
(2002) 11 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 9458 of 2002

Shri Gupteshwar Bedua and Others

APPELLANT

Vs

Magadh University and Others

RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:

Citation : (2002) 11 PAT CK 0037

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Mr. Ganesh Prasad Singh, learned senior Counsel appearing on behalf of the petitioners and Mr. M.M.P. Sinha, learned Counsel appearing on behalf of the respondent University.

2. By the order impugned as contained in Annexure 16 dated 24-7-2002, services of the petitioners along with others have been terminated.

3. According to the petitioners, they were appointed on daily wages to perform the duties of Class IV employees in between 5-8-1980 and 21-11-1984 against the vacant sanctioned posts and they continued to work as such, and, in the meantime, the Advisory-cum-Development Committee of the University took interview of daily wages employees including the petitioners and prepared a select list on the basis of their merit and the same was sent to the University for their absorption and regularisation of their services which included the names of Petitioner Nos. 1, 2 and 3. Pursuant to the merit list prepared by the Advisory-cum-Development Committee, the University regularised the services of four of the daily wages employees ignoring the claims of the petitioners, though persons below in the list were regularised, which would be evident from Annexure 8-A of the writ application and the case of Petitioner No. 4, since she was working with effect from 1980, was also recommended by the Principal of the college for her regularisation, but somehow or the other, the petitioners were not regularised. It is the further case of the petitioners that the Government issued resolution vide communication, as contained in Annexure 10 dated 10-5-1991, directing that the employees appointed till 10-5-1986 would be entitled for their adjustment and

further ordered to allow such employees, who were working prior to May 10, 1986 beyond the staffing pattern to continue until they are adjusted against future vacancies, while the services of the persons appointed after 10-5-1986 were to be terminated. It is the further case of the petitioners that the University authorities pursuant to a direction of this Court, issued in Civil Writ Jurisdiction Case No. 9256 of 1995 terminated the services of the petitioners and other persons, whose names were included in the select list prepared pursuant to advertisement dated 5-12-1991.

4. Mr. Ganesh Prasad Singh, learned senior Counsel appearing on behalf of the petitioners submitted that the petitioners were appointed in between 5-8-1980 and 21-11-1984 against the vacant sanctioned posts and they cannot be treated to be appointees pursuant to the advertisement dated 5-12-1991. Learned Counsel further submitted that it would be manifestly clear from the order of this Court passed in Civil Writ Jurisdiction Cases No. 9256 of 1995, as contained in Annexure 13, that a direction was issued to the University to terminate the services of the appointees pursuant to advertisement dated 5-12-1991 after giving them 15 days' notice and since the petitioners were appointed in between 1980 and 1984, they could not have been treated as fresh appointees pursuant to advertisement dated 5-12-1991 and merely because their names were included in the select list, they would not cease to be on roll of the University from before, as they were appointed in between 1980 and 1984. Learned Counsel, therefore, submitted that the action of the respondent University while passing the order impugned is wholly arbitrary, unreasonable and without jurisdiction.

5. A counter affidavit has been filed on behalf of the respondent University. Mr. M.M.P. Sinha, learned Counsel appearing on behalf of the respondent University submitted that since selection made in pursuance of the advertisement dated 5-12-1991 was declared illegal by this Court vide its order passed in Civil Writ Jurisdiction Case No. 9256 of 1995, the petitioners have been terminated. Learned Counsel further submitted that the University considered the matter pursuant to the direction of this Court and decided to terminate the services of the petitioners and others and, therefore, the order impugned cannot be said to be without jurisdiction, rather it is in accordance with the direction aforesaid, issued by this Court.

6. The facts that the petitioners were appointed on daily wages against the vacant sanctioned posts in between 1980 and 1984 are not in dispute. It is also not in dispute that the University authorities as per Annexure 10 issued a resolution that the employees appointed till 10-5-1986 would be entitled for their adjustment and they would be allowed to work in accordance with the staffing pattern and they would be adjusted against future vacancies. It is also not in dispute that the Advisory-cum-Development. Committee of the University took interview of the daily wages employees including the petitioners and names of Petitioner Nos. 1, 2 and 3 were included in the select list according to the merit.

7. The petitioners, for these reasons, cannot be treated to be appointees pursuant to the advertisement dated 5-12-1991, and, therefore, the direction, issued by this Court in Civil Writ Jurisdiction Case No. 9256 of 1995 will not apply to the cases of the petitioners, and, accordingly, they could not have been terminated. The basic facts, which have been pleaded in the writ application about the appointment of the petitioners and their continuance in services have not been denied in the counter affidavit filed by the respondent University.

8. The petitioners admittedly continued on daily wages against the vacant sanctioned posts for about 20 years, and, therefore, the actions of the University were not justified in terminating their services taking shelter of the direction of this Court,

9. It is settled that the appointment made even on Class III and Class IV posts, according to the staffing pattern, ipso facto will not be illegal and their services are liable to be adjusted against the future vacancies and even though the posts are not sanctioned, post facto approval may be given by the State Government and, therefore, in any view of the matter, it will not be appropriate exercise of discretion to reopen the matter after such a long lapse of time. The question involved in this writ application and also the interpretation of Section 35 of the Bihar State Universities Act pertaining to approval of the appointments made by the Universities have elaborately been dealt with by a Full Bench of this Court in case of Braj Kishore Singh and Others Vs. State of Bihar and Others, .

10. The instant case, in my opinion, is squarely covered by the case of Braj Kishore Singh and others, (supra).

11. For the reasons and discussions aforementioned, the order impugned, as contained in Annexure 16, is not sustainable.

12. In the result, this application is allowed and the order impugned, as contained in Annexure 16, is set aside. The University authorities are directed to consider the cases of the petitioners for their regularisation/absorption against the future vacancies in accordance with law.

13. No order as to costs.