

**(2002) 06 PAT CK 0018**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 2280 of 2002**

|                                 |    |            |
|---------------------------------|----|------------|
| Ramesh Chandra Kumar and Others |    | APPELLANT  |
|                                 | Vs |            |
| The State of Bihar and Others   |    | RESPONDENT |

**Date of Decision :** 25-06-2002

**Acts Referred:**

Bihar State Universities Act, 1976 — Section 35  
Constitution of India, 1950 — Article 14, 16

**Citation :** (2002) 3 PLJR 461

**Hon'ble Judges :** S.N. Jha, J

**Bench :** Single Bench

**Advocate :** Rajendra Prasad Singh, Niranjana Kumar and Rajeev Kumar Singh, for the Appellant; Azfar Hasan and Priyadarshini, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.N. Jha, J.—This writ petition on behalf of 19 Petitioners has been filed for quashing the letter of the Joint Secretary, Higher Education Department, dated 19.12.2001, so far as it relates to the Petitioners, and for a direction upon the Respondents not to disturb the Petitioners from the post of Laboratory Incharge (Lab Incharge in short) in Nalanda College, Bihar Sharif and to pay arrear salary to them.

2. By the said letter dated 19.12.2001 the Joint Secretary communicated approval of the State Government with respect to 13 posts of Lab Incharge in science subjects i.e. Chemistry, Physics, Botany and Zoology which is far short of the Petitioners' claim and request of the College/University. Accordingly, what the Petitioners in effect and substance seek is direction to approve the post of Lab Incharge in accordance with the request of the College and the University authorities, so that they may be paid their salary against those posts.

3. The Petitioners had moved this Court earlier in CWJC Nos. 2649/99 and 2840/99 which were disposed of with a direction to the Secretary, Higher Education Department, to decide the dispute relating to approval of posts of Lab

Incharge in terms of the staffing pattern treating them as "deemed sanctioned" posts in accordance with the decision of the Full Bench of this Court in the case of Braj Kishore Singh and Others Vs. State of Bihar and Others, . The Court directed that if the posts are thus found to be sanctioned in terms of the staffing pattern the Government will release fund in respect of such posts for payment of salary to the incumbents working against such posts. The University in its turn was directed to determine as to which of the Petitioners or all of them, come within the "deemed sanctioned" posts and pay them salary including arrears. The Petitioners were given liberty to file representation before the Secretary. The impugned communication was made in the light of the above said order of this Court on the representation of the Petitioners.

4. The case of the Petitioners is that for the post of Lab Incharge the staffing pattern was laid down by the State Government in its letter No. 9690 dated 17.8.79 of the Education Department. The said staffing provides for one Lab Incharge for a group of 32 students on the basis of the capacity of the Laboratory at the I.Sc. and B.Sc. (Honours) level. In case the Laboratory functions in three shifts with 32 or less students there should be two Lab Incharge. There being 795 students in Chemistry, 734 students in Physics and 288 students each in Botany and Zoology, the State Government should have approved as many posts @ 32 students in the said subjects and therefore the impugned decision approving three posts each in Chemistry, Botany and Zoology and four posts in Physics is arbitrary. Further, the impugned decision refusing to approve any post of Lab Incharge in the subjects of Geography, Psychology and Geology must also be held to be arbitrary because there cannot be effective teaching without Laboratory work in those subjects necessitating appointment of Lab Incharge. According to the Petitioners, post of Lab Incharge has been sanctioned in other colleges such as A.N.S. College Barh vide Memo No. 1518 dated 27.8.82 and Government Manila College, Gardanibagh, Patna vide Memo No. 422 dated 5.5.87. Further, not a single post of Lab Incharge has been approved for the Post Graduate students. The case of the Petitioners further is that in view of decision of the Government contained in Memo No. 189 dated 10.5.91 of the Human Resources Development Department, non-teaching employees working since prior to 10.5.86 should be allowed to continue in service even if posts are not available as per the staffing pattern and they may be adjusted against the further vacancies. The case of the Petitioners further is that they were appointed after proper selection pursuant to advertisement dated 31.3.81 and therefore their appointments cannot be said to be otherwise invalid.

5. The case of the Department is that 13 posts of Lab Incharge have been approved in accordance with the staffing pattern and the letter dated 17.8.79. It has been stated that while determining the number of posts, the volume of work in terms of hours has been taken into consideration. It was submitted in course of hearing that making provision for one Lab Incharge for a group of 32 students does not mean that student strength should be divided into groups of 32 students and for each group there should be one Lab Incharge. If that were so,

Lab Incharge would be practically left with no work after the practical class of a particular group of students is over. It was explained that the practical classes are not held every day and therefore one Lab Incharge can work for different groups of students. The student strength of 32 has been indicated in letter dated 17.8.79 only for the purpose that the practical class should comprise of 32 students and there should be one Lab Incharge to assist them. That does not mean that after the practical class is over the duty of the Lab Incharge would come to an end. After the practical class of one group of students is over he can work with other groups of students as and when they take their practical classes. It was pointed out that even in para 3 of the letter dated 17.8.70 it was specifically mentioned that weekly work-load of the Lab Incharge should be 42 hours. That is to say, Lab Incharge is supposed to work for 42 hours in a week which is possible only when he is asked to work with different groups of students in different shifts.

6. It has been stated in the counter affidavit that almost all the Petitioners and many others were appointed as Lab Incharge/Lab Technician/Lab Assistant against the posts of Demonstrator which were not in existence by reason of the promotion of the incumbent Demonstrators as Lecturers after the posts of Demonstrator was abolished. From the report of the Selection Committee it appears that after interview etc. 12 persons were recommended for appointment as Lab Incharge in different subjects against the so called vacancies on the post of Demonstrator, whereas as per the direction of the University contained in letters dated. 25.6.81 (Annexure 6), dated 22.9.81 (Annexure 9), dated 20.2.82 (Annexure 10) and 26.4.82 (Annexure 13) 25 Lab Incharge were appointed.

7. As regards the claim for the post for the post-graduate students in Science subjects, it has been stated that postgraduate teaching in Nalanda College was not approved by the State Government but without taking such approval the College/University authorities started post-graduate teaching and in the circumstances it is not possible to provide additional posts for the post graduate classes/students. As regards provision for the post in the subjects of Geography, Psychology and Geology it has been stated that the Government order contained in letter dated 17.8.79 refers to only science subjects and therefore the Government is unable to approve the posts of Lab Incharge in those subjects.

8. Though a doubt has been expressed in the counter affidavit about the validity of selection on the basis of which the Petitioners claim to have been appointed, and it has been stated that the advertisement was published in the "Indian Nation" but the interviews etc. were conducted on the basis of local notice pasted on the Notice Board of the College, the so called interviews were conducted at B.D. Evening College, Mithapur, Patna, and in the circumstances the process of selection was not in conformity with Articles 14 and 16 of the Constitution, I am not inclined to go into the question of validity or otherwise of the selection on that ground after 20 years of the selection. However the question of availability of the sanctioned posts goes to the root of the matter

which cannot be ignored. In view of the provisions of Section 35 of the Bihar State Universities Act, 1976 there cannot be any doubt that unless posts are approved/sanctioned by the State Government no valid appointment can be said to be made, for the financial burden of the appointment is necessarily on the Government and thus the Government's approval is a must. In the case of *Braj Kishore Singh v. State of Bihar* 1987 (1) PLJR 509 the Full Bench held that where appointments are made as per the staffing pattern, approval of the State Government with respect to each post and appointment, individually, is not necessary. The posts within the staffing pattern will be deemed to be sanctioned. As regards the post of Lab Incharge, it is admitted position that the staffing pattern has been laid down in the aforementioned letter No. 9690 dated 17.8.79 of the Education Department. In the previous writ petitions i.e. C.W.J.C. Nos. 2649/99 and 2840/99 also this Court directed the Government to consider the admissibility of the posts on the principle of "deemed sanction" in accordance with the staffing pattern laid down in letter dated 17.8.79. The moot point of consideration thus is whether the impugned decision of the Government is in accordance with the staffing pattern laid down in letter dated 17.8.79 and the order of this Court.

9. Having considered the submission of the counsel for the parties I am of the view that the Petitioners cannot claim separate posts of Lab Incharge for each group of 32 students. A Lab Incharge is supposed to assist the students in their practical classes and practical classes are held in addition to the classes for the theory papers. If the stand of the Petitioners were correct, as many as 25 Lab Incharge will be required for 795 students in Chemistry subject alone, which would be an absurd preposition. The significance of the student strength of 32 is that the practical classes should be held for a group of 32 students; naturally justifying appointment of one Lab Incharge for them. If there are only 32 students on roll in the subject, it will justify appointment of one Lab Incharge but that does not mean that with the increase of student strength, say, to 64 there should be another Lab Incharge for the simple reason that one Lab Incharge can assist the other group of 32 students as well. The request of the College/ University authorities contained in the letter under reference thus appears to be highly inflated. It is to be kept in mind that in the letter dated 17.8.79 itself it was made clear that Lab Incharge will have to work for 42 hours in a week which means that they are required to assist different groups or batches of students in different practical classes.

10. So far as provision of Lab Incharge in the subjects of Geography, Psychology and Geology is concerned, the Court cannot sit in judgment over the decision of the State Government. The letter dated 17.8.79 refers to only Science subjects, but the Court would not like to put its seal of approval on the stand of the Government As indicated above, in the reply affidavit the Petitioners have given instances of sanction for post of Lab Incharge in subject of Psychology in at least two colleges. The circumstances in which such sanction was accorded are not known. No supplementary counter affidavit in response of the reply affidavit has

been filed on behalf of the Department. The Standing Counsel appearing for the State also fairly stated that this is a "grey area". However as the materials have not been produced before the Court on behalf of either the Petitioners or the State, on the basis of which the Court could come to a definite conclusion about requirement of post of Lab Incharge in the subjects of Psychology, Geology and Geography, the Court would merely ask the Department to reconsider this aspect of the matter notwithstanding that the letter dated 17.8.79 refers only to Science subject. No Government order on the point-one way or the other-has been brought to the notice of the Court.

11. As regards the post-graduate classes/students, if it is a fact that postgraduate teaching was started without approval of the State Government (there is no denial by the Petitioners in the reply affidavit) the Court would find it difficult to direct the Government to approve the post of Lab Incharge taking into account the post graduate classes because that would be a circuitous way of recognising the validity of the post graduate teaching. Obviously, that is an executive function of the State which the Court would not like to perform. Unless the postgraduate teaching in science subjects is approved by the State Government there can be no justification to direct the Government to approve the post of Lab Incharge for the post-graduate classes, or post take into consideration the post-graduate classes while approving the posts of Lab Incharge. The remedy of the Petitioner and/or, indeed, the College/University authorities is to make representation before the State Government to approve the post graduate teaching in science subjects, at the first instance and only then any occasion to approve the post of Lab Incharge for the post graduate classes would arise.

12. In the above premises, the Court would find it difficult to grant any relief to the Petitioners as prayed for, but in the facts and circumstances permit the Petitioners to make representation in respect of their grievance to the extent the same has not been rejected by this Court in the present order.

13. In the result, the writ petition is dismissed with the observations made hereinabove.