

(2015) 06 PAT CK 0018

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3473 of 2015

Shiva Deo Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Bihar Private Educational Institutions (Taking over) Act, 1987 — Section 11, 6

Citation : (2015) 06 PAT CK 0018

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Dhruv Mukherjee, Senior Advocate and Sanjay Kumar, for the Appellant; Harish Kumar, GP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Tripathi, J.—The five petitioners are working in various capacities in an autonomous body, known as Lalit Narayan Mishra Institute of Economic Development and Social Change. The institution was initially setup as a private educational institution, but the State of Bihar by virtue of Act 11 of 1987 took over the institution and the validity of the Take-over Act was upheld right up-till Hon"ble Apex Court.

2. The institution imparts education in management and economics and awards degree through Magadh University, Bodh Gaya, Gaya. The institution also has recognition and receives aid from the Human Resources Development Department, Government of India, besides the State of Bihar.

3. The primary relief which the petitioners are looking for is to fix their age of retirement at 65 years at par with the other teachers and in terms of the norms laid down by AICTE and UGC. The other relief is to also provide and grant pension to the petitioners or the like at par with government servants of the Department of Education and to pay gratuity at the rate of Rs. 10,000,00/- and other benefits available to a government servant. Yet another relief is that their

service conditions should be at par with the teachers of other universities of the State of Bihar and the same norms which is applicable to them and laid down by UGC should be extended.

4. After the institution was taken over by the State of Bihar, a notification, contained in Annexure- 1 was issued by the Education Department, indicating that the service conditions etc. of the employees will be at par with the employees of various universities of the State of Bihar. This notification, dated 11th of August, 1986 was issued under the signature of the Joint Secretary, Department of Education. Obviously, this was a kind of a hurried notification to fill in the gaps and clarified the status of the employees of the taken over institution.

5. Annexure-2 is the take over Act. Act 11 of 1987 and section 6 of the said talks in terms of determination of terms of service of the teaching staffs and employees of the institution.

6. On 13th of November, 1990, yet another notification was issued by the Human Resources Development Department, Government of Bihar, wherein under the purported exercise of power under section 11, sub section 1 of the Take Over Act, a rule governing the institution, namely, Lalit Narayan Mishra Institute of Economic Development and Social Change has been introduced. This rule duly gazetted is Annexure-3. What is of significance is rule 11, which indicates that the employees and officers shall draw the same pay and allowances as that applicable to an employee of the Education Department. This also seems to be a stop-gap arrangement of kind.

7. Another notification of significance is dated 08.01.2005 and is Annexure-4 to the writ application. This lays down the service conditions of the employees. It is Rules of 2004.

8. For the first time, the service conditions of the persons working in the said institution came to be crystallized. Relevant provisions are rule 8 and 9, so far as present dispute is concerned.

9. The petitioners have annexed the minutes of a decisions taken by the Board of Governors, which was headed by the Chief Minister of the State of Bihar as Annexure-6. The minutes are dated 08.07.2006. The reason for annexing the said minutes is to show that the Board of Governors did take some decision with regard to the service conditions as well as enhancement of the age of retirement of the teachers and non-teaching staffs. But nothing tangible came to be done. The Department of Education, however, in the meantime has enhanced age of superannuation of the employee and the teaching staffs of the universities of the State of Bihar. This institution is being discriminated for no apparent reason. It is in this background that the writ application has been filed seeking the reliefs mentioned earlier.

10. A counter affidavit on the respondent Nos. 1 and 2, i.e., Department of

Education, Government of Bihar has been filed. They take a stand as to what should be the age of retirement is a matter of policy for the State Government to decide. The Courts have no role to play. They are fortified in taking such a stand on the basis of an Hon''ble Apex Court decision rendered in the case of B. Bharat Kumar and Others Vs. Osmania University and Others, (2007) 6 SCALE 608 : (2007) 11 SCC 58 : (2008) 1 SCC(L&S) 722 : (2007) 6 SCR 168 . They also make a reference to a decision in relation to a litigation traveling from the State of Bihar to the Apex Court. It is the case of State of Bihar and Others versus Teachers Association of Government Engineering Colleges and Others reported in State of Bihar and Another Vs. Teachers'' Association of Govt. Engineering College and Others, (2000) 10 SCC 527 .

11. The stand of the State with regard to fixing of pension and other retirement benefits on the same terms as regular employees of the State Government is that the employees of the institution are entitled to payment of gratuity, leave encashment and Contributory Provident Fund, therefore, benefit of pension cannot be extended to them.

12. A short counter affidavit on behalf of the Director, Lalit Narayan Mishra Institute of Economic Development and Social Change has also been filed. They take a stand that the institution is working under a Managing Committee, after it was taken over by the Government of Bihar and there are a set of rules notified by the State Government, which governs teaching and non-teaching staffs of the institution. The institution has limited resources and it is managing its affairs from internal resources and limited subsidies from the State Government. No doubt some decisions favourable in nature was taken by the Managing Committee, but it is always subject to the approval by the State Government and since there is no notification or approval to the knowledge of the Director, those decisions and recommendations have remained on paper.

13. This institution has had a chequered history. It was set up as a private institution, but taken over by a legislation put in place by the State of Bihar. After its validity was upheld by the Hon''ble Apex Court, it is evident from reading the various Annexures that as stop-gap arrangement notifications of varied kinds came into place as an ad-hoc measure. Initially in 1990 a rule was notified in the gazetted on 13th of November, 1990 (Annexure-3). Rule 11 to 14 are required to be reproduced and are reproduced hereinbelow:--

14. On 08.01.2005 (Annexure-4), a Rule was notified as Lalit Narayan Mishra Institute of Economic Development and Social Change Institution Society Service Rule, 2004. Rule 8 and 9 are reproduced hereinbelow:--

15. From a reading of the notifications, quoted above, it is evident that the broad framework of the service conditions in relation to the employees of the institution is still governed by rule 11 to 14 of the notification, contained in Annexure-3.

16. Even when service rule was notified on 08.01.2005, limited issues were dealt with in relation to some of the service conditions, contained in rule 8 and 9 of

Annexure-4.

17. The contention of the learned Sr. Counsel, representing the petitioners that rule 11 to 14 of Annexure-3, therefore, still governs the terms and conditions and the status of the employees of the institution. This is in broader terms and the service rule notified in Annexure-4 should be brought in conformity with Annexure-3.

18. This Court has reservation in accepting such a broad interpretation with regard to all service conditions which are applicable to them since a specific service rule was notified on 08.01.2005, which is Annexure-4 to the writ application. The issues which have been specifically dealt with in Rule 8 and 9 will be guided by the said rule. The entitlements with regard to age of retirement, contributory provident fund, gratuity, leave and leave encashment will be dealt with by Rule 8 and 9 (ka) (ii) (ga). However, the notification, contained in Annexure-3 still stands. This is a gazette notification, notified by the Human Resources Development Department as far as on 13th of November, 1990. Many an issues and areas have not been addressed in the 2005 Rules. Those are the areas which will be covered by rule 11 to 14 and the State Government has a legal obligation in this regard, because they do not take stand that the gazette notification, contained in Annexure-3 has been rescinded or amended.

19. There is a kind of adhocism to the extent in relation to governance of the institution even though the State Government had taken over the institution by a legislation way back in the year 1987. 28 years is a long time for the respondent-State authorities to have a clear cut rules in place, especially if the institution has been given an autonomous status. This various peace-meal notification, contained in Annexure-1, 2 and 3 has left many a gaping holes and Annexure-4, which is the 2005 Rules does not encompass the entirety of the service conditions of the employees. To that extent the petitioners have a right of seeking parity with regard to their other service conditions, which are not required to be spelt out in so many words. They will be conditions of service which are not covered or crystallized in Rule 8 and 9 of the service conditions Rules of 2005.

20. The writ application, therefore, is disposed off with a direction upon the Principal Secretary, Department of Education, Government of Bihar, Patna that the right and claim of these petitioners with regard to the entitlement in terms of Annexure-3 and the provisions, contained in rule 11 and 14 shall be closely scrutinized and the benefit at par with the State Government is required to be extended, except such specific provisions, contained in Rule 8 and 9 of the 2005 Rules.

Writ application stands allowed to the extent indicated above. No benefit, therefore, beyond what has been indicated with regard to enhancement of age, pension etc. can be granted, independent of the above adjudication.