

(1993) 04 PAT CK 0036

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 759 of 1992

Sadanand Jha and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 20-04-1993

Acts Referred:

Bihar Private Engineering College (Taking Over) Act, 1991 — Section 5(1), 5(2), 5(3)

Citation : (1993) 2 PLJR 272

Hon'ble Judges : S.N. Jha, J;Aftab Alam, J

Bench : Division Bench

Advocate : S.J. Mukhopadhyay, Amber Nath Banerjee, R.N. Mukhopadhyay, Shivendra Kishore and K.K. Thakur in C.W.J.C. Nos. 759 and 3036 of 1992, Prakash Srivastava, Sharangdhar Upadhyay, Dhananjay Kumar Dubey and S.S. Chaudhary in C.W.J.C. Nos. 796, 4556 and 10250 of 1992 and Uma Kant Shukla and Uma Kant Prasad in C.W.J.C. No. 1865 of 1992, for the Appellant; Ram Balak Mahto, P.K. Shahi and Ram Suresh Roy, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—These six writ applications have been heard together and are disposed of by this common order. In C.W.J.C. No. 759 of 1992, there are 92 petitioners. Their services on different class III and Class IV non-teaching posts have been terminated by notification dated 31.1.91 as a result of their non-absorption in Government service u/s 5(3) of the Bihar Private Engineering College (Taking Over) Ordinance (now Act IV of 1991 hereinafter referred to as "the Act"). The services of the petitioners in the other five writ petitions, who are ten in number in all, have likewise been terminated by notification dated 28.12.91. While the services of the former group of petitioners have been terminated as being beyond, the strength and staffing pattern prescribed by the All India Council for Technical Education ("the Council" in short) and approved by the State Government, those of the latter group of petitioners have been terminated after scrutiny of their cases as to eligibility and suitability. I shall consider the cases of the two groups of petitioners separately but before I do

that certain basic facts which are not in dispute may be noticed.

2. In order to check the mushroom growth of engineering colleges and other types of technical institutions in the private sector, the State of Bihar enacted the Bihar State Engineering and Pharmacy Teaching Institute (Management & Control) Act, 1982. A Committee was constituted on 7.3.84 to consider the cases of existing institutions for the purpose of their take over. It is said that in the light of the recommendations of the said committee, three private engineering colleges, namely, Indian College of Engineering Motihari, Jagannath Mishra Institute of Technology, Darbhanga and Magadh Engineering College, Gaya, were taken over with effect from 9.12.86 under Bihar Ordinance No. 37 of 1986. Section 3 providing for the consequences of the take over lays down, inter alia, that with effect from the date of enforcement of the Ordinance, all assets and properties of the said engineering colleges shall stand transferred to and vested in the State of Bihar free from all encumbrances. Section 5 provides for the determination of conditions of services of teachers and other categories of employees working in the colleges. In order to appreciate the points arising for consideration, the provisions as contained therein may be quoted in extenso :

(1) All the staff employed in the private Engineering Colleges 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 such 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/circulars 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 the 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 ad hoc basis for a fixed term or on contract and shall where necessary redetermine the rank, pay, allowances and other conditions of service.

3. In terms of provisions of sub-section (2) of Section 5, the State Government constituted a Screening Committee comprising of the Joint Secretary, Science & Technology Department as its Chairman, the District Magistrates concerned (where the College is situate) or an Additional Collector nominated by them, a representative of the Personnel Department and three senior professors of BIT, Sindri (one each in respect of three colleges), a special expert and Joint Director (Administration), Science and Technology Department as the members, for examining the strength and stalling pattern as well as the biodata of each member of the teaching and other categories of employees of the three colleges to ascertain whether the strength and stalling pattern, their appointment, promotion or confirmation made by the concerned managing committee were proper in accordance with Acts and Statutes, oilier rules and circulars of the Government and all other relevant materials such as the requirements of the College, their qualification, experience etc.

4. Since in terms of Sub-section (1) of Section 5 of the Act, the existing staff continued to serve the colleges on adhoc basis, in view of the delay in the submission of the report and taking appropriate decision in the matter, the Government look a decision, contained in Memo No. 2019 dated 25.6.87 of the Science & Technology Department, to make adhoc payment of salary on the basis of provisional screening to be made by the District Magistrates concerned having regard to the norms and guidelines as stated therein. It was made clear that such screening was to be made only for the purpose of making payment of salary in order to obviate the difficulties of the working staff and would have no bearing on the report of the Screening Committee, constituted in terms of the provisions of the Act in the matter of absorption.

5. The committee considered various aspects and submitted its final report on 11.10.88. In the meantime, a decision was taken by the Government under resolution, as contained in Memo No. 2819 dated 8.9.88 of the Department, determining the subjects which were to be taught in the three colleges and the strength of the students to be admitted in different subjects.

6. On receipt of the recommendation of the Committee, a memorandum was submitted on 27.12.89 for necessary Government order regarding creation of posts as per the strength of the staff and staffing pattern. The Government order was issued on 15.1.90. On 31.1.91, two notifications were issued under Memo Nos. 320 and 321 of the Science & Technology Department. By the former, services of various persons of different non-teaching categories were absorbed after screening of individual cases. By the latter, the services of others, including the petitioners, were terminated on the ground that they are in excess of the strength and staffing pattern. It is this notification contained in memo no. 321 dated 31.1.91 which is under challenge in C.W.J.C. No. 759 of 1992. The notification terminating the services in the other cases, as noticed at the outset, was issued on 28.12.91 in respect of typists after screening of the individual cases. Thus, while in the former notification, the order of termination is on

account of the persons concerned being in excess of the strength and beyond the staffing pattern as prescribed by the Council, in the latter, it is pursuant to screening of individual cases.

7. The main thrust of the submission of Mr. S.J. Mukhopadhyay, Learned Counsel for the petitioners in C.W.J.C. No. 759 of 1992 is that the order of termination has been passed as being contrary to the staffing pattern and in excess of strength but as a matter of fact, no such staffing pattern has been determined by the State Government as provide u/s 5(3) of the Act. At this stage it would be useful to notice certain other provisions of the Act as contained in Sections 8, 9 and 10. Section 8 provides that the State Government shall start mainly course of study of new subjects of engineering in the taken over colleges and may also continue the courses of study in other subjects as per requirement. Preamble of the Act also states that the colleges were taken over "to introduce and encourage courses of studies in new subjects with a view to develop engineering education in Bihar". Section 9 empowers the State Government to determine the number of students to be admitted in the 1st Year course subject-wise after take over. As regards the students already admitted in the colleges before the take over, Section 10 provides that they shall be deemed to have been admitted in the 1st Year course and entitled to appear in the examination conducted by the concerned University. It would, thus, appear that although the colleges in question were taken over along with their assets and properties etc., admission, teaching and the examination have to be done afresh virtually on a new state. It was in exercise of the power under sections 8 and 9 that the State Government came out with the resolution as contained in Memo No. 2819 dated 8.9.88 (supra) determining the subjects as well as the number of students in the following manner :

(A) Magadh Engineering College, Gaya

(i) Mechanical Engineering 60

(ii) Chemical Engineering 20

(iii) Printing Technology 20

(iv) Automobile Engineering 20

Total 120

(B) Indian College of Engineering, Motihari

(i) Civil Engineering 40

(ii) Water Resourcing Engineering 20

(iii) Bridge Technology 15

(iv) Paper and Pulp Technology 15

(v) Electronics & Instrumentation 30

Total 120

(C) J. M. Institute of Technology, Darbhanga

(i) Electrical & Electronics 10

(ii) Computer Science 40

(iii) Textile Technology 20

(iv) Chemical Engineering 20

(v) Environmental Engineering 20

Total 120

8. One can take notice of the fact that before the take over, while colleges were being managed by the private managing committees, students had been admitted to various course without following any norm. Many of them were also shown to have passed the examination and promoted to the next higher classes. In this background, the provision as contained in Section 10 laying down that all students admitted prior to the take over shall be deemed to have been admitted in the 1st Year course or for that matter, the provisions as contained in Sections 8 and 9 laying down that the State Government shall have power to determine the subjects as well as the number of students subject-wise, appear to be well-meaning and reasonable. If the number of students is to be restricted in that manner, it would logically follow that all those persons who were appointed against various teaching and of the categories of posts cannot be retained. The number of staff has to bear some ratio with the number of students. That is why the provisions as contained in Section 5 were made laying down that the strength of staff and staffing pattern will be determined and after examination of the bio-data of each employee of the colleges, the State Government would decide as to who out of them are to be absorbed in Government service or terminated.

9. Mr. Mukhopadhyay did not challenge the aforesaid provisions. His submission was that the decision to terminate the services of the petitioners (and others) was taken without determining the staffing pattern.

10. Copy of the report of the Screening Committee constituted u/s 5(2) of the Act has been brought on record as Annexure-10 in C.W.J.C. No. 759 of 1992. It appears from the report that more than 3,300 students were said to be studying in the 1st Year Course itself in the three colleges while the number of staff, teaching and non-teaching taken together, was 878. The Committee laid down the norms for examination of the bio-data of the candidates. On the question of determination of the staffing pattern, it was decided that the State Government should follow the staffing pattern as fixed by the Council or the same pattern which is in vogue in an established government engineering college in the State keeping in view the requirements of the college in question. I have already stated above that by resolution dated 5.9.88, the State Government, in terms of the provisions of the Act, had determined and fixed the subjects which were to

be taught in the three engineering colleges as also the number of students.

11. Learned Advocate General, who appeared for the respondents, submitted that the Council has made recommendation regarding the staffing pattern, both with respect to teaching and non-teaching posts, in the following manner :

Salient Features of An Engineering College with an Annual Intake of 300 Students

Branch-wise intake

60 each in the branches/ discipline, of Civil, Mechanical, Electrical, Electronics and Computer Science&Engineering

Total Strength of students

1200

Total strength of teachers

122

Staff to student ratio

1 : 10

Total land area

Minimum : 7.0 hectares Desirable : 17.0 hectares

Plinth area of the Institution (excluding hostel and staff quarters)

Minimum : 13664 Sqm. Desirable : 17256 Sqm.

Plinth area per student

Minimum : 11.3 Sqm. Desirable : 14.4 Sqm.

Total number of technical supporting staff

117

Total number of Administrative and other staff

77

Ratio of Teaching to Technical sup-

1 : 0.96

porting staff Ratio of Teaching to all Other staff

1 : 0.66

It was pointed out that the figures have been worked out taking an engineering college with annual intake of 300 students (total 1200 students for four years) as model. It was stated that as per the resolution dated 8.9.88 (supra), the intake of students for each college having been fixed at 120, the total number of

students in Four Years Course would be 480. According to the Advocate General, the Government has more or less adopted the same pattern, while fixing the strength giving due regard to the requirement of the colleges.

12. It would be useful at this stage to point out that in terms of the provisions as contained in section 10 (1) (i) of the All India Council for Technical Education Act, 1987 under which the Council has been established, it is the duty of the Council to take all such steps as it may think for ensuring coordinate and integrated development of technical education and maintenance of standards and for the purpose of performing its functions under the Act, it may "lay down norms and standards for courses, curricula, physical and instrumentational facilities staff pattern, staff qualification, quality instructions, assessment and examination.

13. Learned Advocate General referred to the memorandum dated 27.12.89, Annexure-11, on the basis of which the Council of Ministers resolved to create the posts as communicated under Department memo no. 97 dated 15.1.90, Annexure-13. Paragraph 8(iii) of the memorandum states that as per the staffing pattern fixed by the Council the Planning and Finance Department had agreed for creation of 53 teaching and administrative posts, 53 posts of supporting technical staff, 23 posts of non-technical supporting staff and 41 posts of class IV staff for each college. The Government decision, as evident from the resolution dated 15.1.90, is in the same terms. It has been noticed above that as per the Government decision dated 8.9.88 the number of students in all subjects was fixed at 120 in one year i.e. 480 in four years. It would appear from Annexure-13 that out of 53 teaching and administrative posts 48 posts have been created for teaching staff in the following manner : Professor-7, Associate Professor-14 and Assistant Professor-27, besides 1 post of Principal. The total number of students being 480, the sanctioned teaching staff even if the post of Principal is excluded, is exactly in the ratio of 1 : 10 as recommended by the Council. So far as technical supporting staff are concerned, the Council recommended 117 posts for a college having total strength of 1200 students. The number of posts of technical supporting staff sanctioned by the Government for each college having total strength of 480 students only is 53 which works out to be more in ratio than the recommended ratio of students and technical supporting staff. The abstract does not separately mention about the number of the non-technical supporting staff but it would appear that the council recommended the ratio of 1:0.66 of the teaching staff to the other staff. The number of teaching staff being 48, in that ratio the number of "other staff" would not be more than 32. It would appear from the resolution that the total number of 23 posts of non-technical supporting staff and 41 posts of class IV staff have been sanctioned. In my opinion, these figures are sufficient to indicate that the report of the Screening Committee as also the decision of the State Government are on the same lines and pattern as recommended by the Council. That, according to me, is enough to demolish the contention of the petitioners that the decision to terminate their services has been taken without fixing the staffing pattern.

14. Mr. S.J. Mukhopadhyay, however, submitted that the norms and standards laid down by the Council, relied upon by the respondents, came into existence only in August, 1990. In other words, according to Learned Counsel, on the date the committee considered the matter and submitted its report or even on the date the State Government took the final decision no such norms and standards had been fixed by the Council. According to him, thus, the respondents cannot rely upon a document which came into existence after the impugned decision was taken. The submission is without any force. It is true that the brochure produced by the respondents during hearing of the case bears the date August 1990. That, however, does not mean that the materials on the point were not available. The document may be the final report as far as the Council is concerned and the State Government might have procured the same materials from the Council or other source. In my opinion, it is not necessary to go into that question because even if the State Government decided about the staffing pattern without taking into consideration the aforesaid recommendation of the Council, if it later transpires that the same is on the same lines and in conformity, it has to be accepted as relevant piece of evidence. Reference in this connection may be made to the observations made to this effect in the case of *New Swadeshi Distillery (Proprietor-Oudh Sugar Mills Ltd.) Vs. The State of Bihar and Others*, of the judgment. It is well settled law that the Court exercising jurisdiction under Article 226 of the Constitution is not supposed to go into the adequacy of the material if it is found that the decision is based on some materials which are relevant and germane. The decision has to be accepted as valid.

15. For these reasons I am inclined to hold that the impugned decision contained in Annexure-1 in 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.

16. About petitioners of C.W.J.C. No. 759 of 1992, it has been stated in the counter affidavit that they were found fit for consideration by the Screening Committee but their services were finally terminated as they were found surplus i.e. beyond the sanctioned staffing pattern. It may be mentioned here that besides the persons holding teaching and administrative posts with which we are not concerned in these cases, 105 technical and 164 non-technical class III posts and 312 class IV employees were found to be qualified, while 74 technical and 140 non-technical employees were disqualified. It has been stated in the counter affidavit that the surplus staff were identified on the basis of seniority as per the date of joining. In other words, the Government followed the principle of "last come first go" and, thus, those who were eligible and suitable and appointed earlier have been retained and absorbed as against those who, although eligible and suitable were appointed later enough as to come within the sanctioned strength. That is a well established norm which is universally applied to identify

surplus staff.

17. So far as the other group of writ petitioner is concerned, I have noticed at the very outset that the services of the concerned petitioners have been terminated after scrutiny of biodata of individual employees. 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. These petitioners are said to have been working as Typist in the J.M. Institute of Technology, Darbhanga and Indian College of Engineering, Motihari. It has been stated in the counter affidavit that typing test was conducted by the District Magistrates concerned and all of them were found unfit. It has also been stated that no post of typist has been prescribed. The posts which have been recommended are meant for Steno-typists. The petitioners have controverted the allegation that they were found unfit in any typing test. According to them, no typing test was at all held. It is not necessary to go into this dispute. There is no assertion on behalf of the petitioners that they are fit for appointment on the post of Steno-typist. So far as they are concerned, their services have been terminated on the ground that they are not qualified for such appointments. The decision, in terms, states that the same has been taken after examination of bio-data of each employee. 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. These writ petitions, in my considered opinion, have no merit and are, accordingly, dismissed, but without any order as to costs.

Aftab Alam, J.

I agree.