
(2015) 01 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7636 of 2014

Kedar Nath Pandey

APPELLANT

Vs

The Magadh University

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 01 PAT CK 0006

Hon'ble Judges : Ajay Kumar Tripathi, J.

Bench : Single Bench

Advocate : Vinod Kumar Kanth, Senior Advocate, Purushottam Kumar Jha, Avanindra Kumar Jha and Sandhya Mishra, for the Appellant; Girijish Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—The six petitioners, who are all Readers in different Colleges under Magadh University, have been hit by a unilateral decision taken by the Pay Verification Cell constituted by the Education Department, Government of Bihar in terms of Annexure-8 series. The impugned decision has the effect of shifting the date of their absorption in service after many many years. This will not only affect their pay fixation etc. but will also have the effect of taking away the benefit of promotion granted on the basis of the earlier date of absorption in service. The decision contained in Annexure-8 series according to the petitioners are unilateral without any opportunity of hearing or notice as well as being beyond powers of the Pay Verification Cell and in total derogation of the provisions of the Bihar Universities Act.

2. Interlocutory Application has been filed subsequently, which was numbered as 8646 of 2014. This IA also challenges the constitution and validity of the Pay Verification Cell constituted by the State Government on many a grounds including the fact whether the same are in the teeth of Section 4(1)(14) of the Bihar Universities Act. The above IA is allowed.

3. The common plea taken in the writ application is that between the year 1980 and 1984 petitioners were appointed as Lecturers in different subjects in three different affiliated Colleges under the Magadh University. The details of their appointment and engagement have been provided in paragraph 4 of the writ application. In support thereof the appointment letters have also been annexed as Annexures 1 and 2 series.

4. The Colleges in which these petitioners worked came to be taken over by the State and under the 4th Phase and became constituent Colleges under Magadh University. There were large scale controversies in matter of such take over and the status of the teachers and employees of the 4th Phase taken over colleges. The dispute travelled right uptill the Hon''ble Apex Court. The Hon''ble Apex Courts set up a Commission under Hon''ble Mr. Justice S.C. Agrawal (Retd.). After detailed deliberations and hearing, Hon''ble Justice Agrawal submitted his report before the Hon''ble Apex Court on 19.12.2003 and the said report was accepted by the Apex Court vide order dated 12.10.2004. The order of the Hon''ble Apex Court is reported in State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, , which is equivalent to 2005 (1) PLJR 464 (SC).

5. Based on acceptance of Justice Agrawal's report, the Magadh University issued a notification where the services of altogether 748 employees, relating to 8 Colleges of 4th Phase constituent Colleges, falling under the said University was notified. Details relating to the said notification and the date of absorption are available as Annexure-3 but the same has been extracted insofar as it relates to these petitioners in paragraph 8 for convenience.

6. It is the stand of the petitioners that the notification issued by the University in terms of Annexure-3 is in conformity with the recommendation of Justice Agrawal and in support thereof extracts of the recommendation of Justice Agrawal Commission has been annexed as Annexure-4 series to the writ application. Learned Senior Counsel representing the petitioners submits that a conjoint reading of Annexure-1, 3 and 4 series makes it absolutely clear that the respondent University has fixed the date of absorption of service of these petitioners strictly in accordance with the eligibility fixed by Hon''ble Justice S.C. Agrawal. Since the report of Justice Agrawal was accepted by the Apex Court in toto, it has the seal of approval by the Apex Court and has become final. If the University authorities in exercise of power under Section 4(1)(14) of the Bihar State Universities Act, 1976 has formalized the said recommendation by issuing a notification, which has taken effect as far back 8th of May, 2005, the same cannot be undone by a non-statutory authority or officials, overriding the above factual and legal position in garb of issuing pay slips. Such unilateral decision is in gross violation of the law and the right of these petitioners.

7. The stand of the University is in support of the present petitioners. According to them, the notification dated 8th of May, 2005 was in conformity with the recommendation of Justice Agrwal Commission and the University thereafter took

a conscious decision in terms of the power vested under Section 4(1)(14) of the Universities Act, 1976. But they also take a plea that since the University is bound by the directive issued by the State Government and funds have to be released by the State Government for payment, they are helpless and they cannot override the said decision.

8. In view of the decision so taken, the Court directed the counsel for the State to file a counter affidavit justifying the decision of the Pay Verification Cell and whether it is empowered to take such decision and justification thereof.

9. The State has filed a counter affidavit including a supplementary counter affidavit. They take a plea that the various provisions under the Universities Act like Section 47, 48, 50, 51, 52 and 53 deal with various financial powers and arrangements between the University and the State. The State Government is empowered under Section 54 of the Act to get the accounts of the University audited. Keeping in mind the provisions noted above, it is onerous duty of the State Government while releasing funds on a recurring basis to properly scrutinize and audit such funds at the stage of preparation of budgets as well as at the stage of proper utilization by the University and the Colleges. The Pay Verification Cell has been set up with the above statutory provision and object in mind. Nobody can take an objection to such arrangement.

10. The State has also taken a plea that all these persons were appointees by the Managing Committee but the post on which they were recommended was the third post so not sanctioned. No doubt recommendation was made on 30.4.1986 for approval before the State Government but the actual approval to such recommended post was issued only on 1.2.1988. It is in this background that the petitioners are being treated to have been absorbed with effect from 1.2.1988.

11. When IA No. 8646 of 2014 was filed challenging the constitution of the Pay Verification Cell the supplementary counter affidavit of the State Government was filed in which similar plea has been taken that taking into consideration the various legal provisions under the Bihar State Universities Act 1976 the State Government has financial control over the Universities. Earlier the State Government used to leave such responsibility upon the Universities but the same was not found to be satisfactory. There were many issues emerging from the previous arrangement, therefore, the State Government took a policy decision and a centralized Pay Verification Cell was set up after due approval of the Finance Department as well as the Cabinet vide resolution contained in Memo No. 169 dated 28.1.2013. The said resolution has been annexed as Annexure-A to the supplementary counter affidavit. The Pay Verification Cell has been assigned power to verify initial appointment, promotion, increment of pay, transfer, retirement and other cases relating to verification of pay of the concerned employees. They also clarify that the basic verification is still done by the University authorities and forwarded to the Pay Verification Cell which is checked and cross-checked for correctness and authenticity. If certain omissions are found then a decision is taken by the Pay Verification Cell.

12. The State also harps on the point that under Section 35 of the Universities Act no posts for appointment are to be created without prior sanction of the State Government. Their stand in paragraph 17 of the supplementary counter affidavit is that Justice Agrawal Commission's recommendation was for absorption of services of employees of the 4th Phase constituent colleges, who were appointed either against sanctioned post or against the post recommended by the University to the State Government upto the cut off date i.e. 30.4.1986. But since the Commission has not fixed date of absorption, therefore, the date of sanction by the State Government, which is said to be 1.2.1988, stands applied to the petitioners. The Pay Verification Cell has only pointed out the above fact while issuing the entitlement slip. The State had also taken opinion of the Advocate General whose opinion is similar to the stand taken by the State.

13. Learned Senior Counsel representing the petitioners submits and is agreeable to the extent that the Pay Verification Cell at the most can point out infirmities, if any, but the final decision has to be taken by the University authorities since power is vested in them under the statute. The Pay Verification Cell is working as an auditor and at the best their objection can be treated as audit objection on which appropriate response should have been sought of the University as well as the person so affected but treating the objection of the Pay Verification Cell as sacrosanct and final would be conferring a power and responsibility not vested in them.

14. Learned Senior Counsel has serious objection to the creation of the Pay Verification Cell and the legality of its constitution and continuance. This Court, however, has to reject such a plea on the ground that the State Government does have the necessary power drawn from the various provisions of the Universities Act and such a constitution is by a Cabinet resolution. This Court does not find the creation of the Pay Verification Cell to be in derogation of any law or procedure. There has to be audit and power has to be conferred and vested in a body especially when there is huge amount of public money being spent by the State Government, as grant-in-aid, to the Universities across the State. They have no financial capability and money to meet even a fraction of the expenses. There has been large scale misuse and diversion of funds issued by the State which has remained unaccounted, for many a years, and it became impossible for the State of Bihar to exercise proper control over the money released by them in favour of the Universities since none of the Universities would render proper accounts or provide authentic budget well in time for verification by the State. The creation of the Pay Verification Cell, therefore, was an outcome of the conscious executive decision duly approved by the Cabinet from power drawn under the Universities Act. The Court opines that the State Government does have power to exercise control over the financial affairs of the University. The Court, therefore, does not find any illegality in the constitution of the Pay Verification Cell under the Department of Education, Government of Bihar.

15. But the Court may accept the proposition urged at the bar on behalf of the

petitioners that the objection taken or pointed out by the Pay Verification Cell cannot become the decision of the University and, therefore, this decision cannot be permitted to overturn previous decisions of the Universities by virtue of which the absorption, promotion etc. are given by the Universities. These powers are vested in the Universities and in this regard decision of this Court in the case of Dr. Sheela Rani Sinha Vs. The Hon'ble Chancellor of Universities and Others--> lays down the law. The relevant paragraphs are quoted herein below:--

"5. It is also contended that in view of the decision which has already been rendered by the Hon'ble Supreme Court in the case of State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, , there ought not to be any confusion on the issue as to which rules or statute will govern their cases. Attention of the Court has been drawn to para 54, 55 and 56 of the said decision wherein the Hon'ble Supreme Court has given its interpretation to section 35 as well as section 4(1)(14) of the Bihar Universities Act as well as the subsequent amendment brought about under section 57-A.

6. Paragraphs 54, 55 and 56 of the aforesaid decision are reproduced hereinbelow, which according to the counsel settles the law or removes the ambiguity if at all on such issue:--

"54. The two non obstante clauses with slightly different wordings have thus to be harmoniously construed so as to fulfil the object of each one of them. On examination of the scheme of the Act and the relevant provisions, we find that Section 35, requiring prior sanction of the State Government for creation of posts and appointments, applies to all affiliated colleges. Compared with Section 35, Section 4(1)(14) has limited operation at a stage when a university enters into an agreement with the management or Governing Bodies of private institutions affiliated or non-affiliated for taking over its management, assets, liabilities and staff. The effect of non obstante clause in Section 4(1)(14) is that the matter of absorption of staff of such institution/college proposed to be taken over, would be within the sole power and jurisdiction of the university concerned within whose jurisdiction the affiliated college or institution falls. On the matter of absorption of staff of taken-over institutions, Section 35 requiring prior sanction or approval of the State Government for creation of posts and appointment, would not be a constraint on the power of the university. It is different thing that the university in considering absorption of the staff of institution taken over may give due consideration to the legality/regularity or otherwise of a particular appointment but it would not be inhibited by the absence of prior sanction or approval of the State as contemplated in Section 35 of the Act. This is how the two non obstante clauses have to be harmoniously construed and applied as giving overriding effect to each and restrict their operation within exclusive field assigned to each. In the matter of creation of posts and appointments in affiliated colleges in normal circumstances, requirement of prior sanction or approval of the State Government, as contained in Section 35, is not dispensed with because of the contrary provision contained in Section 4(1)(14) and the latter section is

restricted in its operation to absorption of staff or a taken-over institution by the university.

55. Clause (c) to sub-section (2) of section 57-A was introduced by Act 3 of 1990 and has no retrospective application to the cases of affiliated colleges taken over as constituent colleges prior to the year 1990. The said clause (c) to sub-section (2) of Section 57-A requires further approval of the Bihar State University (Constituent Colleges) Service Commission before absorbing the services of teachers of the affiliated colleges converted into constituent colleges. The aforesaid piece of subsequent legislation amending the same Act can appropriately be taken as an aid to the interpretation of the unamended provisions of the Act. The amended provisions of the Act are an indication that the subject of absorption of staff of taken-over affiliated colleges is treated as a subject distinct from regular recruitment to the posts in affiliated colleges which is to be made with prior sanction or approval of the State Government as provided in Section 35 of the Act. Similarly, sub-section (3) added to Section 35 by Act 17 of 1993 is also prospective in application and has no adverse effect on the absorption of the services of the teaching staff of the affiliated colleges taken over as constituent colleges prior to 1993. Sub-section (3) applies to normal mode of recruitment of staff (teaching or non-teaching) of affiliated colleges and is merely reiteration of the legal position that appointments and promotions made contrary to the provisions of the Act, statutes, rules and regulations would be invalid and liable to be terminated at any time. It also provides that any expenditure incurred by the university against such illegal, irregular, unauthorized appointments/promotions shall be realized from the officers found responsible for committing such illegality as a public demand under the provisions of the Public Demands Recovery Act, 1914. Clause (c) of Section 57-A(2) introduced in the year 1990 and sub-section (3) of Section 35 introduced in the year 1993 being prospective in operation have no application to the affiliated colleges taken over as constituent colleges with the existing staff prior to the year 1990. Those provisions introduced subsequently in the year 1990 and 1993 are being referred to for a limited purpose to show that the legislature has always treated differently the normal recruitment which has to be made with the approval of the State Government to teaching and non-teaching posts in affiliated colleges and the matter of absorption of existing staff appointed against sanctioned or non-sanctioned posts in the affiliated colleges taken over and converted as constituent colleges.

56. The two non obstante clauses, although slightly differently worded, one in proviso to Section 4(1)(14) and the other in Section 35 of the Act have thus been construed harmoniously. Our conclusion is that they operate in two different fields - former to consideration of absorption of staff of taken-over colleges and the latter to affiliated colleges when they are not under any proposal of being taken over by the university. The two provisions being intended to operate in two different situations and fields, both have an overriding effect on each other. That is why the legislature has employed a non obstante clause in each."

7. In the background to the interpretation which has been given by the Hon''ble Supreme Court in the year 2005, the stand taken by the learned counsel for the Hon''ble Chancellor to that extent has no meaning because whatever be the observation which may have been given by the Division Bench of the High Court in the case of Dr. Shiv Narain Yadav (supra), the interpretation now given by the Hon''ble Supreme Court settles the issue.

8. When learned counsel for the Hon''ble Chancellor is confronted with this decision and the observation of the Hon''ble Supreme Court, he submits that now the position is otherwise, in the sense that the ball lies in the court of the University itself and the Chancellor has no role to play.

9. Whatever be the understanding of the situation by the counsel for the Chancellor the law being what it is as laid down by the Apex Court in the case of State of Bihar and others v. Bihar Rajya M.S.E.S.K.K. Mahasangh and others (supra), the University is competent enough to decide the cases of the two petitioners.

9. This Court has no conflict in its mind keeping the facts as well as the ratio laid down by the Hon''ble Supreme Court in the above quoted paragraphs of the decision. In light of the same, these two writ applications are disposed of with a direction upon the Vice Chancellor of Magadh University to consider the claim of the petitioners within a reasonable time frame, pass an appropriate order and communicate the same to the two petitioners."

16. In view of the above, the objection of the Pay Verification Cell cannot have the effect of annulling previous notifications issued by the University, unilaterally, nor can such objection have the effect of modifying the previous notification issued in favour of the petitioners. Such objections will be treated as audit objections for which notices would be required to be given to the University concerned, which in turn will issue notice to the concerned affected teachers and employees, seek their response and the University thereafter will revert to the Pay Verification Cell. If the response of the University or the concerned employee is not found to be satisfactory, the State Government can issue appropriate direction to the University to issue appropriate corrigendum within the time frame so fixed. But the final notification and amendment or corrigendum or clarification of the previous decision has to be taken by the University because Pay Verification Cell does not have any power in this regard.

17. Yet another serious infirmity found by the Court is that the decision contained in Annexure-8 series has been passed in gross violation of the principles of natural justice because the decision so taken by the Pay Verification Cell has serious civil consequences for these petitioners since they are going to not only loose out on the salary they have so earned but even the orders of promotion etc. which they have acquired over a period of time on the basis of the date of their initial absorption on their respective post and position gets altered.

In view of the above, Annexure-8 series are quashed. Writ application is allowed

with liberty to the concerned respondents to act in accordance with law and the statute.