

(2006) 04 PAT CK 0070
In the Patna High Court
Case No : CWJC No"s. 1588 of 2005

Shailendra Kumar and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2006) 3 PLJR 1

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : J.P. Shukla and Piyush Lal, Ram Balak Mahto, Chittaranjan Sinha, Anil Kumar Sinha, Amaresh Kumar Sinha and Tara Nath Jha, for the Appellant; Harendra Prasad Singh, Dr. Kumar Anil and Arvind Ujjawal, for the Respondent

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Petitioners are the Class III/IV non-teaching employees of the Lalit Narayan Mishra Institute of Economic Development and Social Change,. Patna (hereinafter referred to as "the Institute"). They are aggrieved by the directions of the Human Resource Development (Higher Education) Department of the State of Bihar as contained in Letter dated 8.1.2005 to terminate their services in consideration of the report of the Enquiry Committee constituted under the Chairmanship of the then Director of the Institute in compliance of the directions of this Court contained in order dated 7.5.2002, passed in C.W.J.C No. 13417 of 2000 as the Committee had noticed illegalities in appointment/promotion of the petitioners. They are also aggrieved by the consequential order of the same date issued in compliance of the aforesaid directions of the State Government terminating their services. The two orders are annexed with the different writ petitions as Annexures-28, 57, 18, 20, 29 and 3 series in the seriatim indicated at the title page of this order. The Institute was initially named as Bihar Institute of Economic Development and was established as a Research Institute recognized by the Magadh University and subsequently Ranchi, Patna and Bihar

Universities also granted recognition to the Institute as a Research Institute. Later its name was changed to commemorate the memory of Late Lalit Narayan Mishra, Former Union Railway Minister. In March 1977 the Institute was declared as an autonomous Institute u/s 73 of the Bihar State Universities Act. Thereafter the Institute was taken over under the Bihar Private Educational Institutions (Taking Over) Ordinance, 1986. The Ordinance was later replaced by the Bihar Act 19 of 1987. Petitioners were appointed in the services of the Institute before and after its take over and the said fact will appear from the date of their appointment as given in the chart below:

Name of the Petitioners (C.W.J.C. No. 1588/2005) Date of Appointment

Shailendra Kumar 10.7.1987

Ram Badan Rai 10.7.1989

Smt. Ragini Dubey 17.12.1994

Md. Naimuddin Siddiquee 1.6.1993

Bhola Rajan 15.10.1985

Hiralal Paswan 14.9.1985

Hirendra Pd. Singh 16.11.1987

Md. Habib 20.9.1988

Kusum Lal Yadav 30.10.1989

Chethru Rai 30.10.1989

Bijendra Kumar 30.11.1989

Krishna Paswan 30.10.1989

Nityanand Mishra 30.10.1989

Name of Petitioners (C.W.J.C. No. 1590/2005)

Krishna Mohan Jha 1.10.1975

Shivnandan Jha 25.2.1983

Mahendra Kumar Singh 18.10.1976

Bholanand Thakur 1.4.1981

Ziaul Haque Ansari 2.8.1976

Anil Kumar Jha 20.9.1988

Shailendra Mohan 12.9.1988

Ram Chandra Mishra 5.2.1990

Md. Hafiz 13.3.1976
Dhaneshwar Mishra 1.10.1975
Jamuna Pd. 1.1.1976
Gopal Jha 1.10.1975
Bishnu Bahadur 31.8.1976
Bharat Lal Kamat 1.10.1980
Baidyanath Jha 5.7.1983
Shyamanand Jha 6.7.1983
Mithilesh Ram 28.8.1984
Ram Janam Paswan 30.10.1989
Sudama Ram 30.10.1989
Name of Petitioner (C.W.J.C. 1633/2005)
Md. Asif 2.5.2003
Petitioner of C.W.J.C. No. 1634 of 2005
Smt. Anita Jha 5.2.1990
Petitioner of C.W.J.C. No. 5721 of 2005
Binod Kumar @ Binod Kumar Jha 11.2.1985
Petitioners of C.W.J.C. No. 2067 of 2005
Rajnandan Singh Yadav 4.9.1984
Prabash Narain Jha 9.11.1987
Smt. Kamala Devi 15.9.1985

2. The employees appointed in the institute before its take over ceased to be its employees from the date of take over, but they continued to serve the Institute as an ad hoc employees until a decision was taken by the State Government under subsections (3) and (4) of Section 6 of the Take Over Act.

3. The validity of the Take Over Act as also the order terminating the services of the Registrar of the Institute was questioned by the Institute and its Registrar before the Hon''ble Supreme Court and the Hon''ble Supreme Court having considered the provisions of sub-sections (3) and (4) of Section 6 of the Take Over Act as also the order terminating the services of the Registrar of the Institute held as follows:

"It is clear that there is some distinction between sub-paragraph (3) and sub-paragraph (4). While under sub-paragraph (3), the State Government is to

decide, among other things, whether the service of a member of teaching staff will be terminated or not, under subparagraph (4), the State Government has not been enjoined to decide whether the service of any member of a non-teaching staff will be terminated or not. All that has been directed to be decided by the State Government under subparagraph (4) relates to the term of appointment and other conditions of service."

And thereafter proceeded to quash the termination order with direction to the authorities to grant opportunity of hearing to the Registrar. The order is reported in 1988 PLJR 45(S.C.) (Lalit Narayan Mishra Institute of Economic Development etc. vs. State of Bihar & Ors.).

4. The State having taken over the Institute on 19.4.1986 went into slumber and forgot to carry out its statutory obligation under sub-section (2), (3) and (4) of Section 6 of the Take Over Act to get the employees of the Institute screened by the committee constituted for the purpose and to take a decision regarding their absorption as also to finalize their service conditions in the light of the report of the Screening Committee. This callous attitude of the State Government was noticed by this Court when the employees Union of the Institute approached this Court in C.W.J.C. No. 13417 of 2000, which was disposed of under orders dated 7.5.2002 directing the State Government to discharge its statutory obligation under the Take Over Act and for that purpose following directions were issued:

"(i) The State Government will issue a fresh notification, constituting a committee in terms of sub-section (2) of Section 6 of the Take Over Act within fifteen days from the date of receipt/ production of a copy of this order in the office of the Secretary, Higher Education, Government of Bihar.

(ii) The committee will be required to submit its report within three months from the date of issuance of the notification under which it is constituted.

(iii) Within three months from the date of submission of the report by the screening committee, the State Government will take a final decision and issue necessary orders as provided under subsections (3) and (4) of Section 6 of the Act.

(iv) The process u/s 6 of the Act must in all events be completed and necessary orders issued before the end of the year 2002."

5. It appears, in compliance of the aforesaid directions of this Court the State Government issued notification, bearing No. 501 dated 18.6.2002 constituting a committee of its officers under the Chairmanship of the then Director of the Institute in terms of sub-section (2) of Section 6 of the Take Over Act with instructions to screen the teaching and non-teaching employees of the Institute and then to submit a report as regards their absorption in the Institute and also to finalise their service conditions. After notifying the committee when no further action was taken by the State Government in compliance of the aforesaid orders and directions dated 7.5.2002, the Employees Union of the Institute filed M.J.C.

No. 2202 of 2002 asserting willful non-compliance of the order dated 7.5.2002 on the part of the State Government and its officers. The contempt application was taken up by the High Court on 21.12.2004 when the authorities were asked to report compliance. The State Government and the Institute thereafter reported compliance by framing rules called Lalit Narayan Mishra Institute of Economic Development and Social Change Society (Conditions of Services) Rules, 2004 in purported exercise of power u/s 11 (1) of the Take Over Act as also by passing the impugned orders dated 8.1.2005 terminating the services of the petitioners.

6. Petitioners assail the correctness and validity of the two orders on various grounds namely that at this belated stage after 15-29/30 years of the appointment their services ought not to have been terminated when they have served the Institute for 15-29/30 years to the satisfaction of all concerned. They further assail their termination order on the ground that the same is violative of sub-section (4) of Section 6 of the Take Over Act as thereunder non-teaching employees could not have been terminated as the State authorities were only empowered to fix their service conditions. It was also submitted that the termination order has been passed in violation of the Rules of Natural Justice inasmuch as neither the copy of the report of the Screening Committee referred to in the impugned termination order was served on them nor any opportunity of being heard was given to the petitioners before passing of the impugned order as was directed by the Hon'ble Supreme Court in the case of the Registrar of the Institute, Lalit Narayan Mishra Institute of Economic Development etc. vs. State of Bihar & Ors. (supra).

7. Having heard the counsel for the parties, this Court under orders dated 20.2.2006 directed the learned counsel appearing for the Institute to procure the copy of the report referred to in the impugned order and serve the same on the learned counsel for the petitioners. It appears, in compliance of the aforesaid directions, the copy of the report was procured by the learned counsel for the Institute and served on the learned counsel for the petitioners and thereafter the same has been placed on the records as Annexure-36 by affirming supplementary affidavit dated 24.2.2006 in C.W.J.C. No. 1590 of 2005. Perusal of the report indicates that the same is dated 16.8.2002 and has been submitted by one of the members of the Screening Committee constituted under notification of the State Government dated 18.6.2002 and thereunder two conclusions, have been reached, namely, (i) Rules of reservation were not followed while making appointments in the Institute to the detriment of the reserved category and (ii) Irregularities were committed while granting promotion, pay fixation and replacement of scale to the employees of the Institute.

8. Learned counsel for the petitioners submitted that the termination order has been passed with reference to the report of the committee but the report dated 16.8.2002 is not the report of the committee, rather it is the report of one of the members of the committee, which can never be taken to be the report of the

Screening Committee in terms of the notification dated 18.6.2002 as the report does not contain the signature of the members of the committee including its Chairman who was also the Convener of the Committee. He further submitted that in any case the report ought to have been served on the petitioners before the impugned order was passed with opportunity to the petitioner to satisfy the State Government that their appointments were not in violation of Articles 14 and 16 of the Constitution of India as they were appointed by the competent authority after publication of Advertisement. Learned counsel further submitted that the violation of the Rules of Reservation had no effect on the case of the petitioners as it was the duty of the appointing authority to have obtained roaster clearance before proceeding to make the appointments and for the failure of the appointing authority to seek roaster clearance the petitioners could not be penalized. In this connection learned counsel for the petitioners placed reliance on the judgment of this Court in the case of *Sujit Kumar vs. The State of Bihar and Ors.*, reported in 2001(2) BLJ 807.

9. On the other hand, learned counsel for the Institute and the State have supported the impugned order and have submitted that the termination order has been made in consideration of the report dated 16.8.2002 and this Court should be slow in setting aside the termination orders as the same is based on the report of the Screening Committee constituted by the State Government in compliance of the orders of this Court dated 7.5.2002, passed in C.W.J.C. No. 13417 of 2000. In this connection he made veiled attempt with reference to a departmental file to justify the report dated 16.8.2002 submitted by one of its members by stating that the report was later signed by the other member of the committee and thereby the report submitted by one of its members became the report of the committee. Having addressed the court on facts, learned counsel for the Institute and the State proceeded to justify the impugned orders by submitting that in the peculiar facts of this case, termination order although issued after a passage of 15-29/30 years should not be set aside by this Court on equitable consideration as equity and law are twin brothers and law should be applied and interpreted equitably but enquiry should not override written or settled law. In support of the said contention, learned counsel relied on the case of *P.M. Latha and Another Vs. State of Kerala and Others*, and *Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Another*,

10. In terms of the order of this Court dated 7.5.2002 the committee was notified under notification dated 18.6.2002 and the committee consisted of seven persons out of whom the then Director of the Institute was the Chairman and Convener of the Screening Committee. The report dated 16.8.2002 placed on record alongwith the affidavit dated 24.2.2006, has been submitted by Sri B. K. Sinha, one of the members of the screening committee, which does not contain the signature of its Chairman/Convener and other members. There is nothing on the records to suggest that the Chairman/Convener and other members of the committee ever authorized Sri B.K. Sinha to submit the report on their behalf and thereafter approved the contents of the same, which fact is even confirmed

from perusal of the Report dated 16.8.2002 Annexure-B appended to the counter affidavit filed on behalf of the Institute and its functionaries, namely. Respondent Nos. 3 and 4 in C.W.J.C. No. 1590 of 2005. In the circumstances, this Court is of the opinion that the report dated 16.8.2002 of Sri B.K. Sinha is not the report of the screening committee constituted under sub-sections (2) and (4) of Section 6 of the Take Over Act. Further the report having not been served on the petitioners including those who were appointed after the take over of the Institute and also they having not been heard before passing of the impugned orders, in my opinion, the orders terminating services of the petitioners dated 8.1.2005 Annexures-28, 57, 18, 20, 29 and 3 of different writ petitions in the seriatim mentioned at the title page of this order is violative of the Principles of Natural Justice and thereby infracting Article 14 of the Constitution of India. As regards the petitioners who were appointed prior to the take over of the Institute the impugned orders are further violative of the provisions of sub-section (4) of Section 6 of the Take Over Act. Accordingly, the impugned orders are quashed. The case law relied on by the learned counsel for the State and the Institute has no application to the facts of this case as in the opinion of this Court the two impugned orders are not only violative of the provisions of the Take Over Act, but also of the Principles of Natural Justice. In the result, these writ applications are allowed. No costs.