

(2012) 03 JH CK 0033
In the Jharkhand High Court
Case No : L.P.A. No. 339 of 2011

The State of Jharkhand

APPELLANT

Vs

Surendra Prasad Sahu and Others

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Bihar State Universities Act, 1976 — Section 35, 4(1)(14), 57A

Citation : (2012) 3 JCR 423 : (2012) 3 JLJR 579

Hon'ble Judges : Prakash Tatia, C.J.; Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Mr. A. Allam, S.C. - II, for the Appellant; Sumeet Gadodia, Advocate For the Respondent Nos. 1 to 8 and Mr. Anoop Kr. Mehta, Advocate For the Respondent No. 9, for the Respondent

Judgement

1. Heard learned counsel for the parties. Initially dispute arose involving absorption of about 4000 employees working on teaching and non-teaching posts in 40 colleges affiliated to various universities which were taken over as constituent colleges in accordance with the provisions of the Bihar State Universities Act, 1976. The present petitioners-respondents are also employees of one of the constituent colleges i.e., Baijnath Jalan College (in short B.N.J. College). Initially this matter came up before the High Court of Patna when Bihar was unified and a Division Bench of the Patna High court while deciding the question of absorption of 4000 such employees directed the universities concerned to take steps u/s 4(1)(14) of the Bihar State Universities Act, 1976 in respect of regularization of service of the teachers of the colleges which have become constituent colleges of different universities in the 4th phase. Further direction was issued by the Division Benbh that steps be taken in accordance with the communication with the State Government which was Annexure-5 in the said writ petition and it was further directed that steps be taken in the light of the observation made in the judgement as well as in accordance with the provisions of Section 4(1)(14) of the Act of 1976, however, within a period of four months. The universities were directed to maintain status quo till the

completion of the steps.

2. Being aggrieved against the judgement of the Division Bench of Patna High Court dated 31.01.1997, several civil appeals were preferred which were decided by the Hon"ble Supreme Court vide judgement delivered in the case of State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others, . While considering the issue and finding the Complexity in the subject of absorption of large number of employees of various universities running in the State of Bihar, Hon"ble Supreme Court, vide order dated 12.10.2001, constituted one man Commission of Hon"ble Mr. Justice S.C. Agrawal, retired Judge of the Supreme Court, to go into the various controversies and disputes with regard to the absorption of employees of the erstwhile affiliated colleges in the services of the converted constituent colleges. The terms of reference to be answered, after enquiry by the one member Commission of Hon"ble S.C. Agrawal, were as under :-

1. How many sanctioned posts of teachers and non-teaching employees were there in the 40 colleges which were converted into constituent pursuant to the sanction letter dated 19.08.1986 of the State of Bihar?

2. How many proposals with regard to creation of posts for teachers and non-teaching employees had been submitted to the Education Department of the State of Bihar or universities before 30-04-1986, the cut-off date mentioned in Appendix "Kha" (p. 208 of SLP) with respect to 36 colleges converted into constituent colleges as per government letter dated 19-08-1986? (List of colleges is at pp. 206-07 of SLP and other dates mentioned in government communications in respect of four other colleges.)

3. How many teachers and non-teaching employees seeking absorption in the constituent colleges were not appointed through selections made by the College Service Commission/University Service Commission and whether they possess the basic qualifications prescribed by the Act and statutes? This exercise will be without prejudice to the contention of the respondents that Section 57-A is not applicable to such selection, as has been held by the High Court in the judgment.

4. How many teachers and non-teaching employees would be entitled to absorption on the basis of the government letter dated 19-08-1986 and Appendix "Kha" and the agreement entered into between the university concerned and the constituent college u/s 4(1)(14) of the Bihar State Universities Act, 1976 and other orders of the Government?"

3. Said S.C. Agrawal Enquiry Commission submitted its detailed report on 19.12.2003 before Hon"ble Supreme Court. The parties were granted time to submit their written objections and in view of the said permission, several objections were submitted before the Hon"ble Supreme Court against the Commission's report,

4. Hon"ble Supreme Court after rejecting all objections, including respondents"

objection that against the name of the petitioners, in Hon"ble Justice Agrawal Committee's report, word "interpolation" has been mentioned and yet said commission has included the names of petitioners in recommendations. According to learned counsel for the appellants, the Commission considered the case of the college of the writ petitioners in its report from page 909 and thereafter recommended the names of these petitioners-respondents for absorption by the university of the petitioners-respondents" college. It is also submitted that petitioners were appointed in the year 1985 in the constituent college and were getting their regular salary in accordance with the rules applicable to them including the enhanced salaries which were effected by the 4th Pay Revision Commission recommendations. However, when the petitioners were denied the benefit of 5th Pay Revision Commission recommendation, petitioners approached this Court by filing writ petition which had been contested by the appellant State.

5. The petitioners are supported by the university, who, after decision of the Supreme Court in the case of State of Bihar & Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh (Supra), recommended for absorption of the services of the petitioners, which, according to the petitioners, was in view of the directions issued by the Hon"ble Supreme Court in the aforesaid judgement.

6. Learned Single Judge by a brief order allowed the writ petition of the petitioners and while allowing the writ petition, learned Single Judge, in the impugned order dated 28.06.2011 considered the objections submitted by the State that against the names of the petitioners the word, "interpolation" was mentioned and this fact was taken note of by the Commission in its report. That objection was rejected and learned Single Judge held that since the university has already passed the order for absorption of the petitioners and the petitioners were getting the salary under the old U.G.C. Scale, obviously as per the recommendation of the 4th Pay Revision Commission, they cannot be denied the benefit of the recommendation of the 5th Pay Revision Commission which was implemented with effect from 01.01.1996. After holding so, learned Single Judge directed the State Government to pass appropriate order on the petitioners" claim for revision of their pay scale in the revised U.G.C. Pay scale within six weeks from the date of receipt of a copy of that order and, thereafter, pay the arrears of salary to the writ petitioners.

7. Learned counsel for the appellants-State vehemently submitted that it is clear from the Commission"s report that before the Commission it was pointed out by the State that, in the list which was under consideration before the Commission, by interpolation names of some persons including petitioners" names have been aded and, therefore, after taking note of this fact in the Annexure-IIIA annexed to the Commission"s report, against the name of each of the petitioners, except one petitioner the word, "interpolation" had been mentioned. So far as 8th petitioner, Mange Oraon, is concerned, his subject has been shows to be language Kurukh, whereas that subject is not a sanctioned subject and still is not

sanctioned in the State of Jharkhand and, however, his name is in the select list for absorption prepared by the Commission. But, since there is no sanctioned subject, he cannot get the benefit of regular revised pay scale. Learned counsel for the appellants also drew our attention to some decision relied upon by counsel for the petitioners-respondents, delivered in the case of State of Bihar & Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh (Supra), and especially drew our attention to the order of the Hon"ble Supreme Court that the claim of absorption of the services of the employees working against the posts, for which proposal had not reached the State Government before the cut off date, are liable to be rejected. Referring to paragraph 27 it has been pointed out that Hon"ble Supreme Court ordered to reject List III and, therefore, in view of the above, the petitioners who were factually not entitled to be absorbed, cannot get the benefit of 5th Pay Revision Commission's recommendation and further, particularly because of the reason that list III of the teachers had been rejected by the Hon"ble Supreme Court and recommendation in respect of the petitioners was not sent by the university to the State Government within the stipulated period of time i.e. by or before, 30th April 1986, the petitioners are not entitled to any relief.

8. Controverting the submissions of the learned counsel for the State, learned counsel for the petitioners- respondents as well as university submitted that the L.P.A. deserves to be dismissed in view of the same judgement which has been relied by the State Government. The State Government, before the Hon"ble Supreme Court, in that very judgement, submitted written objection raising the same plea which has been raised before this Court by submitting a counter affidavit and that "objection has been rejected by the Hon"ble Supreme Court. It is also submitted that the university has decided the issue of absorption of the writ petitioners after the decision of the Hon"ble Supreme Court referred above and passed order on 15.03.2005, 30.03.2005 and 09.06.2005 and, therefore, there is no merit in the challenge to the order passed by the learned Single Judge. It is also submitted by learned counsel for the petitioners respondents that the State has taken stand against its own orders. The Commission in Annexure IIA annexed to the report, found that recommendation made by the university up to the cut off date pending consideration before the State Government was for total 32 posts including two posts for Kurukh language. The State Government accepted even this part of the Commission's report and passed the consequential order on 29.11.2008 (Annexure-3) and sanctioned the above 32 posts for the petitioner-B.N.J. College along with other posts for other colleges and that too, from the cut off date i.e., 30.03.1986/31.03.1987. Therefore, the State Government after accepting the report and sanctioning the posts from the cut off date, cannot take just a contrary stand which is sought to be taken by the State Government here.

9. Learned counsel for the petitioners-respondents submitted that it is true that there was allegation of interpolation before the Commission but that objection was rejected by the Commission and for the purpose of giving facts with respect

to the persons, only a list (Annexure-IIIA) was prepared wherein, there is a mention of the word, "interpolation" against the names of the writ petitioners but that was only mentioned because of the reason of allegation levelled by the State. However, after taking note of this fact in the list, the Commission ultimately, by list, Annexure-IVA annexed to the same report, held that the teaching staff named in the list Annexure-IVA are eligible to be considered for absorption and this list has been accepted by the State for other persons excluding the writ petitioners. However, learned counsel for the State submitted that against the names of these writ petitioners, there are either different comments in the column of the nature of appointment or there is no comment at all, whereas against some of the members of teaching staff, there are clear mention that they are permanently absorbed and, therefore, by having the names of the writ petitioners in the list Annexure-IVA, they cannot get any benefit.

10. Learned counsel for the university submitted that the petitioners were appointed in the year 1985 and after considering the entire fact situation, after the decision of the Hon"ble Supreme Court referred above, the university consciously took decision and recommended for absorption of the employees and, therefore, the State is bound to pay the benefit of the pay revision to the writ petitioners. It is also submitted that as per the statutory provision, the university is paying the salary to all the teaching and non-teaching staff according to the rules and these employees were getting the salary as per the recommendation of the 4th Pay Revision Commission.

11. We considered the submissions of the learned counsel for the parties and perused the Commission's report as well as the judgement of the Hon"ble Supreme Court.

12. It appears that the Commission considered the facts of the case in detail and while doing so examined the allegation of interpolation of adding names of ten persons in the list and observed that photostat copy of proceeding book of the Government body containing resolution dated 30.09.1985 was placed on record as Annexure-2 to the affidavit of Sri S.K. Srivastava dated July 29, 2003 filed on behalf of the State of Jharkhand. Then the Commission further observed that a perusal of the photostat copy of the resolution does support the inference that the names of the 10 members of teaching staff mentioned in Annexure-IIIB of the report of the screening committee have been interpolated in the sense that they were inserted after the minutes have been recorded and, thereafter, fact of the individual teachers were considered. The Commission also observed that "the names of 10 members of teaching staff except Shri Shafique Ahmed, Lecturer in Psychology, are found in the list of teachers annexed to the affidavit of Shri L.N. Bhagat dated March 18, 2003 filed on behalf of the University", since the name of said Shafique Ahmed was not in the list, his name was excluded and it has been observed that after excluding the name of said person, total number of teaching staff comes to 50. Then the Commission found that out of 50 teachers,

three left the job. Then the Commission held that after excluding these three teachers, the total number of teaching staff in the college would be 47. Then it has been observed that a list containing 47 members of the teaching staff wherein the names have been arranged subject-wise in the order of the date of appointment, is annexed as Annexure-IIIA. Therefore, it appears that while taking facts of the case with respect to the allegation of interpolation and insertion of names by interpolation, it was thought proper to prepare a list of 47 members of the teaching staff and, therefore, list, Annexure-IIIA, was prepared by the Commission and made part of the report wherein word "interpolation" has been mentioned against the names of the petitioners but their names have not been rejected. Thereafter, a list Annexure-IVA was also prepared and annexed with the report of the Commission wherein also, names of the petitioners are there but without remark of any interpolation and while answering the terms of reference, the Commission clearly declared that the members of the teaching staff whose names are in Annexure-IVA, are very much eligible for consideration for absorption in the order of the date on which they became so eligible. As we have already noticed that the names of these petitioners are there in the list Annexure-IVA, the language Kurukh is a sanctioned subject of the State Government in view of the order of the State Government dated 29.11.2008 (Annexure-3). Therefore, the petitioners were in service since 1985, whose cases have been considered by the Commission after taking note of the allegation of interpolation and the Commission had recommended their names for absorption and that Commission's report has been accepted by the Hon'ble Supreme Court after rejecting the State Government's specific objection that the Commission has committed serious error by adding the names of these petitioners in the recommendation for absorption. The State now cannot re-agitate the issue after the decision of the Hon'ble Supreme Court wherein after rejecting all objections against the Commission's report including the State Government objection of wrong inclusion of the names of the writ petitioners in the list Annexure-IVA, we are of the considered opinion that mentioning the word, "interpolation" in Annexure-IIIA is only mentioning of fact alleged by the State Government i.e., allegation against these persons but not a decision of the Commission and the Commission's decision is clearly for the recommendation of the names of these persons.

13. So far non-mentioning of any comment against the names of these writ petitioners in the list, Annexure-IVA, is concerned, it will be worthwhile to mention here that so is not the position for only these writ petitioners but, apart from these writ petitioners, there are large number of teaching staff against whose names, there is no comment and they are getting the benefit of revision of the pay scale which has been denied to the writ petitioners. In this fact situation, we may again look into the judgement of the Hon'ble Supreme Court in the case of State of Bihar & Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh (Supra) as according to the counsel for the appellant-State, the State Government is not bound to accord benefit of revision of pay scale because of

the fact that the recommendations were not sent in time by the university. At this juncture, it will be appropriate to observe that in the case of State of Bihar & Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh (Supra), the Hon''ble Supreme Court clearly held that in the matter of deciding the question of validity of appointment in affiliated colleges and absorption of those appointees in constituent college, the jurisdiction to adjudicate upon vests in the university in view of Section 4(1)(14) of the Bihar State Universities Act, 1976. The Hon''ble Supreme Court further held that the said matter is within the exclusive jurisdiction of the university concerned. Then it has been held that Section 35 requires prior sanction or approval of the State Government for creation of the posts and appointment not a constraint on the power of the university and the university can review appointment and consider absorption of its staff employed without valid sanction of the post. Otherwise also it is not the case of the State Government that such power vests in the State Government of examining validity of appointment in the constituent colleges. In view of the above, it is clear that the appointment of the petitioners, who were appointed in the year 1985, were not found to be illegal by the Commission after considering the objection of the State Government that their names were inserted by interpolation and the Commission thereafter recommended for absorption of the writ petitioners and Hon''ble Supreme Court has already rejected all objections against the Commission''s report including the State Government''s objections which have been referred above.

We are, thus, of the view that this L.P.A. has no merit. It is accordingly dismissed.