

(2000) 10 PAT CK 0003
In the Patna High Court
Case No : L.P.A. No. 1357 of 2000

Shashi Nath Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

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

Citation : (2001) 3 PLJR 126

Hon'ble Judges : Nagendra Rai, J; D.P.S. Choudhary, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment dated 24.8.2000, passed by a learned Single Judge, by which he has dismissed C.W.J.C. No. 9142 of 1997 and other analogous cases, which were filed by the Appellants and others for quashing the notification dated 31.1.1991, issued by the Respondent-State terminating their services as a result of their non-absorption in Government service u/s 1(3) of the Bihar Private Engineering College (Taking Over) Ordinance, 1991, which was replaced by Act IV of 1991 and for further quashing the subsequent orders passed by the authorities reiterating the same order.

2. The facts necessary for disposal the present appeal are that the Government promulgated Ordinance No. 37 of 1986 and took over three private Engineering Colleges, namely, (i) Indian College of Engineering, Motihari, (ii) Jagarnath Mishra Institute of Technology, Darbhanga and (iii) Magadh Engineering College, Gaya. Section 5 of the Act contains provisions for determination of the conditions of service of employees including non-teaching employees. It provided, inter-alia, that all the staff employed in the said 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 and the employees shall continue to serve the concerned Private Engineering College on ad hoc basis till a decision is taken

under Sub-section (3) of Section 5 by the State Government. The said section also provided for constitution of one or more Committees of experts and knowledgeable persons to examine the strength of the staff and the staffing pattern and will also examine the biodata of such member of the teaching and other categories of employees of each of the private Engineering Colleges and shall then ascertain whether strength, staffing (sic), 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. Sub-section (3) thereof empowers the State Government to determine the strength of teaching and other categories of employees and the staffing pattern. It also empowers the State Government to 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. It further authorises the State Government to redetermine the rank, pay, allowances and other conditions of service.

3. The Appellants were working as Class III and Class IV staff in the Jagarnath Mishra Institute of Technology. In terms of the provisions contained in Section 5(2) of the Act, a Screening Committee was constituted and the Committee submitted a final report on 11.10.1988. On receipt of the report of the Committee, two notifications were issued on 31.1.1991. By one notification, services of various persons of different non-teaching categories were absorbed after screening of individual cases while by another notification, the services of the Appellants and others were terminated on the ground that they were excess in strength of the staffing pattern. The latter notification was challenged by the aggrieved persons vide C.W.J.C. No. 759 of 1992 and other analogous cases and all the writ applications were heard together by a Division Bench and disposed of by a common order dated 20.4.1993, which is reported in *Sadanand Jha and others Vs. The State of Bihar and others*, . The Division Bench considered the matter and held that the decision has been taken by the State Government by notification dated 31.1.1991 after determining the strength of staff and the staffing pattern as provided u/s 5(3) of the Act. The decision of the Government determining the strength of the staff and the staffing pattern is based on relevant materials which cannot be said to be arbitrary, unjust and unreasonable, and, accordingly, the writ applications were dismissed.

4. It further appears that the said notification was challenged by Raghunath Singh and others by filing several writ applications, which were heard by a learned Single Judge and he quashed the notification on the ground that it was passed without following the principle of natural justice. The said judgment is reported in 1996 (1) All P.L.R. 611 *Raghunath Singh v. State*. Relying upon the

judgment in the case of Raghunath Singh (supra), other writ applications were filed, which were dismissed by other learned Single Judge relying upon the Division Bench decision in the case of Sadanand Jha (supra), against which two letters patent appeals, namely, L.P.A. No.- 1662 of 1995 and L.P.A. No. 1696 of 1995, were filed and a Division Bench finally disposed of the matter on 11.5.2000 holding that the judgment rendered by the learned Single Judge in the case of Raghunath Singh (supra) was contrary to the decision of the Division Bench" in Sadanand Jha's case (supra) and, accordingly, overruled the same.

5. Thus, the said two Division Benches of this Court have already upheld the decision of the State Government dated 31.1.1991 passed in terms of the provisions contained in Section 5(3) of the Act. Now, the Appellants want to reopen the said matter on the ground of "additional point. The Appellants reagitated the matter before the State Government which was rejected on 18.9.1997 and thereafter, they filed the writ application, which was dismissed by the learned Single Judge after coming to the conclusion that the question is already concluded by the two judgments of the Division Bench.

6. Learned Counsel for the Appellants submitted that according to the staffing pattern, which should have been followed, the posts are still vacant and as such the termination of the services of the Appellants on the ground of there being surplus staff was impermissible.

7. We are unable to agree with the submission advanced by the learned Counsel for the Appellants. The said question has already been gone into by the earlier two Division Benches as noticed by the learned Single Judge and the same matter cannot be raised or reagitated after some interval. This Court has already upheld the Government decision taken u/s 5(3) of the Act and we do not find any cogent ground to reopen the matter. We fully agree with the view taken by the earlier two Division Benches of this Court and accordingly, we do not find any merit in this appeal and as such this appeal is dismissed.