

(1952) 03 PAT CK 0006
In the Patna High Court
Case No : S.C. Appeal No. 16 of 1952

Harikrishna Sinha

APPELLANT

Vs

The Patna University and Another

RESPONDENT

Date of Decision : 28-03-1952

Acts Referred:

Constitution of India, 1950 — Article 133, 133(1), 226

Citation : AIR 1952 Patna 463

Hon'ble Judges : Sinha, J;Imam, J

Bench : Division Bench

Advocate : P.R. Das, S.K. Sen and K.B.N. Sinha, for the Appellant; Govt. Pleader and Ramananda Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Imam, J.—This is an application under Article 133 of the Constitution, for leave to appeal to the Supreme Court against a decision of this Court dismissing the applicant's application for writ of mandamus under Article 226 of the Constitution. The applicant is employed as a laboratory assistant at the Bihar National College, Patna. Previous to the Bihar Act XXV of 1951, the applicant was on the electoral roll of the Patna University maintained under the Patna University Act, 1917. He was on this roll as a voter for the teachers specified in Class III. With the commencement of the Act XXV of 1951, a Senate, a Syndicate and an Academic Council have to come into existence. For this purpose, an election of the Senate had to take place and the Chancellor of the Patna University under the aforesaid Act, fixed the 20th of March 1952 for election of the Class III representative members Clause (i) under the Act for the Senate.

The electoral roll which was prepared for this election did not contain the petitioner's name as a voter for the Class III Representative members Clause (i). The petitioner along with other laboratory assistants submitted a memorial to the Chancellor of the Patna University somewhere about the 16th of February 1952, protesting against the exclusion of the laboratory assistants from the list of

voters for the aforesaid Class III representatives. The material before me does not clearly indicate as to what was the final order of the Chancellor. I am informed that, in fact, he has passed no order. The petitioner being aggrieved filed an application in this Court for a writ in the nature of mandamus under Article 226 of the Constitution, on the 25th of March 1952, which was summarily rejected by a Bench of this Court on the 26th of March 1952.

2. This matter has been argued at some length by the learned Counsel for the petitioner as well as by the Government Pleader. The main contention of Mr. Das has been that the petitioner has the statutory right to be on the list of voters for Class III Representative members Clause (i) having regard to the provisions of the Bihar Act XXV of 1951. He contended that this right was a valuable right, one of the most valuable rights that any individual can have in a democracy. The petitioner had been unreasonably and without justification excluded from the list of voters with reference to the aforesaid Class III representatives and, thus, had been deprived, by an illegal order, of his right to vote. Reference was made to the definition of the word "teachers" in the aforesaid Act, and it is better to set out that definition.

Under Section 2(p), the word "teachers" has been defined to include Principals, University professors, professors, readers, lecturers and other persons imparting instruction in departments or institutes established and maintained by the University or in any of its colleges but do not include research scholars or research Fellows. Section 15 of the aforesaid Act provides that the Senate shall consist of certain persons; Class I refers to ex-officio members; Class II to life members; Class III refers to Representatives members and Class IV to nominated members. It is with Class III that we are concerned in the present matter. Clause (i) under this head-Class III reads as follows:

"Thirty five teachers, other than Deans, Principals, and Heads of the University departments, to be elected from and by the teaching staffs of colleges and University departments in such manner as may be prescribed by the Statutes, so that the teaching staff of every college and the teaching staff of every University department shall be represented on the Senate under this sub-head in such number and at such intervals as may be prescribed by the Statutes."

Clause (ii) refers to fifteen graduates. The other clauses under this Class need not be stated, that is to say Clauses (iii), (iv) and (v).

3. It was contended by Mr. Das, therefore, that having regard to the definition of "teachers" and what is contained in Section 15, regarding Class III, Representative members Clause (i) the petitioner, who was a laboratory assistant, was undoubtedly a teacher and, therefore, was entitled to vote in the election to the Senate for the Class III Representative members, namely, 35 teachers. Mr. Das referred to the fact, which was not in dispute, that the petitioner was on the list of voters for Class III representatives, namely teachers, under the old Act, i.e., the Patna University Act, 1917. He referred to certain

sections of the new Act, namely, the Bihar Act XXV of 1951, which made it clear that statutes, ordinances, regulations, and rules made under the Patna University Act, 1917 which were in force immediately before the commencement of the new Act, shall continue to be in force, so far as they are not inconsistent with the new Act, subject to such modifications and adaptations, if any, as may be made therein by the Vice-Chancellor and approved by the Chancellor.

Section 58 of the Bihar Act 25 of 1951 provides that the enactments specified in the Schedule to the Act, in their application to the colleges transferred to, and the departments established, and maintained by, the University under the Act were thereby repealed, provided that all appointments made, orders issued, degrees conferred, privileges granted or other things done under any of the said enactments and in force immediately before the commencement of the Act shall, so far as they were not inconsistent with the Act, will be deemed to have been respectively made, issued, conferred, granted or done under the Act.

The Government Pleader, on the other hand, has contended that u/s 55 (2) the Vice Chancellor of the Patna University was to carry on the duties of the University for a period of three months from the commencement of the Bihar Act 25 of 1951; and that u/s 9 (4), the Chancellor of the Patna University could, by order in writing, annul any proceeding of the University which was not in conformity with the Act, the Statutes, the Ordinances and the Regulations. The petitioner could and, in fact, did move the Chancellor against his exclusion from the list of voters with reference to Class III representatives. There was, therefore, another remedy open to the petitioner than that of a writ under Article 226 of the Constitution. He further, contended that u/s 45 of the Bihar Act XXV of 1951, if any question arose whether any person had been duly elected as a member of the Senate, the Syndicate or the Academic Council, the matter should be referred to the Chancellor, whose decision thereon shall be final.

His contention in this respect was really to this effect that, if the thirty five teachers, as the Class III representatives u/s 15 of the Act, were elected, the petitioner could still have the matter referred to the Chancellor raising the question whether such persons had been duly elected when the voters' list was incomplete, because those who were entitled to be on this list were not on the list. The Government Pleader also contended that since the application for a writ under Article 226 of the Constitution had been rejected by a Division Bench of this Court and the granting of such a Writ being entirely a matter of discretion, this Court should not grant leave to appeal, because it could not be said, where discretion had been exercised, that it is a fit case for appeal to the Supreme Court. Lastly, the Government Pleader urged that the present application should be dismissed on the ground of convenience, namely, that if leave to appeal to the Supreme Court was granted with the consequent injunction restraining the election to the Senate, the entire functioning of the University would come to an end.

4. So far as the last contention of the Government Pleader is concerned, I am

not attracted by it, for, it seems to me that whatever may be the inconvenience caused by the delay in holding the elections that consequence must follow, if any right, which the petitioner has under the law to vote in the elections, he has been deprived of.

5. No doubt, the granting of a Writ under Article 226 of the Constitution is a matter of discretion with the Court, but I take it that every discretionary power is exercised judicially and I am not prepared to hold that no leave to appeal to the Supreme Court can be granted where the Court has declined to exercise its discretionary power. Each case has to be considered upon its merits and, I think, instances are not wanting where leave to appeal to the Supreme Court has been granted by this Court where question of issuing a writ under Article 226 of the Constitution has been considered and this court has been of the opinion that the case was a fit one for appeal to that Court. I have not the advantage of knowing what were the reasons which persuaded their Lordships of the Division Bench to reject the petitioner's application under Article 226 of the Constitution.

Therefore, in the present matter, it will be necessary to set out some reasons as to whether this is a case which, in my opinion, is a fit one for granting leave to appeal to the Supreme Court. Under the old Act, namely, the Patna University Act, 1917, a rule had been framed, viz., Rule 102, which provided that the names of only those laboratory assistants that take part in actual teaching in a college and are also graduates shall be entered in the electoral roll of college teachers. In other words, not every laboratory assistant was put on such a roll but only the laboratory assistants who took part in actual teaching in a college, and were graduates. A fresh electoral roll had to be prepared for the election to the Senate under the new Act, Bihar Act, XXV of 1951.

I have given at the commencement of this judgment the definition of the word "teachers" in this Act, and a laboratory assistant may be a person imparting instruction and, if so, may be regarded as a "teacher" under the definition. u/s 15 of the Bihar Act XXV of 1951, Class III Representative Members Clause (i) have to be elected from and by the teaching staff of colleges and University departments. To my mind, an important question arises in this case as to whether a laboratory assistant, though coming perhaps under the definition of the word "teacher" is a member of or part of the teaching staff of a college or University Departments. The petitioner's application under Article 133 of the Constitution, no doubt, states that amongst his other duties he has the duty of imparting instruction and, therefore, he is a teacher within the meaning of Bihar Act, XXV of 1951. There is no assertion in that petition that he is a member of or part of the teaching staff of the college where he is employed.

In a supplementary affidavit filed in the course of the hearing of the present application, it has been asserted that the petitioner is on the teaching staff of the college. One Kalika Prasad, an assistant of the Patna University, has sworn an affidavit to the effect that there was a committee appointed by the Vice-Chancellor to draft Statutes, Ordinances and Regulations under Bihar Act XXV of

1951; that the committee met on the 9th of January 1952 and considered various matters including the question of inclusion of the laboratory assistants in the register of teachers; and it was resolved by the Committee that the laboratory assistants could not be included in the register of teachers and must be transferred to the register of registered graduates. The affidavit goes on to give the reasons as to what influenced the Committee in its decision. The main assertion is in paragraph 5 of the affidavit which runs as follows:

"That the routines of the Colleges would show that they (laboratory assistants) are not shown taking classes and are not on the teaching staff of the colleges or (university?) department."

Paragraph 7 goes on to state that the laboratory assistants do not take part in the election to choose representatives of the teaching staff of the college to the Governing Body of the colleges. Paragraph 8 states that the laboratory assistants are not taking any class. Although there is no definition of the words "teaching staff" in the Act (Bihar Act XXV of 1951), yet in the light of what prevailed before that Act, namely, Rule 102, as quoted in the petitioner's application, the names of only those laboratory assistants who took part in actual teaching in a college and who were graduates were to be entered in the electoral roll of college-teachers.

It seems to me, therefore, that there is a clear distinction between being a "teacher" within the definition of that word under Bihar Act XXV of 1951 and being a "teacher" who is a member of the "teaching staff" of a college or University department. I see no reason to distrust the affidavit filed on behalf of the Patna University by one of its assistants, particularly when that affidavit has as its annexure a copy of the minutes of the Committee to which reference has been made in the affidavit itself. It would, therefore, appear that the petitioner is not a member of the teaching staff of the Bihar National College, Patna and as such could not claim to be entitled to be put on the list of voters for the Class III Representative members Clause (i) under the Bihar Act XXV of 1951.

As to whether the Vice Chancellor was justified while having the electoral roll prepared in excluding the laboratory assistants from the register of teachers and transferring them to the register of registered graduates, was a matter, in my opinion, purely within the domestic affairs of the University. This is not a case where the petitioner has altogether been excluded from the electoral roll of the University.

6. I do not think it is necessary for me to go into the question raised by the Government Pleader with reference to Section 9 (4) and Section 45 of the Act, for the reasons which I have already set out.

7. Having regard to all the circumstances, I do not think this is a fit case for leave to appeal to the Supreme Court. The application is accordingly dismissed.

Sinha, J.

8. I agree.