

(1999) 11 PAT CK 0038
In the Patna High Court
Case No : C.W.J.C. No. 7358 of 1999

Rajendra Prasad and Others		APPELLANT
	Vs	
The State of Bihar and Others		RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Bihar State Universities Act, 1976 — Section 70B

Citation : (2000) 1 PLJR 423

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

Bench : Division Bench

Advocate : Sadanand Jha and Asim Jha in 7358, M/s. Manik Prasad Mishra, Sanjeev Kumar Mishra and Sunil Kumar in 9591, for the Appellant; Azfar Hasan and J.P. Kishore for the State, M/s. Indu Shekhar Prasad Singh and Deoshwar Prasad Singh for Veer Kuer Singh University, M/s. Ramanand Kumar and Bakshi S.K. Sahay for Magadh University and Mr. Shivendra Kishore for the Chancellor, for the Respondent

Judgement

B.P. Singh, J.—I.A. No. 11396 of 1999 filed by the applicants is allowed and they are added as intervenor-petitioners. These two writ petitions involving common questions have been heard at length at the admission stage itself, and considering the urgency of the matters, with the consent of the parties, the same are being disposed of at the admission stage itself.

2. The representative facts are taken from CWJC No. 7358 of 1999.

The petitioners are the non-teaching employees of the Magadh University who are apportioned and transferred to the Veer Kuer Singh University upon creation of the said University, in accordance with Section 70B of the Bihar State Universities Act, 1976.

3. The facts of the case as pleaded in the writ petitions are that in the year 1990, six new Universities were created and their jurisdictions were created by carving out from the jurisdictions of the existing Universities. In this manner the Veer Kuer Singh University has been created by carving out its jurisdiction from the

Magadh University. The Bihar State Universities Act, 1976 (for short "the Act") was amended by Bihar Act 17 of 1993 and Section 70B was inserted providing for the apportionment and transfer of Officers, teachers and servants consequent upon the creation and establishment of new universities. The moot question involved in this writ petition is whether the petitioners have been apportioned and transferred in accordance with the provisions of Section 70B of the Act. The petitioners in support of their plea have relied upon a judgement and order of a learned Single Judge of this Court, Annexure-4 to the writ petition dated 4.10.1996 in CWJC No. 8144 of 1996 and analogous cases. They have submitted that as held by this Court in the aforesaid judgement, before an employee of the University is apportioned and transferred to a newly created University, he has to be given a reasonable opportunity of being heard in the matter, since he is adversely affected by such apportionment and transfer.

4. It is not disputed in the writ petition that after the new University was created and established, the State Government laid down the guidelines which were to be followed in the matter of apportionment and transfer of the University employees. As would be obvious from Annexure-1 dated 10th April, 1996 the matter was discussed by the Vice-Chancellors concerned in the presence of the Director, Higher Education. The guidelines evolved have been duly communicated to the Registrars of the Magadh University as also the newly created Veer Kuer Singh University which are not under challenge. The letter of the Secretary, Govt. of Bihar, Higher Education, dated 6.8.96 (Annexure-2) states that in accordance with the decision taken by the Vice-Chancellors, and in the light of the recommendation made by them, the Govt. of Bihar had apportioned and transferred the employees named in the aforesaid communication to the Veer Kuer Singh University in exercise of its powers u/s 70B of the Bihar State Universities Act and other provisions of the Bihar State Universities Act. The names of the employees so apportioned and transferred are contained in the said letter of the Secretary, department of Higher Education, Govt. of Bihar dated 6th August, 1996. Pursuant to the decision of the State Government as contained in Annexure-2, under orders of the Vice-Chancellor of the Magadh University, the Registrar of the Magadh University issued an office order transferring the employees whose names are contained in the said letter, Annexure-3 dated 17.8.1996 to the newly established Veer Kuer Singh University alongwith the posts. A copy of the said office order is Annexure-3 to the writ petition.

5. The grievance of the petitioners is that the said office order apportioning and transferring non-teaching employees of the Magadh University to the Veer Kuer Singh University is not in accordance with the provisions of the Act and the guidelines framed by the State Government in this regard. The same was, therefore, challenged before this Court by some other employees in CWJC No. 8144 of 1996 and analogous matters, and a learned Judge of this Court by order dated 4.10.1996 had directed the Government not to give effect to the aforesaid order till the representations filed by the concerned employees pursuant to the order of this Court were disposed of by the Commissioner-cum-Secretary. A copy

of the said order has been annexed as Annexure-4 to the writ petition.

While the petitioners place strong reliance on this judgement and order of a learned single Judge of this Court, the respondents have submitted that the said judgement and order does not correctly lay down the law and that it requires reconsideration. When this writ petition came up before a Single Judge of this Court on 2.9.1999, noticing the submissions urged by the parties, he directed the matter to be placed before a Division Bench, and that is how the Hon"ble the Chief Justice has been pleased to place this matter before a division bench.

6. The petitioners herein have referred to the developments that have taken place after the judgement and order of the learned Single Judge. The petitioners of those writ petitions have made representations before the Commissioner-cum-Secretary, Higher Education, Govt. of Bihar, and according to them, a final decision has yet not been taken. In the instant writ petition, we are not concerned with the cases of the petitioners in those writ petitions, and nothing said in this judgement shall affect their cases, as we are told that the judgement and order of the learned Single Judge has not been challenged by the respondents and has therefore attained finality. It is also not necessary for me to notice the developments that have taken place pursuant to the judgement and order of the learned Single Judge in the view that I propose to take in this writ petition. I may only notice at this stage that several objections have been taken with regard to the inter se seniority of the employees of the University, and in view of the numerous disputes that have arisen, perhaps it has not been possible for the Commissioner-cum-Secretary to take a final decision.

7. In the instant case, the petitioners have impugned Annexure-15, whereby the Registrar of the Magadh University has written to the Secretary, Department of Higher Education and the Secretary, Governor's Secretariat, informing them that the list of non-teaching employees to be transferred from the Magadh University to the Veer Kuer Singh University is ready. Annexure-15 is dated 23.7.1999 and annexed thereto is the list of non-teaching employees of different categories who have been apportioned and transferred to the Veer Kuer Singh University. On receipt of Annexure-15, the Officer on Special duty (Universities) in the Governor's Secretariat wrote to the Vice-Chancellor of the Magadh University that the Chancellor has been pleased to direct that the concerned employees should be relieved forthwith, on that very day, and that they shall be paid their salary and allowances from August, 1999 onwards by the Veer Kuer Singh University. This letter of the Officer on Special duty in the Governor's Secretariat is dated 24.7.1999 and is Annexure-16 to the writ petition.

Pursuant to Annexure-16, the Magadh University has issued the impugned notification relieving the concerned employees with effect from the afternoon of 24.7.99 and also notifying that the salary and allowances of such employees shall be paid by the Veer Kuer Singh University from the month of August, 1999 onwards. There are 88 such employees mentioned in the notification, Annexure-17, and some of them are the petitioners in the instant writ petition.

8. A counter affidavit has been filed on behalf of respondents 4 to 6, the Registrar and Vice Chancellor of the Magadh University and the Registrar of the Veer Kuer Singh University. In the said counter affidavit, it is averred that altogether 88 employees of the Magadh University have been transferred on apportionment to the Veer Kuer Singh University, out of whom 56 employees have approached this Court by filing this writ petition while the remaining 32 employees have already joined the Veer Kuer Singh University. Some of the employees who are petitioners before this Court have also joined the Veer Kuer Singh University, such as petitioner no. 52. It has been explained that the Veer Kuer Singh University was carved out from the Magadh University in the year 1992 and for one reason or the other employees could not be transferred to the Veer Kuer Singh University with the result that the newly created University was facing serious administrative problems for want of officers and employees. It, therefore, became necessary to apportion and transfer some of the employees of the Magadh University to the newly created Veer Kuer Singh University, and this is what is sought to be done by the Government and the Universities concerned. The order of transfer does not suffer from any illegality, arbitrariness or unreasonableness. Series of litigations have been filed by the employees who do not wish to join their post in the newly created University to which they have been transferred. The employees were apportioned and transferred from the Magadh University to the Veer Kuer Singh University by order dated 6th August, 1996 which was issued by the State Government in accordance with the provisions of Section 70B of the Bihar State Universities Act. Pursuant to Annexure-2, Annexure-3, dated 17.8.1996, office order issued by the Registrar of the Magadh University containing 77 names was issued. However, in view of the pending writ petitions, including CWJC No. 8144 of 1996 disposed of by order dated 4.10.1996, effect could not be given to the decision of the State Government. It is stated that in view of the judgement and order of this Court as contained in Annexure-4, tentative gradation lists of all categories of Class III and Class IV employees were circulated inviting objections. After the objections were received, the same were considered and disposed of. Thereafter the final gradation lists of all categories have been finalised. On 28.6.99, representations were invited from the concerned non-teaching employees of the University as to their willingness for transfer to the Veer Kuer Singh University. Representations received were also duly considered. Thereafter a meeting of the Vice-Chancellors of the two Universities was held on 21.7.1999 and 22.7.1999 and the list of employees was finalised in accordance with the guidelines contained in Government letter dated 10th April, 1996, Annexure-1. As a result 88 employees have been apportioned and transferred to the Veer Kuer Singh University from the Magadh University. This list was sent to the Secretary, Higher Education, and the Secretary to the Hon"ble Chancellors" Secretariat. The Hon"ble Chancellor is also the head of the State and he has issued directions as he is competent to pass the order of apportionment and transfer in terms of Section 70B of the Bihar State Universities Act. Reference has been made to Annexures 16 and 17 which are mere follow up actions taken.

9. It was firstly urged before us that the provisions of Section 70B of the Bihar State Universities Act make it obligatory for the Government to give an opportunity to the concerned employees sought to be apportioned or transferred, to represent their cases before the Government. Reliance has been placed upon the decision of a learned Judge of this Court, and from the aforesaid decision of the learned Judge, Annexure-4, it appears that he has also relied upon an earlier single Judge decision of this Court dated 30.7.1996 in CWJC No. 7167 of 1996. Counsel for the University submitted that Section 70B of the Bihar State Universities Act does not provide for a representation being made before the order of apportionment and transfer is made. However, after an order of apportionment and transfer is made, the aggrieved employees may, if so advised, file a representation which has to be disposed of in accordance with the provisions contained in the said section. If upon such representation, an employee is re-apportioned and re-transferred, his re-transfer takes effect from the date the Act came into force. Thus the concerned employee is relegated to the same position which he would have occupied if he had never been transferred, and consequently retains all service benefits.

10. To consider the merit of the rival submissions, it is necessary to notice the provisions of Section 70B of the Bihar State Universities Act, 1976 which was inserted by Act 17 of 1993, and is reproduced below in extenso.

70B. Apportionment and transfer of Officers, teachers and servants.-- (1) Notwithstanding anything to the contrary contained in any law or a contract, the following provisions shall apply to all officers, teachers and other servants of the Universities referred in sub-section (1) of Section 3 of the Act.

(a) The State Government shall, as soon as a new University is created and established, apportion and transfer such officers, teachers and other servants between the different Universities and shall also apportion funds between the Universities.

(b) The State Government may, on representation made by any officer or teacher or other servant who has been apportioned and transferred under clause (a), reapportion and re-transfer him to any one of the Universities established under the Act:

Provided that before making any order under this clause the State Government shall give a reasonable opportunity to the officer or teacher or other servant who has been apportioned and transferred under clause (a), reapportion and re-transfer him to any one of the Universities established under the Act:

Provided that before making any order under this clause the State Government shall give a reasonable opportunity to the officer or teacher or other servant of the University, to be adversely affected by such transfer to make a representation and be heard :

Provided further that any officer or teacher or other servant re-apportioned

under this clause shall not be allotted a post lower than the post on which he was employed by the University established under the Act.

(c) On such apportionment or reapportionment such officer, teacher and servant shall be deemed to have been transferred to the University to which they are allotted under clause (a) or clause (b) with effect from the date of commencement of the Act.

(d) The University to which such officer, teacher and servant are deemed to have been transferred under clause (c) shall employ them subject to such terms and conditions as were in force with respect to them immediately before their transfer from the University concerned and they shall be subject to such disciplinary control as are for the time being applicable to the officers, teachers and other servants of the University to which they are deemed to have been transferred.

(2) If consequent upon a transfer made under sub-section (1) a dispute arises as to the post or rank which the transferred officer or teacher or servant should hold in the University, the matter shall be referred to the Chancellor whose decision thereon shall be final.

11. The section begins with a nonobstante clause. It has, therefore, overriding effect. Clause (a) of sub-section (1) provides that the State Government shall, as soon as a new University is created and established (emphasis supplied) apportion and transfer such officers, teachers and other servants between the different Universities and shall also apportion funds between the Universities. This section, therefore, in express terms provides for the apportionment and transfer of the officers, teachers and other servants between the different Universities. The section notices the urgency of the matter and, therefore, the words used are "as soon as a new University is created and established". Clause (a) does not provide in express terms that before passing an order of apportionment and transfer, the concerned employees of the Universities are to be heard in the matter, but the requirement of clause (a) of subsection (1) is that the order must be passed by the State Government.

Then comes Clause (b) which provides that the State Government may on representation made by any officer or teacher or other servant who has been apportioned or transferred under clause (a), reapportion and re-transfer him to any one of the Universities established under the Act. This is followed by two provisos. The first proviso which is relevant provides that before an order is made under clause (b), the State Government shall give a reasonable opportunity to the officer or teacher or other servant of the University, to be adversely affected by such transfer, to make a representation and be heard. The second proviso is not very material for our purposes. Clause (b), therefore, in express term provides for a representation being made by any employee apportioned and transferred under clause (a). This really incorporates a principle of natural justice and makes the legislative intent quite clear, namely, that the

opportunity to make representation shall be given after the concerned employee has been apportioned and transferred. By necessary implication, therefore, application of this principle of natural justice is excluded at the first stage when an order of appointment and transfer is passed under clause (a) of sub-section (1) of Section 70B. It therefore, follows that after an order of apportionment and transfer has been made under clause (a), any person aggrieved by the order of apportionment and transfer may make a representation to the State Government. It is open to the aggrieved person at this stage to bring to the notice of the government that his apportionment and transfer is not justified for whatever reasons, including the reason that such apportionment and transfer has not been done in accordance with the guidelines and norms determined by the Government. The first proviso has to be carefully read and understood, because in my opinion the learned Judge who decided the earlier batch of writ petitions has rested his decision on this proviso for holding that the opportunity to make a representation has to be read into clause (a) of sub-section (1) of Section 70B. As I read the proviso, the opportunity of hearing provided under the proviso is not to be given to the person aggrieved by the order of apportionment and transfer made under clause (a) of sub-section (1). This is obviously so because such a person has been given that opportunity under the main part of clause (b). The proviso contemplates that upon reapportionment and re-transfer some other officer, teacher or servant of the University may be adversely affected and therefore, he should also be given a reasonable opportunity to make a representation and be heard before an order is passed under clause (b). To illustrate the point, if A who has been apportioned and transferred to a newly created University represents under clause (b) of Sub-section (1) for his reapportionment and re-transfer to his parent University on the ground that under the guidelines B ought to have been transferred instead of him, the proviso provides that such other person, namely B, who may be apportioned and transferred in place of A whose representation is being considered under clause (b), should be given an opportunity of making a representation and must be heard. The proviso, therefore, contemplates of a situation where another officer, teacher or servant of the University may be affected by an order of reapportionment and re-transfer passed under clause (b) on the representation of an officer, teacher or servant already transferred under clause (a). The main part of clause (b) provides such an opportunity to the officer, teacher or servant transferred under clause (a). The opportunity contemplated under the proviso to clause (b) is given to another category of officers, teachers or servants who have not been transferred under clause (a) but who may be affected by an order of reapportionment and re-transfer in case the representation is allowed. In short, clause (b) contemplates that while considering an application for reapportionment and re-transfer, not only should the party aggrieved by an order of apportionment and transfer under clause (a) be heard, but also the person who may be adversely affected if the representation of the person aggrieved is allowed and someone else is to be apportioned and transferred in place of the person who has made a representation. This is with a view to provide fairness in

action, so that not only the person aggrieved is heard, but also the person who is likely to be aggrieved by the order of reapportionment and re-transfer in case the representation is allowed.

12. Clause (c) of sub-section (1) provides that as a consequence of apportionment or re-apportionment, the concerned officer, teacher and servant shall be deemed to have been transferred to the University to which they are allotted under clause (a) or clause (b) with effect from the date of commencement of the Act. Thus an officer, teacher or servant, who is apportioned or re-apportioned to a University is deemed to have been transferred to that University with effect from the date of commencement of the Act. It, therefore, follows that if such an officer, teacher or servant is apportioned and transferred to a newly created University, and upon his representation being allowed, he is reapportioned to the parent University, it shall be deemed that with effect from the date of the commencement of the Act he had been so transferred to that University. This only guarantees continuity of service under a particular University so that even for a temporary period, the concerned officer, teacher or servant, is not considered to be employed by any other University.

13. Clause (d) makes it obligatory for the University to employ such officers, teachers or servant's who are deemed to have been transferred under clause (c).

14. Reading the section as a whole, it appears to me that under clause (a), the State Government is required, as soon as a new University is created and established, to apportion and transfer the officers, teachers and other servants between the different Universities and also to apportion funds between them. This power of the State Government is to be exercised as soon as a new University is created and established, the objective being that the work of the newly created University should not suffer. Clause (a) does not provide for any opportunity being given to the concerned employee who is apportioned and transferred. It is not possible to accept the submission urged on behalf of the petitioners that the transfer is not complete till the stage under clause (c) of sub-section (1) is reached. I, therefore, hold that as soon as the State Government passes an order of apportionment and transfer under clause (a), the concerned officers, teachers and servants stand transferred to the University concerned, but this is subject to any order that may be passed on the representation made under clause (b).

Under Clause (b) an express right has been conferred upon the aggrieved officers, teachers and other servants to make a representation, and upon considering their representation, the State Government may reapportion and retransfer them. However, the proviso safeguards the interest of any other officer, teacher or servant who as a consequence of an order of reapportionment or retransfer passed under clause (b) is likely to be affected. Such officers, teachers and servants must also be heard before an order is passed under clause (b). The salutary principle enshrined in proviso to clause (b) is that not only the officer, teacher and servant who is sought to be reapportioned and retransferred

should be heard, but also the officers, teachers and servants who are likely to be affected as a consequence of such order of reapportionment and re-transfer. The first proviso to clause (b) therefore, confers upon the officers, teachers and other servants of the University a right of being heard if they are likely to be affected by the order of reapportionment and retransfer of an officer, teacher or servant already apportioned and transferred under clause (a). It is, therefore, not possible to read into clause (a) a right of representation relying upon the first proviso to clause (b). The first proviso applies to a different class of officers, teachers and servants (other than those to whom clause (a) & (b) relate), who have been given a right of representation as they may be adversely affected by an order of reapportionment and re-transfer passed under clause (b) on the representation of an officer, teacher or servant already apportioned and transferred under clause (a).

If the opportunity provided in the first proviso to clause (b) is read into clause (a), the main part of clause (b) is rendered otiose.

15. In my view, therefore, the view taken by learned Judgd in CWJC No. 7167/96 and in CWJC No. 8144 of 1996 and analogous matters is not correct. The aforesaid judgments do not lay down the law correctly and are, therefore, overruled.

16. The question then arises as to whether the apportionment and transfer of an officer, teacher or servant of the University under clause (a), without affording him an opportunity of being heard in the matter is itself illegal as being in breach of principles of natural justice. In my view, having regard to the scheme of Section 70B, it cannot be said that the apportionment and transfer of an officer, teacher or other servant of the University to a different University, without affording him an opportunity of hearing, is illegal. It is well settled that the principles of natural justice cannot be equated with codified law or fundamental rights. It is also well settled that if the legislature excludes in express terms, the operation of the principles of natural justice, the Courts will not read into the law principles of natural justice. The law, as it is, will have to be considered to find out whether the same is arbitrary or unreasonable. In doing so, the scheme of the law has to be analysed and if it is found that the legislature itself has provided sufficient safeguards against unreasonableness and arbitrariness, the law must be upheld, notwithstanding the fact that it does not provide for application of principles of natural justice. As a matter of interpretation, the courts have read into the laws principles of natural justice where it is not excluded either by express words or by necessary implication. The legislature may also provide for the application of the principles of natural justice at a different stage, and the application of the principles of natural justice at the post decisional stage in appropriate cases, has also the approval of the Supreme Court. The scheme of the law has to be understood, and in doing so the objective that the law seeks to achieve cannot be lost sight of. A law should not be so interpreted so as to defeat the very purpose for which it is enacted. Keeping in

mind these principles, we may test the validity of Section 70B of the Act.

17. When a new University is created and established, obviously the University must be given the necessary strength of officers, teachers and other servants to manage the affairs of the University and to continue the teaching work. Once the statute creates and establishes a new University, the need for apportioning and transferring such officers, teachers and servants becomes imperative and this has to be done at the earliest so that the functioning of the new University does not suffer. Such urgency has been recognised by clause (a) of sub-section (1) of Section 70B which provides that the State Government shall apportion and transfer such officers, teachers, etc. "as soon as a new University is created". Thus the State Government is obliged to make the necessary apportionment and transfer of officers, teachers etc. with a view to make the new University functional. The question may then arise as to the principles which must be followed in the matter of apportionment and transfer. It is not disputed before us in the instant case that the necessary guidelines have been laid down by the government as early as on 10th of April, 1996, Annexure-1. The scheme of the section is that such apportionment and transfer should be done immediately upon the creation and establishment of a new University. The larger interest of the University is paramount, but that is not regardless of the rights of the officers, teachers and other servants who are sought to be so apportioned or transferred. The section itself strikes a balance by providing that after their initial apportionment and transfer, if any such transferred officers, teachers and servants have a grievance, they may make a representation to the Government, and the Government shall thereafter consider the same in accordance with the provisions of clause (b). If the representation is allowed, the effect of clause (c) is that they are deemed to have been transferred to the University with effect from the date of commencement of the Act. As a consequence, upon reapportionment and re-transfer, all the rights of the concerned University employee are kept intact and it is deemed as if from the very first day he was an employee of that University. The law, therefore, provides a remedy against any transfer which may have been affected contrary to the guidelines or any provision of law. No doubt, the stage at which a transferred officer, teacher or servant may represent, is subsequent to the initial order of apportionment and transfer. There is nothing unreasonable or arbitrary in this procedure. If the Government were to consider all objections at the very initial stage, the newly created University may not be able to function at all and the interest of the University, and consequently the interest of large number of students may suffer. The legislative objective is, therefore, to first make the University functional and thereafter consider whether any reapportionment or retransfer is necessary. Moreover, it is not as if all officers, teachers and servants who are apportioned and transferred under clause (a) are aggrieved. Many of them may indeed be satisfied with such apportionment and transfer, though some of them may have objections. Their objections are also to be considered by the State Government, but the law insists that they must first join the university to which they have

been transferred and then represent.

18. The matter may be viewed from another angle. Once a jurisdiction is carved out from the parent University and a new University is created and established, there is reduction of work in the parent University and the staff employed by it may be rendered surplus. If they are sought to be retrenched, it may give rise to great hardship and injustice. Therefore, the law does not contemplate their retrenchment, but provides for apportionment of the employees between the two Universities. The transfer is not by way of punishment and therefore, the concerned employees cannot make a grievance that they have been condemned unheard. It is on account of administrative exigencies that such apportionment and transfer is required to be done. However, with a view to avoid hardship or injustice, an opportunity is provided to the concerned employees to represent against their apportionment and transfer. In my view, the scheme of the Section is just and fair keeping in view the larger interest of the University, and the purpose for which the law has been enacted. Section 70B cannot be held to be bad merely because an opportunity of making a representation is not afforded to the employees before their apportionment and transfer, though such opportunity is given to them after the initial order of apportionment and transfer, with their interest fully protected if their representation is allowed and they are reapportioned and retransferred.

19. In the counter affidavit filed on behalf of the respondents, it has been averred that the gradation list of all categories have been finalised and objections were invited from the employees who were sought to be transferred. However, counsel for the petitioners submitted that the order of transfer has been passed not by the State Government, but by the Chancellor and the University authorities.

20. Clause (a) and (b) of sub-section (1) of Section 70B contemplate that an order of apportionment and transfer or reapportionment or retransfer shall be passed by the State Government and not by the Chancellor of the University. However, it appears that the State Government had already passed an order u/s 70B of the Act on 6th of August, 1996 as contained in Annexure-2. That order could not be implemented in view of the directions made by a learned Judge of this Court in CWJC No. 8144 of 1996. Even though these petitioners were not parties in that writ petition, since the issues involved were similar, perhaps the order passed by the State Government was kept in abeyance and was not implemented. It also appears from the counter affidavit that such of the officers who have been apportioned and transferred were afforded an opportunity of making a representation which has been duly disposed of by the State Government keeping in view the directions contained in the earlier judgement of this Court.

21. In these circumstances, I hold that the State Government is not bound to invite representations from the concerned Officers, teachers and other servants while passing an order of apportionment and transfer under clause (a) of sub-

section (1) of Section 70B. Such opportunity has to be given to them under clause (b) of that sub-section, and the same has to be disposed of in the manner provided by clause (b). The first proviso to clause (b) provides a reasonable opportunity to make a representation not to the officers, teachers and other servants who are transferred under clause (a), but to those officers, teachers and servants who may be apportioned and transferred as a consequence of any representation being allowed under clause (b) of the officers, teachers and other servants already transferred under clause (a). The submission of the petitioners that they should be afforded an opportunity of representation before passing an order under clause (a) of subsection 1 of Section 70B must be rejected. In these circumstances, these writ petitions are disposed of with the following directions.

(i) The State Government is not required to give an opportunity of representation to officers, teachers and servants who are sought to be apportioned and transferred under clause (a) of sub-section (1) of Section 70B. They stand apportioned and transferred to the University concerned upon an order being passed by the State Government under clause (a) of sub-section (1) of Section 70B of the Act. This however is subject to any order passed on their representation under clause (b) thereof. This however, will not in any manner affect the rights of the parties in CWJC No. 7167 of 1996 and in CWJC No. 8144 of 1996 and analogous cases in which decisions have been rendered on 30.7.96 and 4.10.1996 respectively, which have attained finality.

(ii) Such of the petitioners who have been apportioned and transferred under the order of the State Government passed in exercise of power u/s 70B of the Act dated 6th August, 1996, Annexure-2 must be deemed to have been apportioned and transferred to the Veer Kuer Singh University, subject to any order passed on their representation. The remaining petitioners, if any, whose names are not found in Annexure-2 shall stand appointed and transferred to the Veer Kuer Singh University only upon an order being passed by the State Government to this effect u/s 70B of the Act.

(iii) Such of the apportioned and transferred officers, teachers and servants who have already made representations before the Government and whose representations have been disposed of by the State Government, shall not have another opportunity of making such representation under clause (b) of sub-section (1) of Section 70B. However such of the petitioners who have not represented against their apportionment and transfer under clause (a) of sub-section (1) of Section 70B may make a representation, if so advised, under clause (b) of subsection (1) of Section 70B which shall be disposed of in accordance with law.

I.P. Singh, J.

I agree.