

(1995) 06 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6580 of 1989

The Bihar Intermediate Education Council Employees Union
and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-06-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 1 PLJR 18

Hon'ble Judges : B.P. Singh, J;A.N. Trivedi, J

Bench : Division Bench

Advocate : S.J. Mukhopadhyaya, Shivendra Kishore, Ambar Nath Banerjee and Kishore Kumar Thakur, for the Appellant; S.A. Narain, for State, Subhash Chandra Jha, for Respondent Nos. 2, 3, Shiv Kirti Singh and Vinay Kirti Singh for Respondent Nos. 4 to 9, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—Petitioner Nos. 2 to 55 herein are the Assistants working in the Bihar Intermediate Education Council. They have impugned the Office Order issued by the Secretary of the Council dated 9th May, 1989, whereby Respondent Nos. 4 to 8 herein have been absorbed in the service of the Council (Respondent No. 9 having already been absorbed in 1987 with effect from 1-6-1985), and they have been promoted to the post of Section Officer with effect from different dates. Respondent Nos. 4, 5, 6 and 9 have been promoted as Section Officer retrospectively with effect from 1-12-1988 and Respondent Nos. 7 and 8 have been granted such promotion with effect from 6-12-1988 and 10-1-1989 respectively. The grievance of the Petitioners is that they being senior to the aforesaid Respondents as Assistants in the service of Respondent-Council, the aforesaid Respondents could not be granted promotion over-looking the claim of the Petitioners.

On the other hand, the Respondents contend that they cannot be considered to

be junior to the Petitioners, as they form a separate class of deputationists, who were absorbed in the service of the Respondent Council after they had put in several years of service in other organisations from they were brought on deputation.

2. The facts of the case may first be noticed, since there appears to be no serious dispute on the factual aspects of the matter, in so far as they are re the disposal of this writ petition. The Bihar Intermediate Education Council (hereinafter referred as "the Council") was constituted under Bihar Ordinance 149 of 1980. It continued till 20th May, 1985 under successive. Ordinances and thereafter it stood dissolved, since no Ordinance was passed extending its life. It was again revived with effect from 4th August, 1988. During the interregnum some of the powers of the Council were to be exercised by the Secretary, Department of Education, under the provisions of Bihar Ordinance 8 of 1985.

3. After constitution of the Council a question arose as to the staffing pattern of the Council, and the manner in which employees should be recruited. It is the case of the Respondents that the Government took a decision, as would be evident from Annexure R-A that 60 posts of Assistants (including Typists) sanctioned by the Government should be filled up from internal sources, and no outsider should be appointed. As far as possible those posts should be filled up by persons who may be called on deputation from other Universities and Departments and retrenched/surplus employees of other Departments. It is not disputed that an advertisement was published by the Council, being Advertisement No. 4 of 1982, inviting applications for appointment as Assistant under the Council. There were two scales against which Assistants were to be appointed. The first scale of Rs. 284-372/- was to be filled up by candidates who had three years experience, and had passed Secondary School Examination. The posts in the higher scale of Rs. 348-570/- were to be filled up by candidates who had five years experience, and had passed the Intermediate Examination. The advertisement also provided that persons already employed may also be taken on deputation, and that they may also apply through proper channel. There was also a provision for appointment of retired persons on contract, basis. The advertisement has been produced by the Respondents as Annexure-A to the counter-affidavit. Pursuant to the advertisement Respondent Nos. 4, 5, 7, 8 and 9 were appointed by the Council on deputation. Respondent No. 4 had been working as an Assistant in the Bhagalpur University since 1976. Respondent No. 5. had been working as a Selection Grade Assistant in the Bhagalpur University and was initially appointed in the year 1964. Respondent No. 6 had also served the said University in the same capacity for over 15 years. Similarly, Respondent No. 7 had been in service of the Patna University in the Institute of Correspondence Course since 1975. Respondent No. 8 was an Assistant in A.N. College, Patna, since the year 1974. Respondent No. 9 was an Assistant working in R.S. College, Tarapur since 1977. These Respondents were appointed on deputation, and they were also permitted to work as Section Incharge on account of their long experience. The order granting some of the Respondents

the status of Section Incharge has been produced as Annexure-B dated 21-5-1983. After these Respondents started working on deputation in the Council, and after they had taken over as Section Incharge though on temporary basis, the Petitioners herein were appointed in the year 1983 and 1984 to work as Assistants on daily wage basis. As noticed earlier, the Council stood dissolved on account of the lapse of the Ordinance under which it was continued, with effect from 20th May, 1985, and at that time the Petitioners were Assistants engaged on daily wage basis, whereas the private Respondents were working as Section Incharge, though on a temporary basis having regard to long years of service rendered in the University/Department from where they were brought on deputation pursuant to the Advertisement (Annexure-A).

4. In view of the dissolution of the Council, with a view to carry on the work, Bihar Ordinance 8 of 1985 was promulgated whereby certain powers were vested in the Secretary, Department of Education. There is considerable dispute between the Petitioners and the Respondents as to whether the Secretary had power to make appointments, a power which was vested in the Chairman of the Council, or whether he was only vested with the powers to conduct examinations. While the Petitioners contend that the Secretary, Department of Education, had all the powers earlier vested in the Chairman of the Council and the Council itself, the Respondent-Council as well as the private Respondents contend that the power of the Secretary, Department of Education, was limited to the conduct of examination. It is not necessary for me to go into this question; in view of the facts to be noticed hereinafter.

5. In view of the dissolution of the Council, by order dated 20th May, 1985 (Annexure-C) the private Respondents were relieved to enable them to join their parent Departments. Thereafter on 15-2-1986 the Petitioners herein were regularised by the Government as Assistants with effect from 1-6-1985 subject to one year's probation. They were also subsequently given the benefit of revised pay scale.

The Respondents have questioned the regularisation of the Petitioners as Assistants in the Council, because it is their contention that the Secretary of the Department of Education had no power to make appointment. It is also the case of the Council that the regularisation was not done in accordance with law. It is also stated in paragraph No. 21 of the counter-affidavit that the case of the Petitioners is under enquiry, and the enhanced pay scale has been given to them on an undertaking given by them that it shall be subject to the approval of the Finance Department. The matter is still under consideration, since the Finance Department has not concurred in the payment of higher pay-scale. The private Respondents contend that Bihar Ordinance 8 of 1985 conferred upon the Secretary to the Government, Department of Education, only the powers enumerated u/s 15 of the Ordinance of 1984 relating to conduct of intermediate examinations which were held by the Council. He was not vested with the power u/s 22 of the 1984 Ordinance and hence he had no power to make appointments

or to allow promotions. They have, therefore characterised the order of the Government granting regularisation to the Petitioners as wholly illegal and without jurisdiction. It is not necessary for me to go into this controversy and in an appropriate proceeding the question can be gone into. I shall proceed on the basis that the Petitioners were regularised as Assistants with effect from 1st June, 1985 without expressing any opinion on the legality of the order granting them regularisation.

6. As observed earlier, the Council was again revived on 4-8-1988, though the Chairman of the Council joined in the last week of January, 1989. The private Respondents were recalled from their parent organisations to serve the Council. Even before the reconstitution of the Council, Respondent No. 9 was absorbed by the order of the Government in the year 1987 with effect from 1-6-1985. Respondent No. 6, who was working on the post of Selection Grade Assistant in Bhagalpur University for over 15 years was absorbed in the service of the Council with effect from December 1988.

7. The impugned order (Annexure-1) (was issued on 9th May, 1989, whereby the private Respondents were absorbed in the service of the Council and were promoted as Section Officers with effect from the dates shown against their names to which" have referred earlier in this judgment.

8. It is not disputed that no recruitment rules have been framed by the Council. In the absence of such rules, it is still open to the Council to make appointments, and to lay down the terms and conditions of service consistent with the principles enshrined in Articles 14 and 16 of the Constitution of India. The only question which, therefore, arises for consideration in the instant case is as to whether the absorption of Respondent Nos. 4 to 9 in the service of Council is illegal. If not, whether the grant of promotion to them, treating them as senior to the Petitioners herein, is arbitrary and illegal.

9. Counsel for the Petitioners submitted that no norms were followed in the matter of absorption of the private Respondents. In any event, they could not be given promotion with effect from a date prior to their absorption in service so as to effect the rights of others. Lastly, it was contended that non-consideration of the cases of the Petitioners was violative of Articles 14 and 16 of the Constitution of India.

10. On the other hand, counsel for the Respondents contended that the Council acted in accordance with law in taking, the decision to absorb the private Respondents, who are deputationists, into the service of the Council. This was done after following a fair procedure. An advertisement was issued, and thereafter the cases of the candidates, who applied, were considered by the Council. Having regard to their long length of service in other Universities and institutions, they were appointed as Assistants initially, but were deputed to work as Section Incharge, though in a temporary capacity. All this happened in the years 1982 and 1983 when the Petitioners had not even joined the service of the

Council even as daily wage employees. The private Respondents had been working in different Universities and institutions between the years 1964 and 1977, whereas the Petitioners for the first time were appointed as Assistants on daily wage basis in 1983 and 1984. In view of the special circumstances created by the dissolution of the Council for a short period, the private Respondents were required to go back to their parent institutions, but as soon as the Council was revived, they were recalled. According to the Respondents, there was no arbitrariness in the action of the Council in absorbing them in service of the Council and in granting them promotion having regard to their long length of service. In fact, when the Petitioners were appointed on daily wage basis, the private Respondents were already functioning as Section Incharge. By granting them promotion the rights of the Petitioners have not been adversely affected, because they must be considered to be far junior to the private Respondents.

11. It is not disputed that an advertisement was issued in the year 1982 being Advertisement No. 4 of 1982 inviting applications for appointment to the posts of Assistant under the Council. The advertisement clearly mentioned that persons employed elsewhere may be taken on deputation and will be entitled to the payment of general scale of pay plus deputation allowance. Annexure R/A, though not conclusive, is certainly indicative of the Government policy not to employ outsiders in the Council, but to employ persons who were engaged in other institutions on deputation and to employ surplus/retrrenched staff of other Departments. It can also well be appreciated that the Council had been constituted recently, and there was need for experienced hands at different levels. That is why the Council issued an advertisement and invited applications from experienced hands as well, who were employed in other organisations or had even retired from service. In my view, the decision taken by the Council was reasonable and justified in the facts and circumstances of the case. In the interest of administration and efficiency the Council was within its rights to decide to employ experienced hands who could supervise the work of Assistants, who may be inexperienced. The procedure adopted by the Council was also, in accordance with the law inasmuch as an open advertisement was made inviting applications from all concerned. No fault, therefore, can be found with the decision of the Council to employ the private Respondents on deputation.

12. Respondent Nos. 4 to 8 were temporarily made Section Incharge having regard to their long experience as employees of the University or Institutions from where they had come Respondent No. 9 came on deputation in the year 1983. The Petitioners were appointed thereafter on daily wage basis. Thus, at the time when the Petitioners were appointed on daily wage basis, the private Respondents had already joined the Council couple of year earlier and had been made Section Incharge. Obviously, therefore, when the Petitioners joined the Council, they had worked under the private Respondents, who were made Section Incharge, though temporarily. No fault can be found with the decision of the Council on this score as well. If the service of the private Respondents in the Universities/Organisation from where they came is taken into consideration,

they were far senior to the Petitioners, who joined the service for the first time in the years 1983 and 1984, and that too on daily wage basis. The Ordinance under which the Council had been continued lapsed in May 1985. On that date the private Respondents were working as Section Incharge, and the Petitioners were Assistants engaged on daily wage basis.

13. The lapse of the Ordinance under which the Council had been continued, created a peculiar situation. The Council stood dissolved and therefore, the private Respondents could not be continued under the Council. Some of the functions of the Council were vested in the Secretary, Department of Education, Government of Bihar. However, for the period during which the Council stood dissolved neither the Petitioners nor the private Respondents can claim that they were serving the Council. Having regard to the special circumstances, neither the Petitioners nor the private Respondents can take advantage of the situation created by the lapse of the Ordinance. While the private Respondents were sent back to their parent Organisations, the Petitioners continued to work under the direct control of the Secretary, Department of Education. During this period the Petitioners were also regularised with effect from 1-6-1985. I need not go into the controversy as to whether this could be done, and if so whether it was validly done. But, it cannot be disputed that they were not regularised by the Council.

14. The Council was revived in August 1988, and the Constitution of the Council was completed in January, 1989, when its Chairman joined the Council. The private Respondents were recalled and were engaged to work under the Council.

15. The impugned order was passed on 9th May, 1989 absorbing Respondent Nos. 4 to 8 in the service of the Council, since Respondent No. 9 had already been absorbed in the year 1987 with effect from 1-6-1985, and promoting them to the post of Section Officer.

16. The first question which arises for consideration is whether the private Respondents could be absorbed in the service of the Council. In my view, there appears to be no reason why the Council could not absorb the private Respondents in the service of the Council, particularly when they, were initially selected on the basis of an advertisement, which clearly stipulated appointment on deputation. There is nothing to show that the action of the Council was mala fide, because even the feeble effort made in the writ petition to suggest that the present Chairman and the Secretary were interested in the private Respondents is destroyed by the fact that those persons did not hold the office of Chairman and Secretary of the Council when the private Respondents were appointed on deputation in the year 1982. Admittedly, there is no law, rule, regulation or contract to regulate recruitment of employees in the Council. There is, therefore, no prohibition against the absorption of experienced employees, who have worked in other organisations for several years and have gained valuable experience. It cannot be lost sight of that the Council did require experienced hands. Since it was a new created Council, it had to appoint employees at all levels to carry on its work efficiently. The circumstances as it

existed therefore justified the appointment of f experienced hands, and, therefore, the decision of the Council to absorb experienced hands for the efficient disposal of work cannot be characterised as unreasonable or arbitrary. At the same time, the actual length of service of the private Respondents could not be ignored, unless there was a law, rule or regulation to the contrary, which may have the effect of obliterating their past experience. If the actual length of service of the private Respondents could not be ignored, and could be reasonably taken into account having regard to the circumstances of the case, there can be no doubt that the private Respondents were far senior to the Petitioners. They had worked in different Universities and educational institutions where they were initially appointed between the years 1964 and 1977, whereas the Petitioners for the, first time were appointed on daily wage basis in the years 1983 and 1984, and were regularised with effect from 1st June, 1985. In fact, it would have been very unfair if the, past experience of the private Respondents was not taken into consideration, and the persons who had worked as daily wage Assistants under them, when they were functioning as Section Incharge, were promoted earlier than them. Once it is held that the Council was justified in taking into account the service rendered by the private Respondents in other organisations from where they had come on deputation, it cannot be disputed that the private Respondents were far senior to the Petitioners. Their promotion, therefore, even with retrospective effect did not adversely affect any legal right of the Petitioners. It is well settled that promotion can be granted with retrospective effect provided it does not effect the vested right of any person.

17. Having regard to these facts and circumstances, I am satisfied that the impugned order does not suffer from any illegality. It can neither be characterised as arbitrary or unreasonable. The decision takes into account the actual realities, and does not in any manner affect the right of the Petitioners, who must be considered far junior to the private Respondents.

18. I therefore, find no merit in the writ petition and the same, is accordingly, dismissed. There wil be no order as to costs.

Ashish N. Trivedi, J.

19. I agree