

(2004) 04 JH CK 0101

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6369 of 2002

Kedar Nath Rai and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 639

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : R. Krishna, for the Appellant; S. Anwar and M.K. Laik, Sr. SC-1, for the Respondent

Judgement

Tapen Sen, J.

1. Heard Mr. R. Krishna, learned counsel appearing for the petitioner and Mr. Sohail Anwar, learned Senior Advocate, for the University and Dr. M.K. Laik, learned Senior S.C.-I for the State respondents and with their consent, this writ petition is being disposed off at this stage.

2. The six petitioners are said to be working continuously and without any break as Laboratory Assistant in the S.R.T. College, Dhamri at Godda. This fact has not been disputed by any of the respondents. The only stand is that these petitioners have been working on daily wages without regular pay scale in as much as the Government has not yet sanctioned these posts. However, a letter dated 06.05.1990 (Annexure 8) issued by the Bhagalpur University goes to show that the University had written a letter to various authorities including the Heads of the P.G. Department etc. and also to members of all constituent colleges of the Bhagalpur University informing them that cases for regularization of non teaching staffs appointed under the staffing pattern should be paid the minimum of pre-revised scale of pay but not less than Rs. 815/- for the 3rd grade and Rs. 525/- for the 4th grade till posts were created or till these employees were regularized in their services.

3. In paragraph 5 of the writ petition, it has been stated that all the petitioners, except the petitioner No. 4, have been working since 1979 i.e. prior to the College becoming a constituent unit of the Bhagalpur University on 14.10.1982. The petitioner No. 4 had started working since 06.06.1983. This fact has also been admitted in the counter affidavit of respondent Nos. 3 and 4 at paragraph 4 but they have stated that these appointments against unsanctioned posts in unaffiliated departments were in violation of Section 35 of the Bihar State Universities Act. It is further evident from the pleadings that the Science Faculty got approval/sanction up to the Intermediate level on 01.05.1987, it is also not disputed by any of the parties that the "petitioners are still continuing to work even till date but on a status which makes them helpless spectators compelling them to move this Court.

4. The overall scenario therefore which emerges is that, as on date, except the petitioner No. 4, the others have rendered the continuous service for 25 years whereas the petitioner No. 4 has put in about 22 years. However, the fact that the petitioners have been working on "staffing pattern" would be evidently from letter dated 15.01.1992 as contained in Annexure 10 (relevant at page 66 which is the list containing names of the petitioners).

5. In that backdrop of the pleadings, it is thus evident that while the petitioners claim a status, the respondents on the other hand, express helplessness on two counts--

(A) that the appointments are against Section 35 of the Bihar State Universities Act and the other- Universities Law; and

(B) that the posts having not been sanctioned by the State Government, no status can be conferred upon the petitioners.

6. The "staffing pattern" under which the petitioners were appointed and under which they have been allowed to continue for such a long period of time, cannot be rendered useless merely because of Section 35. The bar created for not appointing non teaching/teaching staff u/s 35(2)(i) was inserted by Act 3 of 1990. It is prospective and it cannot take away vested and/or accrued rights which stood conferred upon the petitioners as they were appointed on the basis of "staffing pattern" which was not illegal.

7. The only thing therefore that requires consideration is as to whether time has now come to direct the appropriate authority to consider the question of granting sanction and/or approval so that these petitioners can have a status not only in service but also in society.

8. In a judgment passed in the case of "Braj Kishore Singh and Ors. v. The State of Bihar and Ors.", reported in 1997 (1) PLJR 509, a Full Bench of the Patna High Court, held that "staffing pattern" which was already approved and persons having been allowed to work and to continue, it should be open to the competent authority to make the appointments against such posts and that would be

deemed to be appointments according to staffing pattern and these cannot be said to be illegal for want of posts. It has further been held that once staffing pattern is prescribed, it would be unreasonable to insist a prior approval of the State Government in the matter of granting of posts within the framework of the "staffing pattern" and if such appointments are made as per the "staffing pattern" within the sanctioned posts then that cannot be said to be contrary to Section 35 of the Act.

9. However, taking into consideration the creation of the new State of Jharkhand and also taking into consideration that this College now comes under Sidhu Kanhu University and also duly noting the submissions of the University made in paragraph 4 to the effect that Grade 3 and 4 employees of the Science Faculty cannot be paid their wages until and unless a decision regarding creation of posts and regularization is taken by the State, this Court considers it appropriate to direct the concerned Secretary i.e. the Secretary, Department of Higher Education, Department of Human Resources Development, Government of Jharkhand to look into the matter and take a decision in accordance with law. Before parting with this case, it would be relevant to quote the observations of the Full Bench made in paragraph 32 of the said judgment :--

32. In the above premises, the judgment of the learned Single Judge rejecting the claim of the appellants on the ground that they were appointed without prior approval of the State Government as contemplated u/s 35 of the Act cannot be sustained. In the ordinary course, in view of any conclusion that it is open to the State Government to consider the validity of appointments already made for the purpose of granting or refusing post facto approval, it would have considered asking the State Government to look into the claim of the appellants afresh. However, having regard to the fact that the appellants have continued in service for more than 17 years, I do not think it would be appropriate exercise of discretion to re-open the matter after such a long lapse of time. In *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , a Constitution Bench of the Apex Court has held that where initial appointment is not made according to the rules but the appointee continues in service uninterruptedly for long period till regularization of his service, the entire period as the period spent in service for the purpose of consequential benefits will be counted. The appellants are accordingly entitled to have their services regularized against the posts within the staffing pattern as applicable to the College."

10. The concerned authorities shall pass orders in accordance with law after taking into consideration the observations made herein within a period of three months from the date of receipt of a copy of this order which should be accompanied by a fresh representation. It goes without saying that if a decision is taken in favour of the petitioners that would include an order relating to arrears of salary also.

11. With the aforesaid observations and directions, this writ petition stands

disposed off. There shall however be no order as to costs.