
(2009) 10 PAT CK 0014
In the Patna High Court
Case No : CWJC No. 10416 of 2009

Prabhat Kumar and Others

APPELLANT

Vs

The Rajendra Agricultural University and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Rajendra Agricultural University Act, 1987 — Section 14, 36(3), 36(4)

Citation : (2010) 1 PLJR 254

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Chitranjan Sinha and A.K. Ojha, for the Appellant; Subhash Pd. Singh, G.A.VIII for State, Y.V. Giri and Raju Giri for Rajendra Agriculture University, for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Petitioners in both the writ applications are presently working on the posts of Agricultural Inspector, Senior Technical Assistant, Junior Technical Assistant, Demonstrator and Research Assistant in the Rajendra Agricultural University. They have prayed for a direction to the respondent authorities of Rajendra Agricultural University to consider their cases for appointment/absorption/promotion to the posts of Assistant Professor cum-Junior Scientist under the provisions of Section 14.1(b) of the Rajendra Agricultural University Act. Petitioners have also prayed for quashing of the Advertisement No. 2/2009/RAU dated 22.7.2009 so far, it relates to recruitment of Assistant Professor-cum-Junior Scientists. Petitioners' grievance is that by issuing Advertisement No. 2 of 2009 dated 22.7.2009 for recruitment of Assistant Professor cum-Junior Scientist the Rajendra Agricultural University is trying to fill up the post by direct recruitments and leaving the petitioners' in lurch, despite their long struggle for their appointment by way of promotion/absorption on the posts of Professor cum-Junior Scientist.

2. Petitioners' case is that they have struggled for a long time for declaring their

posts equivalent to the posts of teaching employees, for the reason that they were also regularly guiding the students for their technical research work, and, as such discharging the duties of teaching faculties in the University. Earlier CWJC Nos. 4247 and 2647 of 1996 and analogous cases were filed by the similarly situated persons like petitioners, claiming similar U.G.C. scales as teachers. These writ applications were dismissed with this observation that unless the service conditions of the employees including that of Technical Supervisor of the University is amended and a decision is taken by the authorities of the University to grant the petitioners' same scale as paid to the Technical Supervisor of the Birsa Agricultural University, petitioners cannot claim similar scale. The struggle since then continued and finally the Board of Management of the University in its 57th meeting dated 17.8.2002 resolved to constitute a sub-Committee for recommending the criteria and eligibility of the persons holding the posts of Agricultural Inspector, Junior Research Assistant, Research Assistant, Technical Assistant, Senior Technical Assistant and Instructor to be appointed as Teacher. The sub-Committee submitted its report to the Board of Management recommending that the holders of these posts can be appointed/absorbed/promoted to the posts of teacher. The recommendation of the Sub-Committee was approved by the Board of Management in its meeting dated 3.4.2004 and resolution was taken that the persons holding these posts, who have requisite qualification to be appointed as teachers, they can be appointed/absorbed/promoted to teaching posts following the procedure as provided in the Act and the Rules. The Director Administration of the University vide office order No. 521 dated 2.11.2004, in the light of the resolution of the Board of Administration dated 3.4.2004 directed to implement the resolution of the Board and for considering the cases of eligible persons holding such posts for absorption/promotion/appointment on the posts of teacher, such as Assistant Professor cum- Junior Scientist. The Vice-Chancellor of the University thereafter vide letter No. 212 dated 5.4.2005 sent the resolution of the Board to the Chancellor for his approval and the Chancellor gave his approval to the resolution of the Board vide letter No. 1485 dated 10.6.2005. The Chancellor directed the University to prepare an appropriate draft amendment statute for bringing the employees in the category of teacher. The draft amendment statute was prepared and approved by the Board of Management in its meeting dated 24.12.2005. The proposed provision of the amended statute was again sent to the Hon'ble Chancellor for assent vide letter No. 365 dated 14.2.2006. The Hon'ble Chancellor accorded assent to the amendment in Clause 14.1 of the Statute of the University in exercise of power u/s 36(3) of the Agricultural University Act, 1987. The Secretariat of the Chancellor vide letter No. 2668 dated 1.8.2007 issued its approval to the amendment of Clause 14.1 of the Rajendra Agricultural University Statute for declaring Agricultural Inspector, Senior Technical Assistant, Junior Technical Assistant, Demonstrator, Research Assistant etc, as teachers. Finally the State Government also approved for publication of the amended provisions in the Bihar Gazette to satisfy the requirement of Section 36 of Sub-section (4) of the Rajendra Agricultural University Act, 1987

and the amendment was published in Bihar Gazette dated 28.1.2008. The University, after publication of the amendment of the Gazette took steps for implementing the provision and for absorption of the persons holding posts in different categories covered under amended Clause 14.1.(b) of the Statute as teacher. The University called for the details of the employees of the above categories and asked for submitting requisite information from different Departmental heads of the University. A Performa was also prepared for considering the cases for absorption of persons working in their categories, against the posts of Assistant Professor cum-Junior Scientist.

3. Petitioners' case is that the Regional Director, Agricultural Research Institute, Patna in the light of the administrative direction of the University had forwarded the details of the application of all the petitioners to the Director Administration for considering their case of absorption to the posts of teacher. When the University was trying to evolve the mode of absorption to the posts of teacher in accordance with the amended statutes, a resolution was taken in 73rd meeting of the Board of Management dated 29.7.2008 to refer entire matter along with the records to the State Government for approval of the mode of absorption proposed by the University. The Agricultural department after examining the entire matters finally clarified and issued letter No. 2703 dated 24.6.2009 that the steps may be taken for implementation of the provisions of 14.1(b) of the Statute in the letter and spirit. Petitioners' grievance is that despite clear instruction of the State Government for absorption of petitioners to the posts of Assistant Professor cum- Junior Scientist, the University has published Advertisement No. 2/2009/RAU dated 22.7.2009 to fill up the vacant posts through direct recruitments, ignoring the claim of the petitioners for absorption.

4. Petitioners in CWJC No. 10416 of 2009 had earlier moved this Hon'ble Court vide CWJC No. 1424 of 2005 for a direction to the University for extending them the status of teachers and consequential benefits. A counter affidavit was filed by the University in that writ application, stating that the University had already taken steps for implementing the order No. 521 dated 2.11.2004 and to consider the case of the petitioners' absorption under the amended Statute 14.1(b). In the given circumstances the petitioner did not press the writ application and withdrew it. This aspect has been recorded by the Hon'ble Court in the order dated 11.4.2008, whereby the writ application was permitted to be withdrawn. Subsequent to the disposal of writ application, Petitioners are surprised on account of publication of this Advertisement, as the University's action is contrary to the Statute and the assurance given by it before the Hon'ble High Court in CWJC No. 1424 of 2005.

5. Counter affidavit has been filed on behalf of the Rajendra Agricultural University stating that none of the provisions under the Statute have been violated by publication of advertisement for filling up the vacant posts in different categories of teachers and scientists. Petitioners are also free to apply for the posts, if possessed with the requisite qualifications. Their eligibility will also be

considered for appointment on the posts. The University in its counter affidavit had tried to emphasis that only mode for appointment/recruitment on the post of Assistant Professor-cum-Junior Scientists is the procedure, as provided under Clause 14.1(a) of the Statute. Clause 14.1(a) and Clause 14.1(b) are inter connected. Under the amended provisions of Clause 14.1(b) only relief which has been provided to the Agricultural Inspectors, STA, JTA and persons holding equivalent posts, is that now their cases will also be considered for appointment/absorption and promotion on the posts of Assistant Professor-cum Junior Scientists. So far, the procedure to be followed in their cases also is clearly mentioned under Clause 14.1(a) of the Act.

6. On perusal of the unamended Clause 14.1 of the Rajendra Agricultural University Act, I find that earlier also a provision was there for University employee to compete with the direct appointees, if they fulfilled the eligibility criteria. The amended provision u/s 14.1(a) is similar to the unamended Clause 14.1, but so far, the newly added provision under Clause 14.1(b) is concerned, it starts with a non obstinate clause-"notwithstanding anything to the contrary as contained in the Statutes". This special provision has been provided for the employees, holding posts of Agricultural Inspectors, STA, JTA and equivalent posts, working in the Rajendra Agricultural University or the colleges concerned. In their cases, through amendment, provision has been made for their appointment/ absorption/promotion on the posts of Assistant Professor-cum-Junior Scientists i.e. for the teaching post. It means that persons holding such posts, if fulfilled eligibility criteria, they will not have to compete with direct appointees, for which the procedure has been mentioned at Clause 14.1(a). Their cases are to be considered on different footing and for that a provision has been made under Clause 14(1)(b). They are to be appointed to the posts by way of absorption/promotion, in case they possessed the requisite qualification for holding the posts. The stand taken by the University in its counter affidavit that petitioners are not going to be affected on account of publication of advertisement for filling up the vacant posts of Assistant Professor cum-Junior Scientist, is not correct as the beneficial part of amendment under Clause 14(1) (b) is being taken away from them, in case all vacant posts are to be filled through direct appointment.

7. Admittedly the amended statute has been notified and approved by the Chancellor as well the State. The State Government has also issued a direction to implement the amended provisions in its letter and sprit. The University had also taken steps for implementing these provisions by collecting requisite information regarding the qualification of persons holding such posts. In CWJC No. 1424 of 2005 the University had specifically stated in its counter affidavit that steps are being taken for implementing the Office order No. 521 dated 2.11.2004 and benefits will be provided to the petitioners in the light of the amended provisions. In this circumstance the new stand taken by the University, contrary to its earlier statement and previous actions, is quite surprising.

8. The amended provision under Clause 14.1(b) of the Act is the special provision for those who are already in service and to remove their stagnation, the amendment has been brought in the Statute. The persons who are in service for their appointment by way of promotion/absorption, if a provision has been brought in the statute that cannot be defeated by the executive action of the University. The University and the State Government will have to see that out of total vacancy proportionate appointment is made through direct appointment as well as through appointment by way of absorption/promotion. What will be that proportion, should be decided by the authorities like respondent-State and the University considering similar provisions adopted by the State Government in other services. If the total number of vacancies is 50, in that case it will be just and proper that 50% of such posts should be filled through direct appointment and 50% on the basis of appointment by way of promotion/absorption of eligible person in service.

9. Mr. Y.V. Giri, appearing on behalf of the Rajendra Agricultural University, Pusa has submitted that the advertisement has been published under Clause 14.1(a) of the Act, in that case only 50% of the vacant posts should be filled through direct recruitments and 50% by way of promotion/absorption as provided under Clause 14.1(b) of the amended Statute.

10. The respondents are directed to take all necessary steps for implementation of this order, preferably within a period of three months. The order passed in these two writ applications will govern all similarly situated employees in the Rajendra Agricultural University.

11. These writ applications are allowed.