

(2000) 12 PAT CK 0039
In the Patna High Court
Case No : C.W.J.C. No. 12681 of 2000

Prof. (Dr.) Ram Niranjana Kedia and Others	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 14-12-2000

Acts Referred:

Bihar State Universities Act, 1976 — Section 46

Citation : (2000) 12 PAT CK 0039

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Indu Shekhar Prasad Sinha and Shivendra Narayan Sinha, for the Appellant; Azfar Hasan for the University and M/s Ram Balak Mahto and Shivendra Kishore for the Chancellor, for the Respondent

Judgement

S.K. Katriar, J.—As prayed for by the learned counsel for the petitioners, the Financial Commissioner, Department of Finance, Government of Bihar, Patna, and the Commissioner-cum-Secretary, Higher Education, Department of Human Resources, Government of Bihar, Patna, are permitted to be impleaded as respondent nos. 8 and 7. Let two sets of the writ petition be served on Mr. Azfar Hasan, learned Standing Counsel-7, by Monday next failing which, this petition as against the respondents, except respondent no. 2 (the Chancellor), shall stand rejected without further reference to the bench. Respondent nos. 1 and 3 to 7 are represented by Mr. Azfar Hasan, Standing Counsel-7, and respondent no. 2 is represented by Mr. Shivendra Kishore, learned counsel. Insofar as the question of maintainability of this writ petition at the instance of all the petitioners is concerned, Mr. Indu Shekhar Prasad Sinha, learned senior counsel for the petitioners, has made elaborate and illuminating submissions, and has relied on the judgments of the Supreme Court reported in *A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another*, the Division Bench judgment reported in 1984-Allahabad-46 (*Umesh Chand Vinod Kumar and others, vs. Krishi Utpadan Mandi Samiti, Bharrathana & anr.*), the Division Bench judgment reported in 1983 Ori 17 (*Nilamadhava Nanda & others*

vs. Orissa University of Agriculture and Technology and anr.), and the judgment of Punjab and Haryana High Court reported in 1982 P & H-169 (Teja Singh vs. Union Territory of Chandigarh and others). He has also relied on various provisions of the CPC in support of his submission that this writ petition at the instance of more than one petitioner is maintainable. Having considered the submissions, I am convinced that this writ petition is maintainable. Office shall check whether separate sets of court fee has been paid.

2. It appears that the petitioners had entered the employment of the erstwhile Bihar University. Lalit Narain Mithila University, Darbhanga, was carved out of Bihar University, and the services of the petitioners were transferred to the new University. According to earlier posting, such employees have the benefit of Contributory Provident Fund after their retirement. There were amendments in the Statutes for grant of retirement benefits (the Statutes was enforced with effect from 1.4.1972), and the amendments were approved by the Chancellor of the Universities of Bihar with effect from 14.11.1980 and 25.11.1982, whereby the existing employees had been given the options in terms of Clause-4 of the amended Statutes. In terms of the aforesaid provisions, the employees had given their options to continue with the Contributory Provident Fund or change over to the Scheme of monthly pension. After quite some time, the Vice Chancellor of Lalit Narain Mithila University issued his notification bearing Memo No. 246-338, dated 16.1.1998 (Annexure-4), whereby he decided that the issue relating to the aforesaid options may be re-opened. Without waiting for the Government's approval, the options were re-opened, the petitioners changed their options, refunded the post-retirement benefits already received by them with compound interest. The same received the attention of the Chancellor, and at his behest the order dated 13.10.2000 (Annexure-2), was issued whereby serious objections were raised about the Vice Chancellor's decision to re-open the options allowing the petitioners to change the options without waiting for Government's approval. It is also stated there in that the local Vice Chancellors are entirely responsible for the same. Consequently, the Chancellor of Lalit Narain Mithila University has issued the impugned order dated 28.5.2000 (Annexure-1 series), whereby the monthly pension of the petitioners has been stopped with effect from July, 2000.

3. Learned counsel for the petitioners submitted that the impugned action is bad in law for various reasons. No act of fraud or mis-appropriation is attributable to the petitioners. Secondly, the petitioners have refunded the entire post-retirement benefits with compound interest, as a result of which they are now left with no money putting them to extreme of hardship in the evening of their lives.

4. Mr. Ram Balak Mahto, learned Senior Counsel appearing for the Chancellor of the Universities, has supported the impugned action, has relied on the provisions of Clause-4 of the Statutes and submits that the order dated 16.1.1998 (Annexure-4), is a mala fide act on the part of the Vice-Chancellor, and the

Government is not bound by his ultra vires acts. He also relied on the provisions of Section 46 of the Bihar State Universities Act, 1976, which, in his submission, lays down to the effect that the State Government shall contribute annually to the University's fund which is drawn from the consolidated fund. In that view of the matter, Mr. Mahto further submits, the change of options has financial implications and was, therefore, wholly beyond the competence of the Vice-Chancellor to change it. Furthermore, the Vice Chancellors are guilty of gross dereliction of duties and are liable for the most stringent action.

5. Learned counsel for the petitioners submitted in reply that the Vice Chancellor has taken the decision to re-open the options in the least interest of the University and after proper calculation of the financial implications. In his submission, due to re-opening of the options, the State Government will save hundreds of crores of rupees.

6. Having considered the rival submissions, I am not inclined to stay operation of the said impugned orders. Prima facie, it appears to this Court that the decision to re-open the options was illegal on the part of the Vice Chancellor. In that view of the matter, the respondents are directed to submit their detailed counter affidavits within a period of six weeks from today.

7. Put up this matter on 26th February, 2001 in the supplementary cause list with a view to its final disposal at the admission stage itself. The parties should sincerely co-operate in the final disposal of the matter at an early date. Respondent nos. 1, 2, 6 and 7 should take a final decision in the matter promptly. Let copies of this order be handed over to Mr. Azfar Hasan, learned Standing Counsel no. 7, and Mr. Shivendra Kishore, Advocate.