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**(1995) 08 PAT CK 0043**

**In the Patna High Court**

**Case No :** C.W.J.C. No's. 695, 1340, 1354, 1433, 1873 and 1963 of 1990 (R)

Hem Chandra Malkani and Another

APPELLANT

Vs

Ranchi University and Others and State of Bihar and Others

RESPONDENT

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**Date of Decision :** 16-08-1995

**Acts Referred:**

Bihar College Service Commission Act, 1976 — Section 11(2)  
Bihar State Universities Act, 1976 — Section 35(2), 57A

**Citation :** (1995) 2 BLJR 1369 : (1995) 2 PLJR 567

**Hon'ble Judges :** G.B. Patnaik, C.J;P.K. Deb, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

G.B. Patnaik, C.J.—These six writ petitions involve common questions and were, therefore, heard together and are being disposed of by this common judgment. The petitioners in C.W.J.C. No. 1873 of 1991 (R) are lecturers in Commerce in Shree Satguru Jagjeet Singh Namdhari College, Garhwa. The petitioners in CWJC No. 1963 of 1990 (R) are also lecturers of the same College i.e. Satguru Jagjeet Singh Namdhari College, Garhwa, in different subjects like Chemistry, Botany, History, Political Science and Physics. The petitioners in C.W.J.C. No. 695 of 1990 (R) are lecturers of the said College in the Department of Economics, Urdu and English. The petitioner in C.W.J.C. No. 1354 of 1990 (R) are lecturers of the said College in Anthropology, Chemistry and Commerce. The petitioner in C.W.J.C. No. 1340 of 1990 (R) is lecturer in Zoology of the said College and the petitioner in C.W.J.C. No. 1433 of 1990 (R) is a lecturer in History in the said College.

2. It is the common case of the petitioners that they have been appointed by the Governing Body of the College against sanctioned posts prior to the College becoming a constituent College. The College became a constituent College with effect from 1.4.1987 pursuant to the notification dated 12.5. 1985. On 26.7.1991 the Respondent No. 4, Finance Officer, Ranchi University, Ranchi, issued a direction to the Principal of the College, Respondent No. 5, not to make any

payment to the teaching and non-teaching employees of the College beyond 10 teachers on the assumption that those teachers are working against unsanctioned posts without any financial assistance. The aforesaid letter from Respondent No. 4 to Respondent No. 5 has been annexed as Annexure-15 in C.W.J.C. No. 1873 of 1991 (R). As a result of the said letter, though the petitioners were drawing their salary since the date of the College becoming a constituent College, but were denied of any salary since July, 1991. The petitioners, therefore, have approached this Court for quashing of Annexure-15, inter alia, on the ground that the petitioners having duly appointed against the sanctioned posts prior to the College becoming a constituent College, the State Government as well as the University having accepted this position, the impugned order under Annexure-15 has been passed on erroneous assumption that the appointments have been against non-sanctioned posts and, therefore, the same is invalid and in-operative.

3. Broadly the case of each of the petitioner is that the State of Bihar has granted affiliation to the College up to the degree standard. On account of increase in the strength of the students, the Principal of the College had requested the State Government for sanction of additional posts. The Principal, under the orders of the Governing Body, issued advertisement inviting applications from the suitable candidates for filling up the posts. On receipt of such applications, the candidates were required to appear at an interview. The successful candidates in the interview were ultimately appointed to the posts of lecturers in different subjects on different dates, whereafter they joined and started teaching in the College. On 3.7.1987, the Deputy Secretary, Government of Bihar, in the department of Education, addressed a letter to the Vice Chancellors of Bhagalpur, Ranchi and Lalit Narayan Mithila Universities intimating the Government decision to make the three Colleges as constituent Colleges and simultaneously it was also directed that a list of teachers appointed in the College be prepared to be scrutinised by a Committee for facilitating the regularisation of the services of the teachers. The State Government also called upon the Universities to take over control and administration of the College by 31.7.1987. In the aforesaid letter, which has been annexed as Annexure-6 in C.W.J.C. No. 1873 of 1991 (R), it was unequivocally indicated that the posts which have been sanctioned by the University before 16.8.1976 would be treated as legally sanctioned posts; the posts sanctioned by the State Government after 16.8.1976 either with or without financial assistance would be deemed to be legally valid and sanctioned post and all applications filed till 31.3.1987 for creation and sanction of posts pending with the Government in the Education Department as well as the applications for regularisation of services of the teachers would be decided on the basis of the report of a three-member Committee and until a final decision is taken by the State Government, all teaching and non-teaching employees will be paid their minimum pay and dearness allowance and their appointment should be treated as Ad-hoc. Further case of the petitioners is that the State of Bihar through its Deputy Secretary in

the Department of Education informed the Registrar of Ranchi University by letter dated 13.11.1987, which has been annexed as Annexure-8 that the Government has sanctioned 51 posts of lecturers without any financial assistance. The Governing Body then took a decision in its meeting dated 21.12.1987 to hand over the College with all its assets and liabilities to the University. On 11.2.1988 under Annexure-9, the Secretary, Bihar College Service Commission, constituted under Bihar College Service Commission Act, 1976, intimated the State Government of its temporary concurrence for a period of one year from the date of joining the post by the teachers or from the date of creation of the post whichever is later in accordance with Sub-section (11) of Section 2 of Bihar College Service Commission Act, 1976, provided the College has got affiliation of the University. It was also indicated that this concurrence will have no effect if the College has already been taken over and has become a constituent College. The Registrar of the Ranchi University then by its letter dated 25.4.1988 intimated the fact of taking over of the College and then a notification was issued on 12.5.1988, which has been annexed as Annexure 10/2 indicating that Sadguru Jagjit Singh Namdhari College, Garhwa, has been taken over as a constituent unit of Ranchi University with effect from 1.4.1987. Ranchi University through its Registrar, by letter dated 23rd December, 1988, which has been annexed as Annexure- 11, intimated the Principal of the College that the teaching and non-teaching staff of the College have been provisionally accepted subject to verification in due course, and the Vice-Chancellor has been pleased to direct that the employees shall be paid two months salary out of the College fund. In that letter a list of teachers was given some against sanctioned posts and some against recommended posts. The Registrar, Ranchi University, then notified the University level Scrutiny Committee to scrutinise the appointment of teaching and non-teaching staff of S.S.J.S.N. College, Garhwa, fixing a meeting of the Committee at the residence of the Vice Chancellor on 17th June, 1989. Further case of the petitioners is that the said Scrutiny Committee recommended the case of the petitioners in its recommendation dated 23.1.1990 but the State Government, instead of accepting the same and the University instead of making payment, the impugned order dated 26.7.1991 (Annexure-15) emanated, as a result of which the petitioners were forced to approach this Court. According to the petitioners, they have been appointed by the Governing Body prior to the College becoming a constituent College against sanctioned posts and their appointments having been found to be valid appointment by the University level Scrutiny Committee, there was no option for the State Government not to regularise the services and the University was wholly without jurisdiction in prohibiting payment of their salary. It was further contended that at any rate when the petitioners have been rendering services by way of teaching the students, not being intended to be a gratuitous one, the direction of the University under Annexure-15 prohibiting payment of salary is wholly unsustainable in law.

4. The University has filed a counter-affidavit on behalf of Respondents No. 1 to 4 being sworn to by Registrar of Ranchi University. The State Government,

however, has not filed any return, though the counsel appearing for the State Government, Mr. Eqbal made strenuous argument with reference to the provisions of the Bihar State Universities Act, 1976, and the Rules. The stand of the University in its counter-affidavit is that after the College became a constituent College, the State of Bihar requested the Registrar of the University to have a thorough scrutiny over the claims of the teaching and non-teaching staff of the College since a large number of persons were claiming to be duly appointed persons against sanctioned teaching and non-teaching posts. The University level Scrutiny Committee scrutinised the cases of the existing employees and submitted its report to the State Government on 23.1.1990. It is the positive case of the University that the names of the petitioners do not find place as against the list of sanctioned post, but the State Government has not taken any final decision as yet. According to the University's counter-affidavit the salary of those teachers who are working against sanctioned posts are being paid regularly but so far as the persons working against non-sanctioned posts, no doubt, under the orders of the Government, some payment was being made till 1991, but as those employees were not legally entitled to any salary and financial burden became heavy, the impugned order under Annexure-15 has been passed.

5. In course of hearing of the applications, counsel for the University as well as the State submitted with emphasis that u/s 35(2) of the Bihar State Universities Act, 1976 (hereinafter to be referred to as the Universities Act), no College is entitled to appoint any person on any post without the prior approval of the State Government. Under the proviso to the aforesaid Sub-section approval of the State Government is not necessary where the appointment is made for a period of six months. Since these teachers have been appointed without the prior approval of the State Government, the appointment itself is invalid and does not confer any right on them. Further submission of the counsel is that appointment of a teacher of an affiliated College can be made by the Governing Body on the recommendation of the College Service Commission and since the appointment was made without recommendation of the College Service Commission the appointment is invalid and inoperative and, therefore, no right accrues in their favour. Learned Counsel also advanced argument that under Sub-section (9) of Section 58 of the Universities Act, a purely temporary appointment on a post of lecturer duly sanctioned by the State Government would be made for a maximum period of six months or till the end of the session, whichever is earlier by a Selection Committee constituted under the Chairmanship of the Vice-Chancellor. But even such lecturer appointed on a temporary basis cannot continue on the expiry of the said period of six months. The appointment in the present case has not been made by the Selection Committee under the Chairmanship of the Vice-Chancellor and, therefore, the appointment is invalid. The aforesaid provision of the Universities Act, in our opinion, has no application to the present case, since the appointment has been made before the College became a constituent College by the Governing Body of the College. But the said

provision indicates the mandatory nature of the statute even when an appointment is made on temporary basis by a Selection Committee under the Chairmanship of the Vice-Chancellor and, therefore, any appointment made contrary to the provisions of the statute cannot continue for a period of more than six months.

6. In view of rival stand of the parties, the following questions arise for our considerations:

(i) Are the petitioners legally appointed teachers of an affiliated College which was taken over by the State Government and has become a constituent College; and

(ii) Having taken over the College with all its assets and liabilities, is the State and the University justified in not paying the salary to the teachers even though those teachers are continuing as teachers and are imparting education?

7. So far as the 1st question is concerned, the answer would depend on an examination of the relevant provisions of the Universities statute as well as the Bihar College Service Commission Act, 1976, (hereinafter to be referred to as the Commission Act). Under the Universities Act, an "affiliate College" has been defined u/s 2(c) to mean an educational institution having received privileges of the University according to the provisions of the Act and the Universities statutes thereto. The expression "Constituent College" has been defined u/s 2(i) to mean a teaching institution maintained or controlled by the University. u/s 6 of the Universities Act, it is provided that all recognised teaching in connection with the Universities courses shall be conducted through the Colleges and through the departments maintained by the University, subject to the general control of the Vice-Chancellor. u/s 35 of the Universities Act, it is provided that no teaching or non-teaching post involving the financial liabilities shall be created without the prior approval of the State Government, except where the College is established, maintained or Governed by the State Government or is established by religious or linguistic minority. According to Section 57A of the Universities Act, appointment of teachers of affiliated Colleges not maintained by the State Government shall be made by the Governing Body on the recommendation of the College Service Commission. Under the Service Commission Act under Sub-section (7) of Section 2 appointment to the post of teachers in affiliated Colleges shall be made by the Governing Body of the College on the recommendation of the Commission.

8. On the materials available on the record, it is crystal clear that the petitioners appointment had not been made by the Governing Body on the recommendation of the Service Commission nor had it been made against the posts created with the approval of the State Government. Learned Counsel appearing for the petitioners, however, relied upon Annexure-9, the so-called letter from the Service Commission dated 11.2.1988. But the aforesaid document, in our considered opinion, cannot be said to be a recommendation of the Service

Commission in terms of Sub-section (7) of Section 2 of the Service Commission Act. That apart, the very contents of the letter would indicate that it has no application to the petitioners since by the time the letter had been issued the College had become a constituent College. The learned Counsel appearing for the petitioners with reference to the letter under Annexure-8 dated 13.11.1987 as well as the Registrar's letter dated 23.12.1988 annexed as Annexure-11 and Registrar's letter dated 20.6.1989 annexed as Annexure-13, contended that it must be held that the petitioners are duly appointed teachers against sanctioned posts by the State Government. We are unable to accede to this submissions since what is necessary to be established is that before the petitioners appointed to different posts prior to the College became a constituent College, whether the posts against which they were appointed were created with the prior approval of the State Government in terms of Section 35(i) of the Universities Act. The aforesaid documents relied upon by the petitioners do not establish any prior approval on the part of the State Government for creation of posts against which the petitioners have been appointed. In this view of the matter our answer to the Ist question is that the petitioners are not legally appointed teachers against the sanctioned posts of an affiliated College and neither the posts had been created in accordance with the statute nor the appointment of the petitioners had been made in accordance with the provisions of the Service Commission Act. Consequently, the petitioners cannot claim to have any legal enforceable right which can be enforced by a writ of mandamus or certiorari.

9. Notwithstanding our conclusion on the is question as aforesaid, the second question requires serious consideration. It is not disputed either by the University or by the State that even after the College has been taken over as a constituent College in 1987 the services of the petitioners are continuing and they are teaching in the institution. It is also not disputed that from 1987, the date of taking over of the College till the impugned letter under Annexure-15 amanated in 1991, the petitioners were being paid salary though at the minimum scale of pay of a teacher. The aforesaid decision has been taken to give some time to the State and the University authorities to scrutinise the cases of all these teachers and then to find out as to how many of them were appointed duly against sanctioned posts and how many of them can be a regularised and, in the event they can not be regularised, then their services would be terminated. If the teachers are teaching in an institution then the services cannot be intended to be gratuitous one. It is also apparent from the return filed by the University that the University level Scrutiny Committee has already submitted its reported to the State Government in 1991. But the matter is lying there in cold storage and no decision has been taken by the State Govt. The State Government having decided to take over the institution and the institution having been taken over, is not expected to show an attitude of apathy towards the teachers, who were teachers of the institution prior to its take over and who are also continuing to be teachers of the institution. The State as an ideal employer is expected to take a final decision with regard to the fate of such teachers so that in the event it is

ultimately found that they are surpluses or their services cannot be regularised then they can seek any other avocation for their livelihood. By now most of these teachers must have been over-age and we do not know whether at all they can not take up any other avocation for earning their lively. Be that as to may, an indifferent attitude on the part of the State Government in not taking a final decision with regard to the fate of these teachers of the constituent College is highly deplorable. The initial decision to continue those teachers as ad-hoc teachers and to pay the salary at the minimum scale of pay having been withdrawn and no salary being paid to these teachers since the issuance of Annexure-15, it has all the more become necessary for the State Government to wake up from its slumber and take a final decision on the report of the University level Scrutiny Committee, which is said to have been submitted to the State Government in the year 1991. In the aforesaid premises, we are compelled to issue a direction that the State Government must take a final decision with regard to the fate of these teachers of the constituent College in question and while taking that decision the State Government must adopt sympathetic attitude subject to course to the requirement of post of teachers of the College and eligibility of the teachers to teach in the college. This final decision should be taken within a period of two months from the date of receipt of a copy of this order. If no decision is taken by the State Government within two months from the date of receipt of a copy of this order then the State Government and the University are directed to continue to pay the salary of the teachers at the minimum scale of pay as they were being paid after the College become a constituent College in accordance with the letter of the Commissioner of Education dated 26.9.1987, which has been annexed as Annexure-7 in C.W.J.C. No. 1873 of 1991 (R).

10. It was brought to our notice that in a Bench decision of this Court in the case of Akhila Nand Pandey and Ors. v. The Ranchi University, Ranchi, and Ors. C.W.J.C. No. 2790 of 1992 (R), disposed of on 31.3.1995 wherein some other teachers of the College in question had approached this Court, the writ application was dismissed with a finding that the teachers had no legally enforceable right. We have not said in this judgment or anything contrary to the same, but merely have made some observations for the State Government to take decision on the basis of the report of the University level Scrutiny Committee so that the concerned teachers will know their fate finally and thereafter decide their own course of action.

11. With the directions and observations, as aforesaid, the writ applications are disposed of. There will be no order as to costs.

P.K. Deb, J.

12. I agree, Such sort of directions were given to the State Government in respect of lecturers of Constituent Colleges under Vinoba Bhave University in C.W.J.C. No. 1810 of 1994 (R) & C.W.J.C. No. 2292 of 1994 (R).