
(2009) 01 JH CK 0004

Jharkhand High Court

Case No: None

Smt. Babni Debi and
Smt. Shanti Devi

APPELLANT

Vs

State of Jharkhand and
Others

RESPONDENT

Date of Decision: Jan. 16, 2009

Acts Referred:

- Bihar Private Medical Colleges (Taking Over) Act, 1977 - Section 3(1), 6, 6(1)

Citation: (2009) 2 JCR 308

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Amareshwar Sahay, J.

Heard the counsel for the parties.

2. The prayer made in both these writ petitions is same and similar and, therefore, they were taken up together and are being disposed of by this common order.

3. Both the writ petitioners, i.e. Smt. Babni Debi and Smt. Shanti Devi, were employed as Female Ward Attendants in Sri Sri Laxminarayan Trust Hospital, Dhanbad (herein after called as Hospital for the sake of convenience). The said Hospital was initially being run and managed by private management but the same was taken over by the State Government on 15/12/1988. The petitioner Smt. Babni Debi, retired from the service on 31/10/1999, whereas the petitioner Smt. Shanti Devi retired from the services on 31/10/1997.

4. According to the petitioners, they were employed in the said Hospital even prior to taking over of the said Hospital by the State Government and, therefore, in order to fix their pensionary benefits, their services rendered in the Hospital prior to its taking over

should be counted. The petitioner Smt. Babni Debi claimed that her services should be counted from the date of her initial joining in the Hospital, i.e. from 01/03/1966, whereas Smt. Shanti Devi claimed for counting her service in the Hospital from 01/09/1965. Mr. Banerjee, learned Counsel appearing for the petitioners submitted that the case of these petitioners stand on the same footings to that of the employees working in M.G.M. Medical College, Jamshedpur. According to the learned Counsel, M.G.M. Medical College, Jamshedpur was also initially being run and managed by the private management and the same was subsequently taken over by the Government.

5. Two of the employees of M.G.M. Medical College, Jamshedpur, namely, Karan Singh Sharma and Pramatha Nath Choudhary moved this Court by filing two writ petitions, i.e. W.P.(S) No. 1704/2002 and W.P. (S) No. 2003/2002 for the same relief"s as prayed in these two writ petitions, which were heard and disposed of together by a judgment dated 14/06/2002 by this Court. As per the said judgment in those two writ petitions those two employees/writ petitioners were held to be entitled to get the benefit of their services rendered in the hospital prior to its taken over by the Government. A copy of the judgment, passed by the learned Single Judge in the aforesaid two writ petitions has been placed before this Court.

6. On the other hand, the learned Counsel appearing for the respondents has submitted that the petitioners are not entitled to any relief as claimed by them, in view of the judgment of the Supreme Court in the case of "State of Bihar v. S.A. Hassan and Anr. reported in 2002 (2) JLJR (SC) 109 wherein the Supreme Court has specifically held that from the date of taking over, of the College, the employees of the erstwhile management became permanent employees of the State Government and the terms of appointment between the erstwhile management and the employees ceased to exist and they became the employee of the State Government and, therefore, they cannot claim any benefit for the service rendered by them under the private management.

7. In reply, the learned Counsel for the petitioners submitted that the judgment of the Supreme Court, cited by the learned Counsel for the respondents, was already considered by the learned Single Judge while passing the judgment in the aforesaid two writ petitions, i.e. WPS Nos. 1704/02 and 2003/2002 and, thereafter, it was held that the judgment of the Supreme Court would apply prospectively in view of the judgment of the Supreme Court itself, wherein it was specifically observed that the judgment should be effective prospectively. The writ petitioners, who retired much prior to the said judgment of the Supreme Court, were held to be entitled to the retiral benefit after calculating their services from the date of their initial service.

8. In view of this controversy, it is necessary to examine the aforesaid two decisions, it appears that in the case of "State of Bihar v. S.A. Hassan and Anr. reported in 2002 (2) JLJR 109 (SC)" the Supreme Court was dealing with the case of the employees of the same M.G.M. Medical College, Jamshedpur. The claim of the employees of the said MGM Medical College was the same as in the present writ petitions. After considering

Section 6 of the Bihar Private Medical College (Taking Over) Act, 1977, the Supreme Court in Paragraphs 7 and 9 of its judgment held as follows:

7. Sub-section (1) of Section 6 of the Act provides in clear and explicit terms that from the date of the notification issued under Sub-section (1) all members of the staff employed in the college shall cease to be employees of the college shall cease to be employees of the college body. The effect of this provision is that the respondents ceased to be employees of the erstwhile management of the college. At the same time, the proviso to the said Sub-section (1) declares that the staff employed in the college shall continue to serve in the college on an ad hoc basis till a decision under Sub-sections (3) and (4) is taken by the State Government. Therefore, both the respondents continued to serve the college on an ad hoc basis and as a result, whatever the contract of employment which the employees had with the erstwhile Management, came to an end. Thus, from the date of taking over the college, the respondents ceased to be employees of the erstwhile management and they became employees of the State Government on an ad hoc basis. This ad hoc appointment was subsequently regularized and, therefore, they became permanent employees of the State Government. As on the date of taking over the college, the terms of appointment between the erstwhile management and the respondents ceased to exist and they became employees of the State Government on an ad hoc basis, they cannot claim any benefit for the service rendered by them in the college while it was under private management, there being no specific provision to count the previous service to any extent.

9. Sub-section (1) of Section 3 of the Act provides for the taking over of a private medical colleges by issuing a notification and according to sub-section (2) of the said section whatever assets and properties the college had, these would vest in the State Government and Sub-section (3) provides for devolution of all the liabilities and obligations of the College on the State Government. This subsection (3) would operate where the assets of the college were taken over by the State Government in terms of Sub-section (1). According to the learned senior counsel for the respondents, these liabilities would also include pension and other pensionary liabilities of the respondents while they were employees of the college before it was taken over. But there is no material on record to show that the erstwhile Management was liable for any pension or pensionary liabilities in relation to its employees. Moreover, Section 6 which deals specifically with the subject of determination of terms and conditions of the teaching staff and other employees of the college, but it does not mention anything about giving weightage of past service for any purpose. There is also no order of State Government in this regard in terms of Sub-section (3) of Section 6. We, therefore, do not find any force in the contention of Mr. Raju Ramchandran, learned senior counsel for the respondents.

9. Thereafter, in para-14 of its judgment it was specifically held that the respondents (the employees) are not entitled to claim the benefit of the period of their service while they were under the employment of the erstwhile management for the purpose of calculation of their pension and pensionary liabilities. However, it was observed that the judgment

rendered by the Supreme Court will come into effect prospectively and observed as follows:

The State Government shall not be entitled to claim refund of any pension or pensionary benefits already granted to any employees and also to the respondents.

10. Similar question arose before the Patna High Court regarding the applicability of the judgment of the Supreme Court in the case of "State of Bihar v. S.A. Hassan and Anr. reported in 2002 (2) JLJR (SC) 109" (Supra). The case before the Patna High Court was with respect to the employees of S.K. Medical College, Muzaffarpur, who retired from the service on 30th April, 1999 and they were also claiming that their services rendered in the said college prior to its taken over, be counted for fixation of pensionary benefits. The Division Bench of Patna High Court while dealing with the Letters Patent Appeal, i.e. L.P.A. No. 24/2003 held that the employees shall not be entitled to the benefits of the period prior to the taking over the institution and, therefore, there was nothing wrong in the judgment of the Single Judge and, thereby, dismissed the Letters Patent Appeal. In the present case, after considering the relevant facts and submissions made by the parties as well as on consideration of the judgments of the Supreme Court, as well as of the Division Bench of Patna High Court as well as the judgment of the learned Single Judge of this Court, I am of the view that when the Supreme Court specifically held that the employees would not be entitled to claim the benefit of the period of service while they were under the employment of the erstwhile management for the purpose of calculation of their pension and pensionary liabilities then nothing remains to be decided in the present case. This case is squarely covered by the judgment of the Supreme Court in the case of "State of Bihar v. S.A. Hassan and Anr. reported in 2002 (2) JLJR (SC) 109 (Supra).

11. So far as the question of applicability of the judgment of the Supreme Court with prospective effect is concerned, the Supreme Court has clearly observed that the State Government shall not be entitled to claim refund of any pension or pensionary benefit already granted to any employee or also to the respondents and such directions was given especially for the reason that the State Government allowed a number of judgments adverse to it to become final and there was consequence uncertainty of legal position. Similar question arose in one another case before this Court in the case of "Ashok Madhav Kharkhedkar v. State of Jharkhand and Ors. reported in 2005 (2) JLJR 34. In the said case, the writ petitioner Ashok Madhav Kharkhedkar claimed that his father Late M.P. Kharkhedkar was initially appointed in Mahatma Gandhi Memorial Medical College, Jamshedpur when it was being managed by the private Management. Subsequently, the said institute was taken over by the State in the year 1978 and, thereafter, his father superannuated from service on 30th September 1985. After retirement the petitioner's father was given the retrial benefit but without counting the period of service rendered by him prior to the Medical College was taken over by the Government. The learned Single Judge after relying the judgment of the Supreme Court in the case of "State of Bihar v. S.A. Hassan and Anr. reported in 2002 (2) JLJR (SC) 109 (Supra) held that the petitioner

was not entitled for any benefit as claimed by him. It was also held in the said judgment that the effect of this judgment rendered by the Supreme Court is that the recovery from those, who had already been granted such benefit should not be made.

12. I also agree with the view taken by the learned Single Judge in the case of "Ashok Madhav Kharkhedkar v. State of Jharkhand and Ors. reported in 2005 (2) JLJR 34.

13. In view of the discussions and findings above, I hold that in view of the decision of the Supreme Court in the case of State of Bihar v. S.A. Hassan and Anr. reported in 2002 (2) JLJR (SC) 109 (Supra) followed by the decision of this Court in the case of "Ashok Madhav Kharkhedkar v. State of Jharkhand and Ors. reported in 2005 (2) JLJR 34 there is no scope for this Court to grant any relief to the writ petitioners as claimed by them. Accordingly, it is held that the petitioners cannot claim weightage of their services rendered by them in the Hospital prior to its taking over by the State Government for any purpose or for any pensionary benefits..

14. Accordingly, both these writ petitions are hereby dismissed. But, however, in the facts and circumstances of the case, there shall be no order as to cost.