

(2003) 03 JH CK 0109

In the Jharkhand High Court

Case No : Writ Petition (S) No"s. 2073, 3380, 4370 and 6359 of 2002 and CWJC No"s. 3377 and 3934 of 2000

Shiv Kumar Prasad and Others etc.

APPELLANT

Vs

State of Jharkhand and Others etc.
 Surendra Singh
and Others Vs State of Bihar and Others
 Maheshwar
Toppo and Others, Binod Kant Tiwary, Prem Sagar Pramanik
and Others and Panchu Baraik and Others Vs The Ranchi
University and Others

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Citation : (2003) 51 BLJR 923 : (2003) 2 JCR 588

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S.B. Gadodia and Sumit Gadodia, in WP S No. 6359/02, D.K. Chakravorty, in CWJC No. 377/2000, Allam and Ruby Parween, in WP S Nos. 2073, 3380 and 4370/02, for the Appellant; A.K. Mehta, K.K. Jhunjhunwala, GP III, I. Sen Choudhary, SC III, Ritu Kumar, G.P. IV, S. Akhtar, SC II and M.J. Rahman, JC to GP II and Mokhtar Khan, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—These cases relate to payment of salary of teaching/ non-teaching staff of colleges which were made constituent colleges in 4th phase. They were heard together for disposal by common order.

2. For proper appreciation of cases, it is necessary to take into consideration the relevant background of petitioners as mentioned hereunder :

According to the petitioners of WP(S) No. 6359/2002 Shiv Kumar Prasad and others, they were appointed as Lecturers in Sadguru Jagjeet Singh Namdhari College, Garhwa, Palarnau (S.S.J.S. Namdhari College, Garhwa for short) in February, 1987, prior to the date the college was made constituent college under the Ranchi University, Ranchi (University for short). They are working and are

entitled for salary in view of the interim order of the Supreme Court dated 12th October, 2001 in Civil Appeal No. 6098 of 1997, State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, .

Petitioners of CWJC No. 3934 of 2000 Maheshwar Toppo and others claims to have been appointed by the then Managing Committee of Baij Nath Jalan College, Sisai, Gumla in the year 1985 against non-teaching posts. They were removed from service in July, 1992 but later on reinstated by the University on 15th October, 1998 in the light of an order of the Patna High Court and the order of the Chancellor vide Notification dated 6th October, 1998. They also claimed salary from the date of their reinstatement in the light of decision of the Supreme Court aforesaid.

Petitioners of CWJC No. 3377 of 2000 Surendra Singh and others claim that they were appointed as Lecturers in S.S.J.S. Namdhari College, Garhwa and working since February, 1987. They have also claimed for salary in the light of an order passed by the Patna High Court in Bihar Rajya Mahavidyalaya Shikshak Amam Shikshaktar Karamchari Kalyan Mahasangh v. State of Bihar and Ors., reported in 1997 (1) PLR 533.

Petitioner of WP(S) No. 2073 of 2002 Binoy Kant Tiwary claim that he was appointed as Lecturer in Geography on 1st April, 1986 in P.P.K. College, Bundu, Ranchi which was made constituent college in 4th phase under the University. His service was also terminated but later on reinstated vide Notification dated 7th November, 1998. He has claimed salary from the date he rejoined the post on reinstatement w.e.f. 9th November, 1998 as per the decision of the Supreme Court in State of Bihar and others (supra).

According to petitioners of WP(S) No. 4370/2002 Prem Sagar Pramanik and others, they were appointed as non-teaching staff against class III and IV posts in P.P.K. College, Bundu, Ranchi. Later on, their services were terminated on 23rd July, 1992 but in view of the order of the Patna High Court and the order of the Chancellor, they were reinstated vide Notification No. 59/99 dated 27th January, 1999 issued by the Vice-Chancellor, Ranchi University, Ranchi. They have claimed salary from the date of rejoining on reinstatement w.e.f. 26th February, 1999, 2nd February, 1999, 29th January, 1999, 29th January, 1999, 29th January, 1999 and 11th February, 1999 respectively.

According to petitioners of WP(S) No. 3380/2002 Panchu Baraik and others, they were appointed as non-teaching staff against class IV posts in K.C.B. College, Bero. Later on, their services were terminated on 23rd July, 1992 but in view of the order of the Patna High Court and the orders of the Chancellor, they were reinstated vide Notification No. 3321/98 dated 6th October, 1998 and Notification No. 59/94 dated 27th January, 1999 issued by the Vice-Chancellor, Ranchi University, Ranchi. They have claimed salary from the date of rejoining on reinstatement w.e.f. 12th February, 1999, 2nd February, 1999, 9th February, 1999, 11th February, 1999 and 14th October, 1998 respectively.

3. The colleges in question were made constituent colleges under the University in the year 1986-87 in 4th phase. Therefore, they are commonly called as 4th phase constituent colleges.

Many of the teachers of 4th phase constituent colleges having not paid salary, agitated the matter. At that stage, the State Government made certain enquiries relating to appointment of teaching and non-teaching employees of 4th phase constituent colleges through its Vigilance Department which submitted report and alleged illegality in the matter of appointment of number of teaching and non-teaching employees. When the teaching and non-teaching employee apprehended termination of services, formed an union in the name and style "Bihar Rajya Mahavidyalaya Shikshak Evam Shikshaktar Karamchari Kalyan Mahasangh (Bihar Rajya M.S.E.S.K.K. Mahasangh for short) and filed a writ petition CWJC No. 4021/95 (reported in 1997 (1) PLJR 533. Initially, status quo order was passed on 21st June, 1998. When the case was finally disposed of, the concerned Universities were directed to take steps under Sub-section (14) of Section 4 of the Bihar Universities Act, 1976 in respect of regularisation of the services of the teachers of the colleges which have become constituent colleges of the different Universities in the 4th phase. The Universities were directed to take such step and communicate its decision to the State Government in the light of certain observation made in the judgment. It was ordered to maintain status quo till such steps are taken by the Universities.

The State of Bihar being not satisfied, moved before the Supreme Court in Civil Appeal No. 6098/97, wherein the Supreme Court while constituted one man Commission of Hon"ble Mr. Justice S.C. Agarwal (retired Judge of the Supreme Court) laid down the terms of reference for its decision. The aforesaid order was passed in State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, which reads as follows :

"In the circumstances of the case, it would be appropriate to implead the State of Jharkhand as a party to these proceedings. Let notice be issued to the State of Jharkhand through its Chief Secretary, Mr. Gopal Prasad, learned counsel accepts notice.

2. In the peculiar features of this case, we think it would be appropriate to direct an inquiry to be held by Hon"ble Mr. Justice S.C. Agrawal (retired Judge of this Court) into certain matters mentioned hereunder :

"Terms of reference

1. How many sanctioned posts of teachers and non- teaching employees were there in the 40 colleges which were converted into constituent colleges pursuant to the sanction letter dated 19.8.1986 of the State of Bihar?

2. How many proposals with regard to creation of posts for teachers and non-teaching employees had been submitted to the Education Department of the State of Bihar or University before 30.4.1986, the cut-off date mentioned in

Appendix "Kha" (pp. 208 of SLP) with respect to 36 colleges converted into constituent colleges as per Government letter dated 19.8.1986? (List of colleges is at page 206-207 of SLP and other dates mentioned in Government communications in respect of four other colleges).

3. How many teachers and non-teaching employees seeking absorption in the constituent colleges were not appointed through selections made by the Bihar State University (Constituent Colleges) Service Commission and whether they possess the basic qualifications prescribed by the Act and Statutes? This exercise will be without prejudice to the contention of the respondents that Section 57-A is not applicable to such selection, as has been held by the High Court in its judgment?

4. How many teachers and non-teaching employees would be entitled to absorption on the basis of the Government letter dated 19.8.1986 and Appendix "Kha" and the agreement entered into between the University concerned and the constituent college u/s 4(14) of the Bihar State University Act, 1976 and other orders of Government.

3. During pendency of the appeal the concerned teachers and other employees who would be affected by the ultimate outcome of the proceedings before us will get their full salary along with admissible allowances and other benefits subject to any other order made by the Court. It is made clear that the services of the teaching and non-teaching staff shall not be disturbed during the pendency of the proceedings. The State Government of Bihar and Jharkhand shall share the expenses of the inquiry to be conducted by Hon'ble Mr. Justice S.C. Agrawal and his remuneration may be paid as may be fixed by him. Each State Government shall present all evidence and material pertaining to the inquiry before the learned Judge within three weeks after he fixes the date of inquiry. The inquiry shall be completed as expeditiously as possible preferably not later than six months.

4. List after the report of the inquiry as received."

In the meantime, the Universities terminated the services of some of the employees in violation of rules of natural justice, who were subsequently reinstated vide notifications issued in 1998-99 in the light of certain orders passed by the Court.

The petitioners of all the writ petitions now claim for salary as per interim order of the Supreme Court passed in Bihar Rajya M.S.E.S.K.K. Mahasangh v. State of Bihar, as quoted above.

4. The University has taken plea that in the order of reinstatement, it was made clear that the payment of salary would be made from the date of reinstatement only after fund is received from the State Government. Further, plea taken by the University is that the University has not received any fund from the State Government against any individual name of petitioners.

So far as current salary is concerned, the plea of the University is that unless and until the fund is received from the State Government, it is not possible to make payment of salary. The University is not a fund generating organisation and depends upon the budgetary allocation/grant-in-aid of the State Government.

5. Counsel for the State of Jharkhand informed that about Rs. 50 lacs have been released for payment of salary of teaching and non-teaching employees as per order of the Supreme Court in Civil Appeal No. 6098/97 and certain orders passed by this Court. Reliance was placed on letter No. Mu 1 - 15/2002-744 dated 5th December, 2002 issued by the Secretary, Human Resources Development Department, Jharkhand, Ranchi to the Vice-chancellor of the University.

6. Counsel for the University submitted that for payment of salary as per order of the Supreme Court, it requires more than Rs. 2 crores but only Rs. 50 lacs have been released. It has also not been made clear which is the teaching and non-teaching employee for which the amount has been released. In absence of such information, the University is facing difficulty to pay the salary to one or other individual teaching/non-teaching employee.

7. The Secretary, Higher Education, Jharkhand was directed to appear and assist the Court. Mr. Amit Khare, Secretary, Higher Education, Jharkhand appeared on 20th January, 2003 and assisted. It was informed that the number of posts, sanctioned and created as per Government of Bihar's letter dated 19th August, 1986, have been calculated in respect to all the 12 newly 4th phase constituent colleges and information has been sent to the Hon'ble Mr. Justice S.C. Agrawal Commission. It was further informed that the list of teaching and non-teaching employees will be collected and shall be forwarded to Hon'ble Mr. Justice S.C. Agrawal Commission for screening of their appointment.

In this background, without determining the claim of one or other petitioner, the State of Jharkhand was allowed time and was directed to prepare the list of teaching and non-teaching employees of all the 12 newly 4th phase constituent colleges which they will submit before the Hon'ble Mr. Justice S.C. Agrawal commission.

8. When the case was taken up on 25th February, 2003, the counsel for the State informed that the list of about six colleges has been prepared. For preparation of the list of teaching and non-teaching employee of another 5 to 6 constituent colleges, further four weeks time was sought for. Such prayer was opposed by the counsel for the petitioners and, therefore, the cases were heard on merit.

There are two issues require to be determined before giving finding whether one or other petitioner is entitled for salary or not as per interim order of the Supreme Court in Civil Appeal No. 6098/97, are as follows :

(1) Whether the appointments of petitioners are legal and were made after

following the procedures for appointment as laid down under the Bihar Universities Act, 1976 or not;

and

(2) Whether the petitioners were actually appointed prior to the date the colleges were made constituent for grant of relief as per interim order of the Supreme Court in Civil Appeal No. 6098/97 or not.

9. Counsel for the petitioners placed reliance on the statement made by the petitioners and the enclosures attached to the writ petitions to justify the appointment of petitioners as legal."

But in these cases, it is not desirable for this Court to look into the question of legality and propriety of appointment of one or other teaching/non-teaching employee of 4th phase colleges as the matter has been referred by the Supreme Court before one man Commission of Hon"ble Mr. Justice S.C. Agrawal (retired) for determination of such issue.

The only question remains to determine whether the petitioners were appointed in their respective colleges prior to the colleges were made constituent or not.

The second issue has been framed as the Secretary, Higher Education, Government of Jharkhand raised dispute relating to actual appointment of petitioners and others, who claim to have been appointed and working in the colleges, since the colleges were made constituent in the 4th phase. Reliance was placed on paragraph 6 to letter No. 744 dated 5th December, 2002 from which it appears that the SDO, Garhwa while seized the documents of S.S.J.S. Namdhari College, Garhwa vide letter No. 883/88 dated 23rd December, 1988 informed that 51 teaching and 58 non-teaching employees were working. Whereas the University when requested to released fund for payment, names of 107 teaching and 56 non-teaching employees were shown to be working since the date the colleges were made constituent.

It was informed by the Secretary that there being dispute relating to total number of employees actually working on the date the colleges were taken over, the list of teaching and non- teaching employees was being prepared by the State for information to Hon"ble Mr. Justice S.C. Agrawal Commission, as was informed to the Court on 20.1.2003.

10. Counsel for the State also pointed out the discrepancies in respect to some of the petitioners. For example, petitioner No. 1, Shiv Kumar Prasad Gupta of WP (S) No. 6359/02 was shown to have been appointed by letter of the Secretary of the Managing Committee dated 12th February, 1987 on the 8th post whereas the date of joining of the said petitioner is 1st December, 1986 i.e. more than two months prior to the issuance of letter of appointment. In the letter of sanction of post No. 1132 dated 13th December, 1987, it was shown that the post was sanctioned by the State without any financial liability.

Similarly, petitioner No, 2, Sudeshwar Mahto of WP (S) No. 6359/02 was stated to have been appointed on 12th February, 1987 against 6th post but no such post was sanctioned.

Similar counter-affidavit has been filed in some of the writ petitions.

11. From the aforesaid fact, it will be evident that the second issue i.e. who are the teaching and non-teaching employees appointed prior to take over of 4th phase constituent colleges is still undetermined. The disputed question of fact cannot be determined by this Court under Article 226 of the Constitution of India. The State Government has already taken steps for identification of such teaching and non-teaching employees, which they have identified in respect to six newly 4th phase constituent colleges as informed by the counsel for the State.

Therefore, till the second issue is determined by the State i.e. who were actually appointed prior to the date the colleges were made constituent colleges, it is not possible for this Court to give any specific finding in respect to the petitioners, being a disputed question of fact, nor it is desirable to give specific direction for payment of salary as per the interim order of the Supreme Court. It is only after identification of teaching and non-teaching employees, specific direction can be given for payment of their salary, as per interim order of the Supreme Court, till the other issue relating to legality and propriety of their appointment is decided by the Hon"ble Mr. Justice S.C. Agrawal Commission.

So far as order passed by this Court or Patna High Court in one or other case, as referred by the counsel for the petitioners is concerned, those cases cannot be made applicable in these cases. In those cases, no dispute was raised by the State that there was more number of claimant than the actual teaching and non-teaching employees appointed prior to the date the colleges were made constituent. In this background, in absence of such dispute raised by the respondents, the Court passed order to pay the interim benefit.

12. In the circumstances, no relief can be granted for the present.

However, in the light of stand taken by the State of Jharkhand, the State Government is directed to complete the identification of teaching and non-teaching employees for screening by the Hon"ble Mr. Justice S.C. Agrawal Commission and forward the list of such teaching and non-teaching employees to the commission and to all the Universities within the State of Jharkhand.

The State Government will also release fund for payment of salary in favour of such identified teaching and non-teaching employees as per interim order of the Supreme Court, quoted above.

The Universities in their turn will pay salary only to the identified teaching and non-teaching employees of 4th phase constituent colleges, as per list as may be forwarded by the State of Jharkhand.

If the name of one or other person is not reflected and, thus, not accepted as

teaching and non-teaching employee of a particular 4th phase taken over college, such person be not paid salary as per interim order of the Supreme Court, till any specific finding is given by a Court of competent jurisdiction by the Hon"ble Mr. Justice S.C. Agrawal Commission, all subject to final decision as may be given by the Supreme Court in Civil Appeal No. 6098 of 1997.

13. The prayer having rejected for the present, all the writ petitions are dismissed, but with the observations are made above.