
(1994) 04 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 9004|

Dr. V.C. Kishore and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0026

Final Decision : Dismissed

Judgement

S.N. Jha and G.C. Bharuka, JJ.—These two writ petitions on behalf of 28 Petitioners in all have been filed for direction to the Respondents to include their names in the gradation list dated 15th July 1993 of the Medical Officers of the Bihar Health Service and for giving them the benefit of promotion to the Junior Selection Grade and Senior Selection Grade.

2. The Petitioners were appointed by the private management and working in different capacities in the private Medical Colleges prior to their take over under Bihar Private Medical Colleges (Taking Over of Management) Ordinance, 1976, later replaced by the Bihar Private Medical Colleges (Taking Over) Act, 1978 on 22nd January 1979.

3. A bare perusal of the notification dated 15th July 1993 shows that the gradation list has been prepared with respect to Medical Officers appointed upto the year 1978. According to the Petitioners, they having been appointed by the private management prior to 1978 they are entitled to their inclusion in the aforesaid List. In view of the provisions of Take Over Act the prayer, in our opinion, is wholly misconceived.

4. Section 3(1) of the said Act provides that the State Government may, by a notified order and from the date mentioned therein, take over a College and the management and control thereof shall thereupon be exercised by the State Government in such manner as may be laid down in the said Order. In terms of Section 3(2) and (3), on the date of the Take over all the assets and properties

of the College and the College body shall stand transferred to and vested in the State Government. Similarly, all liabilities and obligations of the College under any agreement or contract entered into bona fide before the date of taking over shall be deemed to have devolved on the State Government. As regards the teaching staff and other employees of the College, Section 6(1) of the Act lays down:

As 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 an ad hoc basis till a decision under Sub-sections (3) and (4) is taken by the State Government.

Sub-section (2) of the said Section provides for setting up of one or more Committees of experts and knowledgeable persons to examine the bio-data of each member of the teaching staff in order to ascertain whether their appointment, promotion or confirmation was made in accordance with the University Regulations in keeping with the guidelines laid down by the Medical Council of India and taking into consideration all relevant materials including length of service, in the College, for the purpose of their absorption in Government service. Section 6(3) empowers the State Government, on receipt of the report of the Committee, to decide in respect of each member of "teaching staff on the merits of each case, "whether to absorb him in Government service or whether to terminate his service or to allow him to continue on an ad hoc basis for a fixed term or on contract and shall, where necessary predetermine the rank, pay, allowances and other conditions of service."

5. The provisions, as aforesaid, leave no room for doubt that retention of the staff employed in the College on the date of the Take Over was on an ad hoc basis so that their cases could be considered for the purpose of absorption. They, accordingly, cannot claim to have entered the Government service prior to the Take Over. The gradation list dated 15th July 1993 includes Medical Officers upto 1978. The prayer of the Petitioners can be allowed only if their appointment in Government service is reckoned from the date(s) of their appointment when the College was under private management, in some cases dating back to 1970-71. Obviously, this would be contrary to the express provision of Section 6. The Supreme Court while considering the same very provisions in the case of State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others, has held that the staff of the private Medical Colleges became Government servants only upon take over u/s 3(1) by virtue of the provisions of Section 6(1) of the Act, characterising their appointment on an ad hoc basis as 'precarious'. If the deemed appointment u/s 6(1) is itself subject to the decision of the State Government u/s 6(3) at which stage his services are even liable to be terminated, it is difficult to visualise as to how his appointment under the Government can relate back prior to the take over itself. The grievance of the Petitioners is wholly misplaced.

6. These writ petitions are devoid of merit and, accordingly, dismissed in limine.