
(2021) 02 JH CK 0168

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4636 Of 2018

Laxmi Narayan Singh And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:

Bihar State Universities Act, 1976 — Section 4(1)(14)

Citation : (2021) 02 JH CK 0168

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Sumeet Gadodia, Suresh Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. Sumeet Gadodia, learned counsel for the petitioners, Mr. Suresh Kumar, learned counsel for the respondent-State, Dr. Ashok Kumar

Singh, learned counsel for the respondent-Nilambar Pitambar University and Mr. A.K. Mehta, learned counsel for the respondent-Ranchi University.

2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising

due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been

heard.

3. The petitioners have approached this Court for direction upon the respondents to absorb the services of the petitioners on Class-III post of Non-

teaching cadre of Sri Sadguru Jagjit Singh Namdhari College, Garhwa. Prayer to extend all consequential benefits to the petitioners has also been

made in the writ petition.

4. The petitioner no. 1 was appointed in Sri Sadguru Jagjit Singh Namdhari College, Garhwa on the post of Routine Clerk/Assistant being a Class-III

employee on 12.12.1986, thereafter he submitted his joining on the said date in the aforesaid college. The appointment of the petitioner no. 1 was duly

approved in the meeting held by the Governing Body of the College on 30.01.1987. The petitioner no. 2 was appointed in Sri Sadguru Jagjit Singh

Namdhari College, Garhwa on the post of Accounts Clerk/Assistant being a Class-III employee on 10.12.1986. The appointment of the petitioner no.

2 was duly approved in the meeting held by the Governing Body. The petitioners were discharging their duties on Class-III posts in Sri Sadguru Jagjit

Singh Namdhari College, Garhwa. The certificate to that effect was issued by the Principal of the said college evidencing the said fact. In the year,

2005, services of the petitioners along with other similarly situated non-teaching employees who were appointed in the said college prior to the cut-off

date i.e 31.03.1987, were discontinued by the respondent-University and the services of the petitioners along with other similarly situated employees

were not absorbed by the respondent- University. The said college was established in the year, 1973 and was affiliated with the Ranchi University.

Pursuant to decision of the erstwhile State of Bihar, said college was converted into a Constituent College of respondent no 4-Ranchi University w.e.f.

1.04.1987 and the cut-off date for the said college was fixed as 31st March, 1987. The petitioners were working in the said college on Class-III post

of Routine Clerk/ Accounts, Clerk/Assistant prior to cut-off date and the petitioners were entitled for absorption of their services under the

respondent-Ranchi University. Several colleges were converted into Constituent colleges at the relevant point of time and disputes arose with respect

to absorption of Teaching and Non- teaching staff of the said college. The disputes with respect to regularization of employees working in one or the

other respective colleges prior to their taking over as Constituent colleges, were initially referred to a Three-Members Committee of the respective

Universities. The said Sri Sadguru Jagjit Singh Namdhari College, Garhwa prior to cut-off date of taking over of the college, there were altogether 114

sanctioned posts of Teaching Staff and altogether 66 sanctioned posts of Non-Teaching Staff, i.e 49 sanctioned posts in Grade-III and 17 sanctioned

posts in Grade-IV. The petitioners along with similarly situated persons were considered for appointment by the Governing Body of the said college on

the posts for which recommendations were already made by the college to the University prior to the cut-off date. The Ranchi University has

recommended for sanction of 75 posts of non-teaching staff prior to the cut-off date, which comprised of 34 posts of Grade-III employees and 41

posts of Grade-IV employees. The dispute with regard to absorption of one or the other Teaching and Non-Teaching staff working in converted

Constituent colleges was, ultimately travelled upto the Hon'ble Supreme Court. The Hon'ble Supreme Court constituted One Member Commission of

Hon'ble Mr. Justice S.C. Agarwal (Retd.) to examine the matter and to submit its report. The Hon'ble Justice S.C. Agarwal Commission examined in

detail the validity of appointment of one or the other non-teaching staff made in Sri Sadguru Jagjit Singh Namdhari College, Garhwa. The Hon'ble Mr.

Justice S.C. Agarwal Commission noticed and gave a finding that the respondent-Ranchi University vide its letter dated 11.02.1987 i.e prior to the cut-

off date had already recommended for sanction of 75 posts of non-teaching staff which comprise of 34 posts of Class-III employees and 41 posts of

Class-IV employees and had specifically given a finding that said 75 posts were also duly sanctioned by the State Government. Adequate details with

regard to non-teaching staff, who were appointed on the recommended posts were not placed before Justice S.C. Agarwal Commission and in that

view of the matter, Justice Agarwal Commission submitted report. Thereafter, the Hon'ble Supreme Court constituted another committee of Justice

S.B. Sinha (Retd.) Justice S.B. Sinha Commission considered the case for regularization/ absorption of the employees after hearing in detail and

submitted report. The report of Justice S.B. Sinha Commission has been accepted by the Hon'ble Supreme Court however, the persons who have not

been able to approach the Justice S.B. Sinha Commission have contended before the Hon'ble Supreme Court and the Hon'ble Supreme Court directed

to approach the High Court for such relief. Pursuant thereto, the petitioners have approached this Court.

5. Mr. Sumeet Gadodia, learned counsel appearing on behalf of the petitioners assailed the impugned action of the respondent-Nilambar Pitambar

University on the ground that Justice S.B. Sinha Commission has considered entire aspect of the matter in detail wherein Form-II, the names of the

petitioners who are required to be absorbed was disclosed by the Ranchi University and after much deliberation the Commission has come to the

conclusion that Form-II is genuine. Learned counsel for the petitioners further submits that pursuant to that acceptance of the Justice S.B. Sinha

Commission Report, the persons whose name is appearing in Form-II, have been appointed whereas the petitioners have been left out and this action

is discriminatory in nature. The name of the petitioners are also figured in Form-II. He submits that the Hon'ble Supreme Court has accepted the

report of Justice S.B. Sinha Commission whereas the names of the petitioners are figured and the petitioners are entitled for absorption. Learned

counsel for the petitioners draws the attention of the Court to several observations made by the Justice S.B. Sinha Commission and submits that the

case of the petitioners is required to be absorbed in terms of observation of Justice S.B. Sinha Commission Report and the Hon'ble Supreme Court.

He submits that by way of notification dated 26.07.2018 persons whose names appeared in Form-II, have been absorbed and the petitioners have

been arbitrarily not absorbed.

6. Per contra, Dr. Ashok Kumar Singh, learned counsel appearing on behalf of the respondent-Nilambar Pitambar University vehemently opposes the

prayer of the petitioners. By way of drawing the attention of the Court to several annexures of the writ petition, he submits that the petitioners' initial

appointment itself in cloud that is why the University after scrutinizing records have not recommended the name of the petitioners for absorption. He

refers to Annexure 1, 2, 3 and 4 of the writ petition and submits that these are not appointment letters. There is no document annexed with the writ

petition with regard to 12.12.1986 proceeding of the Governing Body of the college. He refers to annexure II/B which is at page 72 of the writ petition

and submits that sanctioned posts have been disclosed therein where the posts on which petitioners were appointed, is not there. He submits that the

petitioners have not worked with the said college for a single day and there is no acquaintance roll and salary has also not been paid to the petitioners.

He vehemently disputes the argument of the petitioners and submits that all these facts he has disclosed on affidavit and on these grounds, the writ

petition is fit to be dismissed.

7. Mr. A. K. Mehta, learned counsel appearing on behalf of the respondent-Ranchi University draws the attention of the Court to the Justice S.B.

Sinha Commission report and submits that Ranchi University was heard by the

Justice S.B. Sinha Commission and pursuant thereto observation was made that Form-II of non-teaching staff has admitted to be genuine. He submits that the University has not been able to take any decision prior to that and the Form-II was submitted by the Ranchi University whereas the persons who were working, have been disclosed before the Justice S.B. Sinha Commission pursuant thereto Justice S.B. Sinha Commission accepted the genuineness of the Form-II. He further submits that now the said college is affiliated with Nilambar Pitambar University and there are no documents with the Ranchi University to submit beyond the report of S.B. Sinha Commission.

8. Mr. Suresh Kumar, learned counsel appearing on behalf of respondent-State submits that the State has filed counter-affidavit in which it has been disclosed that the University has not recommended the name of the petitioners and in that view of the matter the role of the State is limited at this stage.

9. Having heard the learned counsel for the parties, the Court has gone through the materials on record. In the light of above facts and submission of the learned counsel for the parties, only question is required to be answered by this Court as to whether after acceptance of Form-II by the Justice

S.B. Sinha Commission which has been accepted by the Hon'ble Supreme Court can it be said that the appointments of the petitioners were not

genuine. It appears that the petitioners were appointed w.e.f. 12.12.1986 and 10.12.1986 respectively. Documents at Annexures 1, 1/1, 2, 2/1, 3, 3/1

suggest that the petitioners were working in the said college. The Secretary of that college has certified about the working of the petitioners disclosing

those documents. The University is disputing that documents but no document with regard to that effect has been brought on record by way annexing

in the counter-affidavit and only averments have been made in the counter-affidavit whereas petitioners have brought the documents vide Annexures

1, 1/1, 2, 2/1, 3, 3/1 to the writ petition with regard to working in the said college. The argument advanced by the learned counsel for the respondent-

Nilambar Pitambar University was considered by the Hon'ble Justice S.B. Sinha Commission and that time Ranchi University was represented before

S.B. Sinha Commission, the argument was verbatim of Nilambar Pitamber University before the Commission by Ranchi University. For correct

appreciation of the argument of the University, certain observations of that Commission is being reproduced here-in-below:-

When the matter was heard on 12.09.2014, Mr. Rajiv Singh, the learned counsel appearing on behalf of the University had raised the following

contentions:

- (i). The Claimants have not been working.
- (ii). The University has no record with regard to continuity of their services.
- (iii). The University has also no record with regard to payment of their salary.

The learned counsel however contended that the names of the applicants are contained in Annexures, but the University was required to verify the letters.

Pursuant to or in furtherance of the leave granted by this Commission to the University to verify the genuineness of the documents annexed to the

Claim Petition.

An affidavit affirmed by Sh. Amar Kumar Chaudhary, the Registrar of Ranchi University, Ranchi Jharkhand has been filed, wherein the genuineness

of the Prapatra-II containing the details of non- teaching employees working on the sanctioned posts and the University Letter No.B/163 dated

16.01.2005 and the reply of the Principal of SSJN College vide reference No. NCG/30/05 dated 19.01.2005 along with annexures containing the list of

non-teaching employees of the said college has been admitted to be genuine.

In the said affidavit, it has furthermore been contended that pursuant to a direction issued by the Hon'ble Jharkhand High Court dated 11.02.2009

passed in W.P.(S) No. 6372 of 2007 and other cases whereby and whereunder permission was granted to the writ petitioners therein to file a

representation in view of the annexures attached to the petition specially Annexure 13 and 14 appended thereto, the University has passed a reasoned

order on 11.07.2009 rejecting the representations of the Claimants.

The Claimants herein have filed a contempt petition before the Hon'ble Jharkhand High Court being Contempt Case (Civil) No. 421 of 2009 and other

cases.

While opining that there was no willful disobedience of the order passed by the High Court dated 11.07.2009 liberty was granted to the Claimants

herein to challenge the said order in accordance with law.

It is not in dispute that after the disposal of the matter by the Hon'ble Supreme Court of India in the Mahasangh's case, the Vice Chancellor of the

University on or about 16.01.2005 sought for a report from the Principal of the College as regards the status of the concerned non-teaching staff

pursuant where to or in furtherance where of by a letter dated 19.01.2005, the names of all the non- teaching staff who had been working in the said

college on the said date was sent to the University.

The University admittedly sat over the said matter for a long time, despite the fact that the same involved the question of livelihood of Class-III and

Class IV employees of the college and now it appears that only pursuant to the order of the Hon'ble Jharkhand High Court dated 11.02.2009, a

reasoned order was passed on 11.07.2009. This Commission asked a pointed question Mr. Rajiv Singh as to on what basis the report of the Principal

of the College was ignored where upon on instructions Mr. Rajiv Singh submitted that various committees had been constituted by the Universities.

The learned counsel, however, very fairly stated that in the year 1998 a committee went into the question as to whether the teaching staff of the

college have been working in the college or not, but no report is available in the record of the University with regard to the non-teaching staff. It is,

therefore, difficult to accept the contention of the University.

It is a matter of grave concern that the Ranchi University did not file the actual 'Prapatra II' before the Justice Agrawal Commission. It is also a

matter of grave concern that despite the fact that it had an opportunity to rectify its mistake, it failed and/or neglected to do so, presumably to save the

skin of the concerned officers. The University, for all intent and purport, has failed to exercise its jurisdiction under Section 4(1) (14) of the Bihar State

Universities Act, 1976 so far as the Claimants are concerned.

The said provision as interpreted by the Hon'ble Patna High Court and upheld by Hon'ble the Supreme Court of India in the case of Mahasangh

clearly postulates that it was for the University to pass an appropriate order and not for the State Government in terms thereof, and for the said

purpose even the services of those who had been irregularly appointed could be taken over. Thus, there cannot be any doubt or dispute that the

University was obligated to take into consideration all relevant facts in the matter of absorption of the teaching and non-teaching staff of a college

which has been converted into its constituent unit. If the entire document which was ' Prapatra II' stands admitted, this Commission fails to see any

reason as to why an appropriate order could not be passed by the University immediately thereafter. Evidently, the purported reasoned order dated

11.7.2009 was passed without taking into consideration the relevant materials and thus, the University must be held to have misdirected itself in law.

The University, as noticed heretobefore, in no uncertain terms admitted that the Claimants herein had been working in the college on the date of

conversion. The University, therefore, ought to have verified as to whether they were validly appointed or not. If the concerned employees were not

being paid their due salaries and had been paid certain ad hoc amounts, the same by itself cannot be ground to deprive them from their legitimate

claims. In the peculiar facts and circumstances of this case, this Commission is of the opinion that as admittedly the posts are still vacant, the

Claimants may be absorbed in the services of the University.

So far as payment of arrears of salary is concerned, the University may pass appropriate order on the basis of the actual services rendered by each of

the employee.

10. Justice S.B. Sinha Commission after considering the affidavit of one Amar Kumar Choudhary for genuineness of Form-II where the name of

petitioners alongwith others are figured has come to the conclusion that the same is genuine document. This genuineness report of Justice S.B. Sinha

Commission has been accepted by the Hon'ble Supreme Court in Civil Appeal No. 2703 of 2017 (Annexure-13) at paragraph no. 20 which is quoted

here-in-below:-

20. In our opinion, the incumbents with respect to whom the favourable direction has been made by Justice Sinha, have to be acted upon by State

Governments, and as such, they be implemented forthwith without any further delay within the outer limit of three months"".

In paragraph 21 of the said judgment, liberty was given to the persons to approach the High Court whose name was not found to be fit for acceptance

by the Commission.

The argument of non-working of some of the candidates was considered by the Hon'ble Supreme Court in para 17 of the said judgement which is

quoted here-in-below:-

17. Coming to the third objection raised with respect to certain candidates that they were not, in fact, working on the date of taking over. The

Commission has taken into consideration these aspects and has clearly recorded findings only after going into the factual aspects of individual matters

on the basis of documents only then cases have been decided. Thus, we find no infirmity or illegality in the same.

11. The petitioners have been compelled to move before this Court in view of the fact that although the petitioners were impleaded as party-

respondents in the said civil appeal however, they have not been able to prove that their case has not been considered by the Hon'ble Commission.

Pursuant thereto in para 21 liberty of the aforesaid judgment, liberty was provided to the persons. It is not the case that the petitioners' name is not

figured at Form-II, which has been affirmed by Justice S.B. Sinha Commission and by the Hon'ble Supreme Court. The persons whose names are

figured at Form-II, they have been absorbed whereas the petitioners have been left out. The University is model employer and in view of the

observations of Justice S.B. Sinha Commission and the Hon'ble Supreme Court, discrimination cannot be allowed to be continued with regard to the

petitioners.

12. As a cumulative effect of the discussions made above, the writ petition succeeds. The petitioners are directed to be absorbed in the light of

observation of Justice S.B. Sinha Commission report wherein Form- II has been found to be genuine which has been accepted by the Hon'ble

Supreme Court as has been done in the case of similarly situated persons contained in Annexure-14 dated 26.07.2018. This exercise shall be

completed within 12 weeks from the date of receipt/production of a copy of this order. With regard to payment of salary etc. , the parameters shall be

applied in the case of petitioners as has been disclosed in notification dated 26.07.2018.

13. With the above observations and direction, the writ petition stands allowed and disposed of.