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**(2000) 05 PAT CK 0002**  
**In the Patna High Court**  
**Case No : L.P.A. No. 1662 of 1995**

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| Ram Niwas Kumar Sharma and Others | APPELLANT  |
| Vs                                |            |
| The State of Bihar and Others     | RESPONDENT |

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**Date of Decision :** 11-05-2000

**Acts Referred:**

**Citation :** (2001) 1 PLJR 509

**Hon'ble Judges :** Ravi S. Dhavan, C.J.;Aftab Alam, J

**Bench :** Division Bench

**Advocate :** S.R. Srivastava, Pravin Kumar, Gopal Jha, B.K. Prasad, for in L.P.A. No. 1662 of 1995, Pushkar Narain Shahi, Partha Sarthi, Ram Vinay Sharma and Manish Kumar, for in L.P.A. No. 1696 of 1995, for the Appellant; R.P. Bhagat and S.K. Ranjan for State, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Aftab Alam, J.—These two appeals (LPA No. 1696 of 1995 at the instance of 55 Appellants and LPA No. 1662 of 1995 at the instance of four Appellants) are filed against the judgment and order, dated 1.11.1995 passed by a learned single Judge of this Court dismissing four writ petitions seeking similar reliefs.

2. The Appellants claim to be working on different Class III and Class IV posts in one or the other of the three private Engineering Colleges, namely, (i) Indian College of Engineering, Motihari, (ii) J.M.I.T. Darbhanga and (iii) Magadh Engineering College, Gaya which were taken over by the Government by Ordinance No. 37/1986, dated 9.12.1986 (later made into an Act). The Appellants came to this Court seeking to challenge notification, dated 31.1.1991 by which a large number of persons, including the Appellants, were denied regularisation and were removed from service in terms of Section 5(3) of the Ordinance. Their challenge to the notification, dated 31.1.1991 failed when the learned single Judge dismissed all the four writ petitions by judgment and order, coming under challenge in these two appeals.

3. It may be noted at the outset that the notification, dated 31.1.1991 covered a large number of persons, including the Appellants and it came under challenge in a number of writ petitions filed before this Court by persons whose services stood terminated by that notification. Unfortunately all those cases could not be consolidated in one group. As a result those cases were disposed of in smaller groups by different Hon'ble Judges at different times and this has led to some divergence in the orders passed by this Court on the notification in question. It is this aspect of the matter from which the Appellants seek to derive support for their appeals.

4. Before proceeding further, it will be appropriate to note Section 5 of the take over Ordinance No. 37 of 1986 which was later replaced by Bihar Act No. 4 of 1991. Section 5 which remains the same in the Act as it was in the Ordinance is reproduced below:

5. Determination of conditions of Service of teachers and other categories of employees of the Private Engineering Colleges.?(1) All the staff employed in the Private Engineering College shall cease to be the employees of the concerned Private Engineering College from the date of vesting in the State Government u/s 3:

Provided that the employee shall continue to serve the concerned Private Engineering College on adhoc basis till a decision under Sub-section 3 is taken by the State Government.

(2) The State Government shall set up one or more Committees of experts and knowledgeable person who shall examine the strength of the staff and the staffing pattern and shall further examine the biodata of each member of the teaching and other categories of employees of each of the Private Engineering Colleges and shall ascertain whether strength, Staffing pattern, appointment, promotion or confirmation sanctioned and made by the managing committee of each of the Private Engineering College are proper in accordance with Universities Act, statutes, Ordinance, rules or Government direction/circular and shall take into consideration all relevant materials such as the requirements of the Private Engineering College, qualification, experience and research degree etc., and submit its report to the State Government.

(3) The State Government on receipt of report of the Committee or Committees, as the case may be, shall determine the strength of teaching and other categories of employees and the staffing pattern and shall decide in respect of each member of the teaching and other categories of employees on the merit of each case whether to absorb him in Government service or to terminate his service or to allow him to continue on adhoc basis for a fixed term or on contract and shall where necessary redetermine the rank, pay allowances and other conditions of service.

5. Proceeding in terms of the provisions as quoted above the State Government determined the number of Class III and Class IV posts required in the three

colleges on the basis of "staffing pattern" and then absorbed in service the requisite number of persons who were found fit and suitable for different posts. The services of the remaining surplus were terminated by the impugned notification, dated 31.1.1991, applying the principle, "last come first go".

6. It may now be noted that the first batch of the writ petitions challenging the notification, dated 31.1.1991 that came up before a division bench of this Court was dismissed by judgment and order, dated 20.4.1993. That decision of the division bench (of which one of us Aftab Alam, J was a member) is reported as *Sadanand Jha and others Vs. The State of Bihar and others*, . In that decision it was found and held that the action of the State Government in issuing the impugned notification terminating the services of the persons found surplus did not suffer from any infirmity and called for no interference by this Court. In para 16 of the decision, it was observed and held as follows:

16. For these reasons I am inclined to hold that the impugned decision contained in Annexure-1 C.W.J.C. No. 759 of 1992 has been taken after determining the strength of staff and the staffing pattern as provided by Section 5(3) of the Act. I am also inclined to hold that the decision of the Government determining the strength of the staff and the pattern is based on relevant materials which cannot be said to be arbitrary, unjust and unreasonable.

Later in para 18 of the judgment, it was observed as follows:

... It would appear from the report of the Screening Committee that for examination of individual case it had laid down certain norms. Those who did not fulfil the requisite qualification and were thus ineligible for absorption/appointment had naturally to be excluded in terms of the provisions as contained in Sub-sections (2) and (3) of Section 5 ... As I have briefly indicated earlier, before the take over of the colleges, the erstwhile managing-committees had admitted students and made appointments on different posts indiscriminately without following any norms whatsoever and regardless of one's merit, qualification and suitability. In terms of the provisions of Section 5(1) they were retained to serve the college on adhoc basis only for the purpose of examination of their cases. The provisions of Sub-sections (2) and (3) of Section 5 are quite clear and specific. In terms thereof no person can claim a legal right that by reason of his appointment under the private management or by reason of his continuance in the college on adhoc basis, any legal right has accrued to him which can be enforced by writ petition-Allowing them to continue on the posts and directing their regularisation would only undermine efficiency of the administration of the college. I, therefore, find myself unable to issue any direction for their absorption on the posts and interfere with the impugned order.

(emphasis added)

7. After the aforesaid division bench decision in *Sadanand Jha*, four writ petitions challenging the same notification, dated 31.1.1991 were listed before another Hon'ble Judge of this Court sitting singly (the Hon'ble S.K. Homchaudhuri, J).

The attention of the Hon"ble Judge was invited to the division bench decision in Sadanand Jha and he primarily relied upon that decision in passing the judgment dismissing all the four writ petitions. It is this judgment which comes under challenge in the present appeals.

8. From the impugned judgment, it appears that the arguments were advanced on behalf of the Appellants-Petitioners assailing the correctness of the division bench decision in Sadanand Jha. Homchaudhuri, J was sufficiently indulgent even to entertain the submissions questioning the validity of the division bench decision. He classified those submissions under different heads and after discussing them separately found and held that all the criticisms against the division bench decision in Sadanand Jha were unfounded and he was bound to follow the division bench decision. From the latter part of the judgment it further appears that in respect of some of the Petitioners in that batch of cases, it was submitted before Homchaudhuri, J. that the principle of "last come first go" was wrongly applied in their case inasmuch as persons who had joined later than the concerned Petitioners were retained in service while the concerned Petitioners were removed from service by the impugned notification. Having noted these objections on facts, Homchaudhuri, J asked the concerned Petitioners to make representation before the competent authority who in turn was directed to reexamine their cases in the light of the objections raised by them and to take a fresh decision. No such direction was made in respect of the present Appellants, presumably for the simple reason that no such fact based objections were raised on their behalf before the learned single Judge.

9. This normally should have been the end of the matter but it appears that a number of cases challenging the same notification were still left over and those cases were later listed before another Judge of this Court sitting singly (the Hon"ble A.K. Ganguly). Ganguly, J. by his judgment and order, dated 6.5.1996 reported as Shri Raghunath Singh and Ors. v. State of Bihar and Ors. in 1996 (2) PLJR 20 allowed the writ petitions mainly on the ground that before passing an order terminating their services, the concerned Petitioners were not given any notice or an opportunity of hearing. In other words, Mr. Justice Ganguly held and found that the impugned notification suffered from violation of the principles of natural justice. It may be noted here that though the division bench decision in Sadanand Jha was brought to his notice, Ganguly, J. for the reasons stated in his decision took the view that he was free not to follow the division bench decision. The relevant passage in this regard is to be found in paras 36 and 37 of the decision in Raghunath Singh (supra), which runs as under:

36. Learned Counsel for the Respondents has relied upon a Division Bench judgment of this Court in the case of Chandigarh Administration and another Vs. Ajit Singh and another, . While delivering the said decisions orders of termination passed in respect of some employees under the same Ordinance were also the subject matter of challenge in the said decision. But in the said decision the only point on which the learned Counsel for the Petitioner of that case assailed the

order of termination was that the decision was taken without determination of the staffing pattern. The court while considering the said argument up-held the orders of termination. The present question which is considered by this Court was never argued and never fell for consideration before the court. In fact, Sub-section (3) of Section 5 of the said Ordinance was not examined in that case.

37. Therefore, for the reasons aforementioned the said judgment is not an authority on the proposition which is considered by this Court here. This court, therefore, does not feel bound by the Division Bench judgment of this Court in the said case of Sadanand Jha (*supra*) which was given completely on a different point.

10. From the afore-quoted passage it is evident that according to Ganguly, J. the issue of natural justice not having been canvassed or considered in Sadanand Jha, the judgment in that case upholding the impugned notification was not binding upon him as he was considering the validity of the notification in the context of the principles of natural justice.

11. It is stated at the bar that the decision of Ganguly, J. in Raghunath Singh was affirmed by a division bench of this Court in letters patent appeals filed against that judgment and later by the Supreme Court when the special leave petitions filed against the judgment and orders passed by this Court was dismissed.

12. We, however, find that the statement that the decision of Ganguly, J. in the case of Raghunath Singh was "affirmed" by a bench of this Court and later also by the Supreme Court is not wholly accurate. It appears that against the decision in Raghunath Singh a number of appeals were filed on behalf of the State. Those appeals were taken up by the appeal bench in two batches but those were dismissed not on merits or even in limine but as being barred by limitation. From the orders, dated 9.9.1998 and 25.9.1998 passed by the appeal bench, it is evident that one set of appeals was filed after a delay of 691 days and the other set of appeals after a delay of 679 days. The appeal bench declined to condone the delay and as a consequence the appeals were dismissed as barred by limitation. The special leave petitions filed by the State in the Supreme Court were dismissed in limine as would appear from the order, dated 5.2.1999 passed in SLP Nos. 591-597 of 1999 and other analogous cases. It is, therefore, difficult to accept the statement that the decision of Ganguly, J. in the case of Raghunath Singh was "affirmed" or "approved" by the appeal bench or by the Supreme Court.

13. Learned Counsel for the Appellants then submitted that later another division bench had allowed another writ petition, challenging the same notification, following the decision by Ganguly, J. in the case of Raghunath Singh. The order, dated 16.7.1996 passed in CWJC No. 522 of 1992 was also produced before us and from that order it is evident that before the division bench the parties agreed that the case of the Petitioner in that writ petition was covered by the decision

reported in 1996 (2) PLJR 20 and on the express consent of the parties the division bench simply disposed of that writ petition with the same directions/ observations as made in the case of Raghunath Singh. From this order also it is difficult to infer that the decision in Raghunath Singh was "affirmed" by another division bench of this Court on a consideration on merits.

14. Thus, the position as it stands is that the decision in Raghunath Singh is to be considered independently and without any support from any other division bench of this Court or from the Supreme Court.

15. That being the position we are unable to appreciate the reason assigned in Raghunath Singh for not following the earlier division bench decision in Sadanand Jha which plainly constituted a binding precedent for the learned single Judge. The reason assigned, as noted above, is that the division bench decision in Sadanand Jha did not consider the validity of the impugned notification in the context of the principles of natural justice. We are, however, of the opinion that the learned single Judge was misled into this assumption by missing out certain observations made in the judgment in Sada Nand Jha. In the judgment in Sada Nand Jha, the division bench had held that the State Government had determined the number of posts required in the three colleges on the basis of staffing pattern and then those who were found fit and suitable for those posts were retained and the remaining being surplus were removed from service applying the principles of last come first go.

16. The decision in Sadanand Jha expressly held that the principle was quite objective and reasonable and it did not warrant any interference by this Court. It was further observed in that decision that in terms of provision of Section 5(1), persons claiming to be employed by the private colleges were retained in the service of the college on adhoc basis, only for the purpose of examination of their cases; that the provisions of Sub-Sections (2) and (3) of Section 5 were quite clear and specific in terms whereof no person could claim a legal right that by reason of his appointment under private management or by reason of his continuance in the college on adhoc basis, any legal right had accrued to him which could be enforced by a writ petition; further that allowing them to continue on the post and directing their regularisation would only under-mine efficiency of the administration of the college. In view of the aforesaid findings, it is difficult to say that the division bench was unconscious of the principle of natural justice. It is plain and clear that the division bench took the view that the principles of natural justice had no application to the facts and circumstances of the case. The learned single Judge in Raghunath's case might have differed with the view but nevertheless the division bench decision constituted a binding precedent. He was obliged to follow the division bench decision in Sadanand Jha.

17. For the aforesaid reasons, we find ourselves unable to endorse the course taken in the case of Sri Raghunath Singh and we feel obliged to follow the division bench decision in Sadanand Jha.

18. Counsel for the Appellants also brought to our notice that shortly before rendering the judgment coming under appeal, the same learned Judge (Homchaudhuri, J) had allowed another writ petition, challenging the same notification. That decision is reported as State of Haryana Vs. Manoj Kumar, . From this judgment, it appears that at that time the division bench decision in Sadanand Jha was not brought to the notice of Homchaudhuri, J. The decision in Shubhankar Jha and others is also unacceptable to us as a precedent to be followed for the reasons assigned in connection with the decision in Raghunath Singh.

19. We are, thus, satisfied that the controversy stands concluded by the earlier division bench decision in Sadanand Jha which this bench must follow.

20. It may here be noted that as the last resort, submissions were made on behalf of the Appellants based on some factual aspects of the case. It was stated that the principle of last come first go was wrongly applied in the case of some of the Appellants and further that some of the Appellants were in fact found fit and suitable by the Screening Committee and while some others who were found unfit and unsuitable by the Screening Committee were retained in service, the names of the concerned Petitioners-Appellants were included in the impugned notification either by mistake or by some mala-fide design. As noted above, these submissions based on facts were not made before the learned single Judge and, therefore, we are not inclined to entertain these submissions at the stage of the appeal.

21. On hearing counsel for the Appellants in the two appeals at some length and on going through all the relevant materials and the earlier decisions in these cases we find no infirmity in the judgment and order coming under appeal and in our view no relief can be granted to the Appellants. These appeals are accordingly dismissed but with no order as to costs.

Ravi S. Dhavan, C.J.

22. I agree.