

(1992) 10 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 868 of 1992 (R)

Manoj Prasad and Others

APPELLANT

Vs

Ranchi University and Others

RESPONDENT

Date of Decision : 29-10-1992

Acts Referred:

Bihar State Universities Act, 1976 — Section 35

Citation : (1993) 2 BLJR 893

Hon'ble Judges : Nagendra Rai, J;B.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Singh and Nagendra Rai, J.—We have heard the counsel for the parties at length, but we find no merit in this petition. We briefly record our reasons.

2. The petitioners claim to be class III and class IV employees of the J. S. College, Daltongaj, a constituent College of the Ranchi University. In the instant petition, they have claimed their wages for the periods from May, 1988 to August 1989 and again from February, 1991 onwards. They claim that though they were appointed against the posts sanctioned by the University in May, 1988, then the Principal of the College stopped payment of wages to them and this compelled them to taken up the matter with the University, Pursuant to an undestanding reached with the University they again started getting their wages from September, 1989 onwards and continued to receive their wages till January, 1991. Again from February, 1992 they are not being paid their wages though they are working against the posts.

3. A counter-affidavit has been filed an behalf of the respondents in which the claim of the petitioners is denied and it is stated that the petitioners have neither been appointed by the University nor by any competent authority of the University. Their appointments have never been approved by the University and further their appointments are illegal having regard to the provisions of Section

35 of the Bihar State Universities Act, 1976 which lays down mandatorily that no appointment shall be made against unsanctioned posts and without the prior approval of the State of Bihar. According to the respondents, all these appointments have been illegally made by the then Principals without the prior approval of the State Government. When this matter came to light, the University through its letter dated 15-4-1988 directed all the Principals of the Colleges to remove/terminate such appointments which were not duly approved. Pursuant to the said communication, the Principal of the J. S. College, Daltongaj through letters issued on 11-5-1988 terminated the appointments of several persons so employed including the petitioners and communicated the same to the University which is evidenced from Annexure-B.

4. Thereafter, the petitioners were not allowed to work nor were they being paid their wages. Subsequently the successor-Principal illegally allowed the petitioners to work from September, 1989 to January 1991 and also paid them wages for that period. This was illegal. He was succeeded by Sri M. Z. Haque as in-charge-Principal. When he came to know of the illegality, he stopped the payment of wages to the petitioners, particularly, in view of the fact that no fund was allotted for payment to such persons as their appointments were illegal. He also did not allow the petitioners to work in the College and the petitioners have not been permitted to work ever since. It is stated that the petitioners did not work for the period from May, 1988 to August, 1989 and Appointing authority (sic) not allowed to work from February, 1991, onwards. Since their appointments stood terminated, there was no question of payment of wages to them.

5. In their rejoinder, the petitioners have not denied the fact that their services were terminated in May, 1988. But they pleaded that the said order of termination was recalled. No reliable material has been placed before us on the basis of which we can say that the orders terminating their services were recalled. Reliance is placed upon Annexure-9 which is a resolution passed by the non-teaching staff Association of the college on 16-5-1988 in which it has clearly expressed its displeasure against the hasty action taken by the Principal of the College in terminating their services. The resolution further mentions that if the orders were not recalled, the non-teaching staff of the college will stop work with effect from 19-5-1988. In one corner of Annexure-9, there is an endorsement by hand that the termination letters issued by the Principal are cancelled.

6. We fail to understand how anyone can act on the basis of such endorsement on the copy of a resolution said to have been passed by the Association. Moreover, admittedly wages were not paid to the petitioners from May, 1988 onwards which would not have been the case if the orders of termination were recalled as alleged on 16-5-1988.

7. The submission urged on behalf of the petitioners that they have been working against sanctioned posts is belied by the letters of appointments annexed by them in support of this plea. The letters of appointment Annexure-5 series, themselves state that the petitioners were appointed on consolidated

remuneration. The posts had been sent to the State Government for approval and salary in the appropriate scale shall be paid only after the posts were sanctioned by the Government.

8. It is, therefore, obvious that these appointments were made in breach of the mandatory provisions of Section 35 of the Act. It is no one's case that the State of Bihar has, at any stage, sanctioned the posts.

9. Once it is held that the appointments were illegal and they stood terminated by separate orders issued in May, 1988, there is no question of payment of wages to the petitioners. It is not disputed that from May, 1988 onwards till August, 1989, the petitioners were not paid their wages. From September, 1989 to January, 1991 the then Principal without any authority permitted them to work and paid them their wages despite the orders of termination of their services. That would not clothe the petitioners with a right to continue to receive wages from the College. The claim of wages is dependant upon the subsistence of employer-employee relationship. If the services of the petitioner stood terminated in May, 1988, and that order was never recalled, set aside or stayed by any competent authority, the petitioners will not be justified in claiming wages because they ceased to be employees of the college, Their claim for wages has, therefore, no merit.

10. We may only observe that this is not the solitary instance where such illegalities have been discovered. The educational system in this State is in a shambles and the whole system has come to a grinding halt for many reasons; one of them is that despite a ban imposed by law, the Principals of various colleges, and in some cases Governing Bodies, have been making illegal appointments against unsanctioned posts for ulterior considerations. The fund granted to the colleges by the University is based upon the sanctioned posts. When that amount is sought to be distributed amongst a larger number of employees, most of them with illegally appointed, it gives rise to resentment on the part of genuinely appointed teachers who are either not paid their salary in full, or do not receive any salary at all for several months. Any effort to deal with such illegal appointments gives rise to lawlessness, and the atmosphere in the Colleges is completely vitiated. Unless the State and the University-authorities take firm action against such Principals and the members of the Governing Body, the situation is not likely to improve.

11. In the case of illegal appointments made by the Principals at the local level, if anyone authorises payment of wages to them, be it the Principal, the Vice-Chancellor, Registrar or any other authority, they do so at their own risk. It is open to the University in such cases to realise the amount so disbursed from the concerned persons authorising such illegal payment, apart from any other action that may be taken against them in accordance with law.

12. For these reasons, we find no merit in this petition and > it is, therefore, dismissed.