

33. Re-Questions no. (a) and (b)

The Parliament enacted the Medical Council of India Act, 1956. In terms of section 33(i) of the said Act, the Medical Council of India has been conferred with certain powers. In exercise of its aforementioned power the Medical Council of India made recommendations in respect of the qualifications requisite for appointment of persons to the post of teachers and Physicians/Surgeons etc. in

the Medical Colleges and attached hospitals for under graduate and Post Graduate teaching which were approved as Regulation under the said Act by Government of India. The staffing pattern in respect of Medical and Surgery Department recommended by the Medical Council of India is in the following terms.

"Director, Professor/Associate Professor, Readers/Assistant Professor."

However, the Medical Council of India amended its recommendation in the year 1974 in which the nomenclatures for the posts suggested were as:--

1. Professors, 2. Readers and 3. Lecturers, conforming to the nomenclature prescribed by the University Grant Commission or alternatively, 1. Professors, 2. Associate Professor 3. Assistant Professor.

34. In the said recommendation it was stated as follows :--

Teachers holding posts of the rank of Associate Professor/Readers and above possessing qualifications and experience as prescribed under the Regulations of the Council as approved by the Government of India vide letter no. F.A. 12/65 MPT dated 5th June, 1971 can continue in their posts and also be eligible for promotion to higher post. But teachers holding posts lower than the rank of Associate Professor/Reader possessing qualifications as prescribed under the Regulations of Council as approved by the Government of India vide their letter no F. 4.12.85 MPT dated 5th June 1971 but not according to the present Regulations can continue in their posts but will not be eligible for promotion to higher posts unless they satisfy the present requirements.

Provided further that candidates appointed as teachers prior to 5th June 1971 and not satisfying either the above requirements can continue in the posts they were occupying as on 5th June 1971.

35. So far as the departments of General Medicine and General Surgery are concerned, the academic qualifications for the posts as recommended by the Medical Council of India are in the following terms:--

Post

Academic Qualifications

Subject

Teaching/Research Experience.

General Medicine.

(a) Professor.

M.D. (Medicine) M.R.C.P. Special Board of Medicine Internal. (USA)

M.D. (General Medicine)

(a) As Reader in General Medicine for five years in a Medical College.

(b) Reader. Associate Professor.

-do-

(b) As Lecturer in General Medicine for 3 years in a Medical College.

(c) Lecturer. Asstt. Professor.

-do-

(c) The requisite recognised Post-graduate qualification in the subject and 3 year teaching experience as Tutor/Resident/Registrar in General Medicine of which 1 year should be after postgraduate qualification.

(d) Tutor/ Registrar/ Resident.

M.B.B.S.

General Surgery.

(a) Professor.

M.S. (Surgery) F.R.C.S. Speciality Surgery USA)

M.S. (General Surgery) Board of.

(a) As Reader in General Surgery for five years in a Medical College.

(b) Reader.

-do-

(b) As Lecturer in General Surgery for 3 years in a Medical college.

(c) Lecturer.

-do-

(c) The requisite recognised postgraduate qualification in the subject and 3 years teaching experience as Tutor/Registrar/ Resident in General Surgery of which 1 year should be after postgraduate qualification.

(d) Tutor/Registrar Resident.

M.B.B.S.

36. There appears to be some disputes as to whether the aforementioned 1974 Regulation of the Medical Council of India received the approval of the Government of India or not so as to partake to the nature of Regulations framed under the Medical Council of India Act. However the stand of the respondent state in this connection appears to be that the recommendations of the Medical Council of India which was approved by the Government of India on 5th June 1971 being a Regulation as contemplated u/s 33(J) of the Indian Medical Council

Act, is binding upon the State but the recommendations made by it in the year 1974 are not binding.

37. It, however, has been asserted on behalf of the State that it adopted a Resolution dated 23rd November 1976 for redesignating the teaching posts in the following manner :--

?Present Designation

Re-designated.

Professor

Professor

Lecturer

Associate Professor

Tutor

Assistant Professor

Registrar/Resident Officer.

Registrar/Resident

A Copy of the said resolution is contained in Annexure B to the counter affidavit filed on behalf of the State.

38. Mr Advocate General, when questioned, however, could not dispute that the post of Reader had all along been considered as higher than that of Lecturer and in that view of the fact although in Annexure B to the counter affidavit the post of Reader or its qualifications have not been mentioned, it appears incongruous to me that whereas the post of a Lecturer had been shown equivalent to that of an Associate Professor, even that status has not been given to the Readers in the 1976 Resolution adopted by the State and as contained in Annexure B to the counter affidavit appears to be thus conflicting with the 1971 Regulations as also the guidelines issued by the Medical Council of India in the year 1974.

39. From Annexure 18 series, particularly, in relation to Dr. B.N. Paul, which is at pages 212 and 213 of the brief and of Dr. Ramdev Kumar, which is at pages 214 and 215 of the brief, it is evident that the said persons, at the relevant time like the petitioners had been holding the posts of Reader but had been treated to have been holding the posts of Associate Professor. From a letter dated 1.3.1975, which is at page 215 of the brief, it appears that Dr. C.P. Thakur and Dr. R.C. Kumar whose names also find place in Annexure 5 like the petitioners, had also been sent on deputation by the State of Bihar.

40. From a letter dated 15.9.1978 addressed by the Principal of S.K. Medical College Muzaffarpur to Dr. M. Mishra Additional Director, Medical Services it appears that the case of Dr. B.K.N. Singh is also similarly situated to that of

petitioners.

41. These aspects of the matter have also been taken into consideration by the Health Commissioner in his report, as contained in Annexure 14 to the rejoinder filed on behalf of the petitioner to the counter affidavit of the State, wherein it was recommended that if a decision is taken to promote the writ petitioners to the post of Associate Professor, the gradation list could be suitably amended. In the said re-port, the report of the Screening Committee has also been considered and thereby the petitioners were recommendable to be considered suitable for promotion in the post of Associate Professor from August, 1978. In the aforementioned report it has further been pointed out that the writ petitioners have been working as Associate Professor like Dr. Narayan, Dr. Sinha and Dr. Verma and others. The respondent State except contending that the writ petitioners were not qualified to hold the post of Assistant Professor could not controvert the position that if they were qualified to hold the post of Associate Professor at the material time and even if the recommendations of the Screening Committee were given effect to, in that event, their cases are absolutely similar to the other persons as referred to hereinbefore.

42. From the discussions made hereinbefore it is evident that the State has failed to give effect to its own policy decision wherein it sought to redesignate the post of Lecturer as Associate Professor and in view of the fact that the position of Reader at one point of time was higher than Lecturer, even in terms of the guidelines issued by the Medical Council of India, there cannot be any doubt whatsoever that the persons who had been holding the post of Reader ought to have been redesignated as Associate Professor.

43. Further there does not appear to be any justification whatsoever for the State of Bihar to discriminate amongst persons similarly situated inasmuch as noticed hereinbefore. Dr. Paul, Dr. R.D. Kumar and others were treated to be Associate Professors who had been holding the post of Reader whereas the petitioners who have hereby been treated as Assistant Professor although they were also holding the posts of Readers. The State of Bihar was also bound to consider the cases of the petitioners on the same footing, albeit of course subject to their suitability to hold the said posts.

44. Article 14 strikes at arbitrariness While applying its policy decision the State is bound to treat similarly the cases of all persons who are similarly situated. It does not lie in the mouth of State to say that it would treat the cases of the petitioners by redesignating them as Assistant Professor although they have already been holding the post of Readers but in case of others they would redesignate the holders of the posts of Readers as Associate Professors, Such a discrimination at the hands of State must be held to be wholly arbitrary and violative of the constitutional protection of equality before law and equal protection of law.

45. In this view of the matter it has to be held that if the petitioners were

otherwise qualified to hold the posts of Associate Professor, the State was bound to consider their cases similarly to those of Dr. B.N. Paul, Dr. R.D. Kumar and others.

46. In *State of Madhya Pradesh vs. K. Kumari Nivedita Jain & ors.* reported in AIR 1981 S.C. 2045, it has been held that Regulation 2 of the Council is merely recommendatory in nature. It was further held in that decision that though the question of suitability into the medical, curriculum may come within the power and jurisdiction of the Council, the question of selection of candidates to the medical Course does not come within the purview of the Council.

47. The aforementioned decision has recently been followed by the Supreme Court of India in *Arati Gupta and others vs. The State of Punjab and ors.* reported in 1988 vol. I.S.C.C. 258. Though, therefore, there is no doubt that the matter relating to selection of candidates must be left at the hands of the State in terms of the provision of the said Act but the same has to be done by the State in terms of its policy decision as also in terms of the provision of Statute itself.

48. In the instant case there is no doubt nor there is any dispute that State has adopted different standards in the cases of the petitioners in one hand and in the case of Dr. Paul and Dr. Kumar and other doctors in the other.

49. While implementing the provisions of the said Act, the State was bound to adopt the same standard but evidently it utterly failed to do so.

50. Thus there is no doubt that the State has made discrimination in case of the petitioners and has also not followed the staffing pattern which was done in the cases of others.

51. Re-Question (C).

In the L.P.A. No. 88 of 1987 and analogous cases it has been held by us that the consent order passed in C.W.J.C. No. 5004 of 1986 and another analogous cases, so far as the same relates to the interpretation of Section 6 of the said Act is concerned, was not binding upon the respondents.

52. Suffice it to say that a consent order although is binding upon the parties and operates as an estoppel, the same being in nature of an agreement entered into by and between the two parties to the lis cannot be held to be binding upon others who are not parties thereto. Such a consent order does not operate as *res Judicata*. The writ petitioners cannot take any benefit of the said consent order so far as interpretation of section 6 of the said Act is concerned as against the private respondents who were not parties thereto and in this view of the matter it is open to the State as also to the private respondents to contend that the same cannot be implemented. It is further well known that an erroneous admission in law is not binding and may be challenged in a Superior Court. Reference in this connection may be made to *State of Bihar V. Simranjit Singh Mann and ors.* reported in 1987 Bihar Law Judgment 362.

53. Further as indicated in our judgment in L.P.A. No. 88 of 1987 and another analogous case, the Supreme Court of India interpreted the provisions of sub-section 2 of Section 6 via-a-via sub-section 3 of Section 6 of the said Act in State of Bihar v. Dr. Yogendra Singh (Col) (Retd) and ors, reported in 1982 S.C. 882 and in that view of the matter the said decision being a binding precedent upon this court in terms of Article 141 of the Constitution, We are bound by the said judgment and accordingly it must be held that provision of sub-sections 2 and 3 of section 6 of the Act operate in different fields and are supplementary to each other and it cannot be said that sub-section 2 of Section 6 controls sub-section 3 thereof.

54. In view of what has been held hereinbefore it must be held that judgment of this court in the aforementioned C.W.J.C. No 5004 of 1986 and another analogous case cannot be implemented by this court by issuing the writ of mandamus against the State of Bihar.

55. Re-Questions (d) and (e)

These aspects of the matter have been considered in details in L.P.A. No. 88 of 1987 and another analogous case. In the said judgment it has been held by us that the writ petitioners do not derive any legal right which can be enforced by filing a writ petition unless a final order is passed by the State of Bihar in terms of sub-section 3 of Section 6 of the said Act.

56. The question as to whether the petitioners were entitled to be appointed to the post of Associate Professor depends upon so many factors e.g. the educational qualifications, teaching experiences of the petitioners for holding the said post etc. and the same must be considered by the State in term of the provisions of the said statute.

57. The very fact that the names of the petitioners found place in Annexure 2 of the report submitted by the Screening Committee constituted u/s 6(2) of the Act is clearly indicative of the fact that no final opinion has as yet been rendered by the said Committee inasmuch as the question as to whether the purported teaching experiences acquired by the petitioners in foreign countries should be considered or not would depend upon the advice rendered by the Medical Council of India in that regard.

58. The scope, object and purport of section 6 of the Act is such that the State can come to its own decisions only upon receipt of the recommendation of the Screening Committee which as held hereinbefore is statutory in nature.

59. The State of Bihar while exercising its power under sub-section 3 of section 6 of the Act must bestow serious consideration upon the relevant materials collected by the statutory Screening Committee and its opinion thereupon along with other relevant materials.

60. It will however be open to the State to consider the cases of each individual teaching staff in accordance with the University Regulations and Guidelines

issued by the Medical Council of India. The suitability of a person to hold a particular post and that too from a particular date must be determined objectively by the State of Bihar. Such a consideration at the hands of the State is quasi judicial in nature.

61. Dr. Tarakant Jha, the petitioner in C.W.J.C. No. 5277 of 1985 has all along been a government servant. So far the case of Dr. C.N. Jha being the petitioner in C.W.J.C. No. 5307 of 1985 is concerned, as noticed therein before, he although was a government servant but he resigned therefrom and the resignation submitted by him has been accepted by the State of Bihar.

62. However for the purpose of consideration as to whether the petitioners are fit to be appointed in teaching post in Sri Krishna Medical College, Muzaffarpur or not stand on the same footing.

In the case of Dr. T.K. Jha the State may not be able to terminate his service so as to render him jobless, inasmuch as in the event it is found by the State that he was not qualified to hold the post of Associate Professor or any other post, it will be open to the State to recall him to the State Service. However for consideration of the candidates for appointment in a teaching post in terms of the provision of the said Act the criteria is same for all eligible candidates, be he on deputation from the State service or otherwise as the provision of the said Act in view of section 12 thereof will prevail over any other law for the time being in force. Thus if a person is to be absorbed in the State Service in terms of the provision of the said Act the statutory requirement laid down therein must be fulfilled.

63. Thus the question as to whether these two writ petitioners were eligible to be appointed in the posts of Professor or not must be judged by the State of Bihar in accordance with the provision of the said Act.

64. However at the first flush the two writ petitioners appear to be highly qualified and thus appear to be entitled to a fresh consideration at the hands of the State of Bihar which has a statutory right to take a decision for selection of candidates.

65. That being the situation, the court has no other option but to direct the State to consider the case of petitioners along with other eligible candidates in terms of the provision of the said Act, However it is held that the writ petitioners till a final decision is taken by the State in terms of Section 6(3) of the said Act. must be deemed to have been serving the State in terms of proviso appended to section 6(1) of the said Act i.e. on ad hoc basis. Consequently it has also to be held that the petitioners have not derived any legal right to be absorbed in the State of Bihar unless a final order u/s 6(3) of the Act is passed.

66. In the result the State is hereby directed to refer the case of the writ petitioners to the Screening Committee which had already been functioning or to a new Screening Committee within a month from the date of receipt of the copy

of this order for consideration of the cases of the writ petitioners. If the opinion of the Medical Council of India relating to teaching experiences acquired by the petitioners have not been received, the State must make an endeavour to obtain the same with utmost expedition. It is further directed that the Screening Committee shall submit its final report within a period of one month from the date of receipt of this order by the State of Bihar in this regard or from the date of receipt of the advice of the Medical Council of India whichever is later. The State must also pass a final order in terms of Section 6(3) of the Act within one month from the date of receipt of the report of the Screening Committee. In the result these writ applications are allowed to the aforementioned extent. But in the facts and circumstances of the cases there will be no order as to costs.