

(2005) 09 PAT CK 0058
In the Patna High Court
Case No : CWJC No. 10339 of 1993

Shree Nath Thakur and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

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

Citation : (2006) 1 PLJR 22

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : R.N. Mukhopadhaya and B.D. Yadav, for the Appellant; Ranjit Sinha, for the Respondent

Judgement

Narayan Roy, J.—Heard counsel for the parties. The petitioners, who are said to be teaching and non-teaching staff of Indian College of Engineering, Motihari, have prayed for quashing of orders, as contained in annexures 1 series. They have further prayed for issuance of direction upon the respondents to absorb them on the respective posts in the college in question with effect from the date of take over of the college under the provisions of Section 5(3) of the Bihar Private Engineering College (Take Over) Act, 1991 (hereinafter to be referred to as "Act").

2. It is submitted by learned counsel for the petitioners that they were appointed on teaching and non-teaching posts in the college in question in between 1982 and 1984 by the erstwhile managing committee. While the petitioners were working in the college in question Ordinance No.37 of 1986 was published for taking over different private engineering colleges. Pursuant to the Ordinance aforesaid, the Collector of the District of Motihari was directed to furnish lists of teaching and non-teaching staff of the college in question, who were working on the date of take over. Certain details were furnished by the then Secretary of the College to the Collector, but, for the reasons best known to the Secretary, the details about the petitioners were not furnished, and, accordingly, names of the

petitioners were not sent to the screening committee. The petitioners thereafter came to this Court in C.W.J.C. Nos. 1807 of 1987, 2614 of 1987 and 4307 of 1987, which were disposed of with a direction to the screening committee to consider the cases of the petitioners. The petitioners cases, however, were not considered prop-erly by the screening committee and they again approached this Court in C.W.J.C. No. 4476 of 1992, which, ultimately, was disposed of with a direction to the screening committee to take a final decision in the matter regarding claim of the petitioners on the report of the Collector, and, accordingly, the screening committee passed orders, as contained in annexures 1 series, declining the claims of the petitioners.

3. Learned counsel for the petitioners further submitted that the college in question was taken over with effect from 9th December, 1986 and till the date of taking over the petitioners were working on the respective posts and in token thereof they had produced sufficient materials before the screening committee, but due to connivance with the Secretary of the managing committee of the college in question, appropriate recommendation was not made, so far the petitioners are concerned. At the same time, the screening committee, as directed by this Court, to examine the case of the petitioners also, failed to consider their respective cases and declined the prayer of absorption saying that on the date of take over they were not on the roll of the college in question. Lastly, learned counsel submitted that the State Government till date has not taken any decision in the matter on the report of the screening committee and the case of the petitioners, thus, is hanging in fire.

4. A counter affidavit has been filed on behalf of the respondent State, wherein it is stated that the petitioners since were not on the roll of the college on the date of its take over, they were not found to be genuine staff of the college, and, therefore, no question of absorption arises.

5. But so far the question as to whether the State Government has taken decision in the matter is concerned, no positive statement has been made in the counter affidavit. However, learned counsel for the State orally submits on instruction that the State Government has taken decision in the matter.

6. From annexure 23, the screening committee's report, it appears that no positive assertion has been made about functioning of the petitioners. From annexures 1 series, it appears that the petitioners were not found working on the date of take over of the college, and, therefore, their names were not recommended by the managing committee. Orders impugned, as contained in annexures 1 series, are the orders passed by the screening committee itself on direction of this Court, as referred to above.

7. Disputed questions of facts are involved in this writ application and it is not known as to whether any final decision has been taken in the matter by the State Government, as required in law.

8. Sub-section (3) of Section 5 of the Act contemplates that the State

Government shall finally determine staffing pattern of teaching and non-teaching staff on the basis of report of the screening committee. It further contemplates that the State Government shall individually examine the cases of teaching and non-teaching staff as already recommended by the screening committee, and, thereafter shall take a decision as to whether they should be absorbed in the Government services or their services may be terminated or they may be engaged on ad hoc basis.

9. It appears from the pleadings of the parties that claims of the petitioners have ultimately not been determined by the State Government, as their names were not recommended by the screening committee. The report of the screening committee appears to be the final report and it is up to the State Government to accept the report of the screening committee or to differ with the same.

10. In these circumstances, it would not be appropriate for this Court to issue any positive direction when the material facts are much in dispute pertaining to their engagement in college in question. However, the petitioners, if so advised, may represent before the State Government for reconsideration of their claims, which would be considered by the State Government in accordance with law. With the direction/observation aforesaid, this application is disposed of.

No order as to costs.