
(1995) 01 PAT CK 0011
In the Patna High Court
Case No : C.W.J.C. No. 1810 of 1994 (R)

Smt. Shyama Roy and Others	Vs	APPELLANT
State of Bihar and Others		RESPONDENT

Date of Decision : 01-01-1995

Acts Referred:

Bihar State Universities Act, 1976 — Section 10(14)

Citation : (1995) 2 BLJR 1230

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Judgement

Prasun Kumar Deb, J.—Both the writ petitions have been Heard together and are being disposed of by this common order.

2. The petitioners in both the cases are Lecturers of different Constituent Colleges under the Vinoba Bhave University, Hazaribagh (respondent No. 2). Previously they were under the Ranchi University and while serving under the Ranchi University, it is said that some of the petitioners have been transferred from their original Colleges to other Constituent Colleges, although by a subsequent notification in the year 1990, transfer of petitioners No. 1, 2, 3 and 7 were cancelled and they were sent back to their original Colleges.

3. In September, 1992, Vinoba Bhave University, Hazaribagh, came into existence and the Colleges in which the petitioners are serving now were declared as Constituent Colleges under the respondent No. 2 by notification dated 3.2.1994 vide Annexure-4. The petitioners were sought to be transferred to various other constituent colleges mentioned in the notification itself on the ground of academic interest of the University but by a letter dated 18.6.1994, the Under Secretary to the Government of Bihar, Department of Higher Education, Patna, issued a letter to the Vice Chancellor of Vinoba Bhave University, Hazaribagh, Annexure-5, wherein it was stated that till finalisation in relation to absorption of the teachers of the Constituent Colleges under respondent No. 2, transfer orders issued by him/her should be cancelled. Accordingly, in compliance

of that order vide notification dated 28.6.1994 (Annexure-6), the respondent No. 3, Vice Chancellor of Vinoba Bhave University cancelled the conditional transfer/deputation made by Annexure 4. The teachers-petitioners have not come up challenging Annexures-5 and 6, the letter and notification respectively, on the ground that the transfer order passed by the Vice Chancellor (respondent No. 3) u/s 10(14) of the Bihar Universities Act, 1976, (the Act) cannot be thwarted by any Government circular or letter and, as such, the respondent No. 3 withdrawing the transfer order is illegal and without jurisdiction. Much stress has been given in the word "constrained" as mentioned in Annexure-6 and thereby submit that practically the Vice Chancellor was interested very much for transfer/deputation of the petitioners to various other Colleges for the basic need of proper education to make equilibrium to all Constituent Colleges under the University, but because of the Government Letter at Annexure-5, the Vice Chancellor, Vinoba Bhave University (respondent No. 3) was practically made to compel to withdraw the transfer order at Annexure-4.

4. By filing counter-affidavit, the Government has taken the stand that after coming into existence of Ranchi University and the Colleges being declared as Constituent Colleges, it could be found by the Government that in many Colleges, teaching and non-teaching staff were not appointed regularly and as such the services of teaching and non-teaching staff could not be regularised and absorbed and a Vigilance Screening Committee was made to go through each and every appointment of teaching and non-teaching staff of those constituent Colleges and it was agreed upon that after proper absorption of the teaching and non-teaching staff, their transfer to some other constituent colleges could be made and accordingly, a letter was issued long back in the year 1986 asking the Vice Chancellor of the University not to make any transfer till the finalisation of absorption matter. When the Vice Chancellor of Ranchi University in violation of that order made some transfer, the same was cancelled on intervention of the Government and it seems that something has now been adopted for and on behalf of the Vinoba Bhave University.

5. The stand of the Government regarding the matter was approved by this Court as per the judgment and order passed in C.W.J.C. No. 1720 of 1991 (R), a copy whereof has been annexed as Annexure C to the counter-affidavit filed on behalf of the respondent No. 1 the other hand by giving reply to the counter-affidavit, the petitioners have submitted that this Court has already held by order dated 22.11.1991 passed in C.W.J.C. No. 1024 of 1993 (R) that the executive instruction made by the Government cannot take away the unfettered right of the Vice Chancellor exercised u/s 10(14) of the Act.

6. It now goes without saying and being settled principles of law that statutory right conferred on an authority cannot be interfered with by any executive instructions. In that sense, the statutory right exercised by the Vice Chancellor of Vinoba Bhave University in issuing transfer order u/s 10(14) of the Act cannot be interfered with by the State Government.

7. Mr. V. Shivnath, learned Government Pleader No. I appearing on behalf of respondent No. 1 has strenuously argued that definitely the Vice Chancellor has got power to transfer all teachers from one constituent college to another constituent college but in doing so, he or she must have considered that those teachers should be first of all of the same category and status. According to him, the Constituent Colleges where the present petitioners were serving although newly declared Constituent Colleges under respondent No. 2 but the serviced of teaching and non-teaching staff of those colleges have not yet been changed through the Screening Committee and as such have not been absorbed and, in that circumstances, they have not yet become the University Teachers, and in such a position, they cannot be transferred to the old Constituent Colleges where those posts have already been considered to be absorbed.

8. Some force may be mere in that submission of Mr. V. Shivnath but it seems that the Government is sitting tight over the matter since 1985 and they could not finalise the matter till these dates when about 10 years have been passed. Moreover, it seems that the transfer orders were made conditionally, subject to their position and status of the transferred lecturers and, in my view, such can be done by the vice chancellor under his unfettered jurisdiction on the academic interest of the Colleges that is run by the University. But it seems that although the Executive instruction cannot take away the right or infringe the right of the Vice Chancellor conferred under the Statute, but he or she had herself/himself subjected to the same by withdrawing the transfer order. In this case, it is found that the Vice Chancellor is not coming forward by filing counter-affidavit, but Mrs. Indrani Sen Choudhuri, appearing for and on behalf of the respondent No. 2 has supported the contention of the petitioners which goes against Annexure-6 itself.

9. In the circumstances, it is found that the petitioners could have gone to the Chancellor against the withdrawal of the order of the Vice Chancellor, on which they had kept and they came to this Court directly. When the transfer orders have already been withdrawn by the respondent No. 3, I do not find it fit to interfere with the same at this stage, but it can be held that the Vice Chancellor (respondent No. 3) has got unfettered right to transfer teachers within its Constituent Colleges. The State of Bihar (respondent No. 1) cannot interfere with the same by issuance of Executive instructions. There might be some anomalous position in making such transfer by the Vice Chancellor regarding the pay scale and status of the posts but for that the State of Bihar is to blame itself when it cannot finalise the matter for a decade even.

10. This application is disposed of with a direction to the State Government to finalise the absorption matter of the teaching and non-teaching staff of the Constituent Colleges under the Vinoba Bhave University, Hazaribagh within six months next positively. If that be not done by the State Government, then the Vice Chancellor, Vinoba Bhave University, Hazaribagh, shall be at liberty to exercise power u/s 10(14) of the Act. This Court has been constrained to make

such direction considering the academic interest of the Colleges in general and the Welfare of the students in particular. The Principal of various Colleges are moving to respondent No. 3 Vice Chancellor for posting of teachers in different departments as no proper teaching work could be discharged because of lack of teachers in various departments and practically the respondent No. 3 acted on such demands. One student union of respondent No. 2 came to this Court for posting of teachers in different Colleges and for maintaining equilibrium in all the Constituent Colleges in C.W.J.C. No. 2480 of 1994 (R) as the sufferance of the student was there and by order dated 13.9.1994, this Court passed order for filling up the vacant posts of Lecturers in Constituent Colleges, either making inter-transfer in the constituent colleges or by making new appointments.