
(2003) 06 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 12974 of 2001

Ram Bihari Singh

APPELLANT

Vs

The Rajendra Agricultural University and Others

RESPONDENT

Date of Decision : 04-06-2003

Acts Referred:

Bihar Agriculture University Act, 1987 — Section 39, 39(4)
Constitution of India, 1950 — Article 16, 311

Citation : (2003) 3 PLJR 703

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Mukeshwar Dayal and Jitendra Kumar, Pravin Kumar, for the Appellant; V.R.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Pd., J.—In this writ petition, the Petitioner, who retired on 28th February, 2001 from the post of ploughman from Irrigational Research Centre, Bikramganj (Rohtas), under Rajendra Agricultural University (hereinafter referred to as "the University"), is aggrieved on account of non-release of the amount of G.P.F., group insurance, differential salary on account of revision of pay with effect from 1.4.1997 and consequential fixation of pension etc.

2. In short, the relevant facts are that initially the Petitioner was temporary employee of Agriculture Department of the Government of Bihar. Later, on creation of the University, his service was transferred under the University. According to the case of the Petitioner, he was absorbed in the University service in the year 1997 and prior to that he was employee of Agriculture Department. This fact has been seriously disputed by the State Government.

3. Learned Counsel for the Petitioner has however submitted that as per the provision, contained in Section 39(4)(b) of the Bihar Agricultural University Act, 1987 (hereinafter referred to as "the Act"), all such Government employees of the Colleges, Research Institutes etc. of the Agriculture and Animal Husbandary

Department, who did not on the eve of transfer to the University hold any permanent post on a substantive basis under the Government or such other temporary employees whose services were transferred to the University by the State Government from time to time, are deemed to have been appointed by the University and they ceased to be the Government servants. However, under Clause (i) of its proviso, they were given option to give a written notice to the State Government within two years from the date of publication of the statutes of the University in the Bihar Gazette that they may be permitted to revert to the Government service and thereupon the Government was to permit them to revert to the service of the Government to the extent of suitable vacancies available, failing which their services were liable to be dispensed with.

4. According to the learned Counsel, prior to the office order dated 28th July, 1986 of the Vice-Chancellor of the University, contained in Annexure B to the supplementary counter affidavit filed on behalf of the State, the State Government directed to revert back some of such employees to the Government service but despite written notice given by the Petitioner pursuant to the said provisions for reverting back to the Government service, he was never communicated with any decision on it and continued to work in the University since his transfer under the provisions of the Ordinance, later converted into Act creating the University and his service finally stood transferred to the University and availed all benefits, including the benefit of 60 years of the age of superannuation which in the Government is 58 years. However, according to the learned Counsel, the University continued to commit mistake in depositing the amount of G.P.F. and the group insurance deducted from the salary of all such employees, including the salary of the Petitioner in the Government Treasury. He, thus, submitted that the Petitioner is entitled for the benefits admissible to the University employees, including in regard to the G.P.F. and group insurance etc.

5. Learned Counsel for the State has contended that, in fact, all the temporary transferred Government servants of the Agriculture Department to the University Service were treated as the employees of the University as their services were not recalled by the Government within two years after the publication of the University Statutes in the Bihar Gazette and, according to him, their service conditions are to be governed as per the provisions of the Act and Statutes applicable to the employees of the University. He submitted that the amount of G.P.F. and G.I.S. was not to be credited in the Government Treasury as they were the employees of the University but as per the letter of the Regional Director, Agriculture Research Institute, it appears that till 1997 the University continued to credit the amounts deducted from their salary towards G.P.F. and GIS in the Government Treasury, which was not permissible and the University and the employees, including the Petitioner, cannot derive any benefit by such credit.

6. According to the learned Counsel for the State, the scheme of G.I.S. was established in October, 1979 whereas the services of such employees were transferred to the University by an Act of 1971 itself. He submitted that it is true

that under Clause (i) of proviso to Section 39(4)(b) of the Act, they were given option to give a written notice to the State Government within two years from the date of publication of the Statutes of the University in the Bihar Gazette that they may be permitted to revert to the Government service and thereupon the Government was to consider and permit them to revert to the service of the Government to the extent of suitable vacancy available, but the said option did not create any right in any such employee to revert back to the Government service. According to him, the said provision was incorporated to enable the State Government to take back the services of such employees of the extent, the Government needed them for the suitable vacancies then available and not that they could as a matter of right, claim for reverting back to the Government service.

7. Learned Counsel for the State with reference to the Office Order dated 28th July, 1986 of the Vice-Chancellor of the University, contained in Annexure B to the supplementary counter affidavit filed on behalf of the State submitted that, in any view of the matter, this question stands settled by the judgment delivered by this Court on 20th December, 1985 in C.W.J.C. No. 3772 of 1984. (Learned Counsel for the parties accepted that the number and date of disposal of the writ case given in the said office order is not correct and the correct number of the case is C.W.J.C. No. 3742 of 1984, disposed of on 19th December, 1985 and that the said judgment was affirmed on withdrawal of L.P.A. No. 28 of 1986 filed on behalf of the University, vide order dated 24.2.1986). He further submitted that the Vice-Chancellor with reference to the decision of this Court in C.W.J.C. No. 3742 of 1984 in his Office Order dated 28th July, 1986 accepted that all such temporary transferred Government servants who did not hold any permanent post in the Government at the time of transfer of their services to the University by Ordinance and subsequently by Act had become the employees of the University. The continuance by the Regional Director, Agriculture Research Institute to deposit the deductions of G.P.F. and GIS in Government Treasury till September, 1997 was the financial irregularity and, in fact, it ought to have been stopped at least after the order of the Vice-Chancellor dated 28th July, 1986.

8. According to the learned Counsel for the University, all such employees, including the Petitioner continued to be the Government servants as their services were never dispensed with by the State Government under the provisions contained in the proviso to Clause (i) of Sub-section (4) (b) of Section 39 of the Act and thus they were never absorbed in the service of the University. He submitted that the office order dated 28th July, 1986 issued by the Vice-Chancellor/University in regard to the absorption of such employees was without any authority. He, however, has not disputed that the Petitioner and all such employees including the teachers were given the benefit available in the University for such employee including with respect to the age of superannuation. I am unable to accept the submission of the learned Counsel for the University that all such employees including the Petitioner, continued to be the Government servants.

9. The validity of the provisions contained in Section 39(4), as it initially stood, came up for consideration before this Court in C.W.J.C. No. 1734 of 1971 (S.W. Akhtar and Ors. v. The State of Bihar and Ors.) disposed of on 29th April, 1972. In paragraph 7 of the said judgment, the Division Bench quoted the provisions contained in Sub-section (4) of Section 39 of the Act as follows:

Every person employed in any of the colleges specified in Sub-section (1), or in any of the institutions referred to in Sub-section (3) immediately before the date referred to in Sub-section (1) or Sub-section (3), as the case may be, subject to such terms and conditions as may be prescribed, become employee of the University on such date.

While dealing with its validity, the Division Bench held that the said provision is one which clearly contravenes Article 311 of the Constitution of India and, therefore, struck it down as ultra vires.

Later, the said provision was amended and new provision was inserted in Section 39(4)(a) relating to permanent employees of the Government allowing them to retain their lien on the permanent posts they held in Government service and Clause (b) relating to temporary employees which is relevant in the present case. Section 39 (4) (b) reads as follows:

(b) All such Government employees of the College, Research Institutes etc. of the Agriculture and Animal Husbandary Department who did not on the eve of transfer to the University hold any permanent post on a substantive basis under Government or such other temporary employees whose services are transferred to the University by the State Government from time to time, shall be deemed to have been appointed by the University and they shall cease to be Government servants; provided that

(i) They shall give a written notice to the State Govt. within two years from the date of publication of the University Statutes in the Bihar Gazette that they may be permitted to revert to the Government service and thereupon they shall be permitted to revert to the service of Government to the extent of suitable vacancies available failing which their services may be liable to be dispensed with;

(ii) the services rendered by them in the regular establishment under the State Government should be taken into account in calculating their Pension and Gratuity in case they are appointed to the pensionable establishment of the University.

Every such individual, who has been employed by the University shall be subject to the provisions of this Act and the enactment and statutes made.

10. It appears that different authorities of the Government as well as of the University from time to time created lot of confusion as regards the date of transfer of such temporary employee in the University service despite the fact that the said question was finally settled long back by a Division Bench of this Court in the case of Bhanunjay Sahay and Ors. v. The State of Bihar and Ors.

C.W.J.C. No. 93 of 1973 and 803 of 1975, disposed of on 2nd March, 1976) in which the scope of the provisions contained in Section 39(4)(b) and also its first proviso regarding exercise of option by the temporary employees have been considered in detail and the Division Bench upheld the validity of the said provision and held that it does not suffer from any of the vices of unconstitutionality. It is true that in the said case the claim related to deputation allowance of such temporary employees since after their transfer to the University service, but the Division Bench on elaborate discussion of all pros and cons held that right of reversion to the Government service has not been made as a matter of course, rather it has been made subject "to the extent of suitable vacancies available, failing which their service may be liable to be dispensed with."

11. The Court considered the question as to whether the Petitioners could be deemed to be transferred, or in other words, "to have been appointed by the University", ceasing to be Government servants by a legislative procedure. The Court also considered about the rights of the Petitioners as temporary Government servants to hold their posts and also that the ratio of the Bench decision of this Court in S.W. Akhtar's case (supra) will have no application and is quite distinguishable, inasmuch as in the earlier provision as contained in Sub-section (4) of Section 39 of the Act, which was struck down, no distinction was made with respect to the permanent Government servants who held a lien on the civil post and, therefore, it had the effect of removing them from their posts and, apparently, contravened the provision of Article 311 of the Constitution." Further the Division Bench has held that "in the case of temporary Government servant, like the Petitioners who; as is clear from the discussion made above, had no lien on their posts and their tenure was dependent only upon the pleasure of the Governor, no protection of the provision of Article 311 of the Constitution apply to their case."

12. The Division Bench has also taken into consideration another Bench decision of this Court in C.W.J.C. Nos. 543 and 741 of 1973 (Bishwanath Singh and Ors. v. State of Bihar and Ors.) disposed of on the 7th November, 1973, which were filed on behalf of the employees belonging to various grades of the Civil Supplies and Commerce Department of the Government of Bihar whose services were similarly transferred to the Bihar State Food and Civil Supplies Corporation Private Limited sometime in the year 1973, which was challenged in the said writ petition. In the said case the Bench held that the Petitioners are entitled to deputation allowance and the Government is not justified in making any discrimination between them and persons belonging to other Departments whose services have been put under the Corporation. However, the Division Bench on consideration held that "...no advantage can be derived by the Petitioners of this decision either, for the simple reason that the transfer of the services of the Petitioners in those cases was by an executive order, and not by a statutory provision, as in the present case. It is plain that the statutory action was subject to the scrutiny of the Court. In my opinion, therefore, there is no infraction of the provision contained in

Article 16 of the Constitution either on this account." Thus, the Division Bench has finally upheld the validity of Section 39.

13. In a similar case, bearing C.W.J.C. No. 3742 of 1984 (Sheoji Ram v. Rajendra Agricultural University, Bihar and Ors.) disposed of on 19th December, 1985, seeking mandamus directing the Respondents not to retire the Petitioner before he attained the age of 60 years and also for quashing a communication dated 7.5.1984 to retire him after he attained the age of 58 years, this Court on detailed consideration held that the Petitioner of the said case had become an employee of the University and as such, he shall be governed by the provisions of the Act and the Statutes which are applicable to the employee of the University and thus it was held that he shall superannuate after attaining the age of 60 years. Pursuant to the said judgment the Vice-Chancellor of the University issued the aforementioned office order dated 28th July, 1986.

14. From the aforementioned facts, it is clear that all transferred temporary Government servants to the University service became employees of the University right from the date of transfer under the statutory provision subject to only one exception that the Government could recall their services by reverting them back to the Government service to the extent the Government needed them for the suitable vacancies then available.

15. It appears that even after the said judgment some temporary employees kept on coming to this Court in C.W.J.C. Nos. 3044 of 1987, 5487 of 1988 and 6147 of 1989 seeking direction to the State Government to take decision on the option exercised by them under proviso to Section 39(4)(b)(i) of the Act and this Court also directed the Respondent-authorities, including the Director, Agriculture to finally dispose of the Petitioner's case positively by 31st March, 1989 and in the last case i.e. C.W.J.C. No. 6147 of 1989 this Court by way of one more indulgence disposed of the writ petition with the direction to the Special Secretary, Department of Agriculture, Patna to comply with the earlier direction of this Court given in C.W.J.C. No. 5487 of 1988 and dispose of the options exercised by the Petitioners in accordance with law by a reasoned order positively within a period of one month from the date of receipt of a copy of the aforementioned judgment. From the said orders it appears that earlier Division Bench decision of this Court in C.W.J.C. No. 803 of 1975 was not brought to the notice of the Court and the Court thus passed the orders directing the Respondent-authorities and the Director, Agriculture for disposal of the option exercised by the Petitioner under proviso to Section 39(4)(b)(i) of the Act.

16. However, In C.W.J.C. No. 935 of 2003 Petitioner Deo Sundari Devi, who is the widow of Late Rajendra Yadav who died in harness on 18.2.1998, raised grievance that she had not been paid the G.P.F. amount with up-to-date statutory interest. This Court disposed of the said writ petition, vide order dated 10.4.2003, on the suggestion of the learned Counsel for the parties and directed the Regional Director, Agriculture Research Institute, Lohianagar, Patna to send requisition with respect to the remaining deposits made in the account of the

Petitioner in Government treasury within one week, whereupon the Joint Commissioner, Department of Accounts Administration (Finance) Bihar, Patna was directed to examine and issue necessary authority for refund of the same within one week thereafter. The Comptroller of the University was directed to make payment of the remaining amount of provident fund with up-to-date statutory interest as is admissible in the University to the Petitioner within one week of the receipt of the authority by the Government.

17. Mr. Singh, learned Counsel appearing for the University has submitted that in view of the fact that there was confusion about the status of all such temporary employees in the minds of all Including the State Government and the University continued to make deposit of the amount of G.P.F. and group insurance deducted from the salary of all such employees in the Government Treasury, the equity demands that the Government should pay at least the interest as is admissible to all such employees as per the Statute applicable to the employees of the University.

18. This Court finds substance in the submission of the learned Counsel for the University. It was the fault on the part of the State authorities also in accepting the deposits of the said amount in the Government Treasury and if the amount is accepted in the Government Treasury, then in the peculiar facts and circumstances of this case, the equity demands that the interest at the rate prescribed for the University employees under the Statute must also be paid by the Government and the Government should refund the entire amount with such interest to the University for payment to the concerned employee.

19. In the result, the writ application is allowed. The Regional Director, Agriculture Research Institute, Lohianagar, Patna is directed to send requisition with respect to all such deposits made in the Government Treasury after calculating the admissible statutory interest on it to the employees of the University under the Statute to the State Government within two weeks, where upon the State Government shall release the payment with aforementioned admissible interest on G.P.F. and group insurance in favour of the University and the University shall proceed in the matter accordingly i.e. in the case of those who have already retired, the University shall make the payment with aforementioned admissible statutory interest to them and in the case of those who are still in the employment, shall deposit the amount in the appropriate account, forthwith on receipt of the fund. This Court further directs that the University shall also take steps for immediate release of differential salary on account of revision of pay with effect from 1.4.1997 and consequential fixation of pension etc., where upon the Government shall release the fund as per its liability, if any, within one month and the University shall pay the same soon thereafter. However, in the facts and circumstances of the case, there shall be no order as to costs.