

(2007) 12 JH CK 0025

Jharkhand High Court

Case No: None

Ram Naresh Prasad and
Manikant Prasad Singh

APPELLANT

Vs

The Vice Chancellor, Vinoba
Bhave University, The Registrar,
Vinoba Bhave University and
B.S.K. College

RESPONDENT

Date of Decision: Dec. 12, 2007

Citation: (2008) 2 JCR 374

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

R.K. Merathia, J.

Heard the parties.

2. Petitioners have challenged the order dated 3.10.2002 passed by the Vice Chancellor (Annexure 10/A) rejecting representation of the petitioners.

3. Mr. Singh, appearing for the petitioners submitted the petitioners were regularized in compliance of the order this Court, and no against any vacancy created by promotion of two persons, and therefore the impugned order is bad.

4. The relevant facts in short are as fellows. According to the petitioners, the then Vice Chancellor of Ranchi University constituted a committee for selecting class III and IV employees Petitioners were selected and started working since 1983. The select list was then sent to the University for approval which was approved but the Principal of the College was directed to make appointment from the penal "Only against sanctioned post" (emphasis supplied). The posts were not sanctioned, there the petitioners filed C.W.J.C. No. 502 of 1991 (R) for direction to the respondent to sanction non-teaching posts with retrospective dates for appointment of petitioners.

That writ petition was disposed of with certain direction on 12.3.1991. Then a contempt petition was filed in which respondents submitted that the order of the Court has been complied. Petitioners' case was that there was some confusion due to which only the third petitioner was absorbed and therefore they again filed the writ petition being C.W.J.C. No. 3739 of 1995(R) for directing the State Government and the University to sanction non-teaching posts of Laboratory Boy/Gas Man with retrospective effect in B.S.K. College, Maithan and for other reliefs. The stand of the University State was that the petitioners were not in service since 1991. Their names do not appear in the pay roll, which was disputed by the petitioners. University further contended that the staffing pattern as was in vogue in the year 1991 was already withdrawn in the year 1995 and therefore the petitioners could not be absorbed. The Stand of the State Government was that petitioners' appointment was totally illegal and against Section 35 of the University Act. After hearing the parties, this Court disposed of the said writ petition by order dated 17.3.1998. The relevant concluding part on reads as follows:

6. Regarding staffing pattern and construction of Section 35 of the Universities Act, Mr.V.P. Singh has referred to a Full Bench decision of this Court in the case of Braj Kishore Singh and Ors. v. The State of Bihar and Ors. 1997 (1) PLJR 509. The facts and circumstances of that case is not at par with the present case. Here the posts had never been created on the basis of the staffing pattern and the appointments of the petitioners were illegally made against the non-existent post and now the staffing pattern had already been withdrawn. So the petitioners cannot be given any relief and they cannot have a right over the post they are claiming to be appointed and continuing in the service. Regarding continuance in the service of the petitioners, there is strong controversy and such dispute cannot be decided under the writ jurisdiction.

(emphasis supplied)

7. The College concerned had been granted approval for running Science streams and the subjects mentioned above must have practical classes in the Laboratory and the Laboratory cannot run without proper Laboratory Boy or Gas Man and for non-approval of posts of Laboratory Boy or Gas Man, definitely the students in the Science streams must suffer. This aspect must be considered by the Government and the University too and rethinking must be there. If any post is created for Laboratory Boy/Gas Man, then the petitioners' case must be taken on priority basis for absorption against the posts if created in near future (emphasis supplied) considering their previous experience and circumstances, as already mentioned above.

8. The writ petition is disposed of accordingly.

5. It was clearly held in said order that the appointments of the petitioners were illegally made against non-existing posts and therefore they have no right over the

post they are claiming to be appointed an continuing in service. However, the Court observed that the Government and the University may consider about creation of posts and then the petitioners were to be considered on priority basis for absorption against the posts if created in near future. But surprisingly the Registrar issued Notification dated 14/15.10.1998 in purported compliance of the said order passed in the C.W.J.C. No. 3739 of 1995(R) saying that the Vice Chancellor was pleased to regularize the services of the petitioners w.e.f. 17.11.1997. As soon as it came to the notice of the Vice Chancellor that the said Notification was wrongly issued, he ordered to withdraw the same on 25.11.1998. The Vice Chancellor made endorsement on the said Notification on 25.1.1998 to show him the draft for approval, and ordered to withdraw the same and issue another letter as per the order passed by this Court in the said writ petition (Annexure B), but it is not known, why such letter was not issued in spite of the direction.

6. Petitioners then filed a writ petition being C.W.J.C. No. 3845 of 2000 for payment of salary from the date of their purported regularization i.e. 17.11.1997. This Court disposed of the said writ petition by order dated 7.3.2002. The relevant portion reads as follows:

No counter affidavit has been filed on behalf of the University.

Mrs. I. Sen Choudhary, the Counsel, for the Respondents University prays for some more time to seek instructions, but such prayer is rejected as about 1 1/2 years have passed when time was allowed to the University, i.e. or 9.11.2000 to obtain instructions and file counter affidavit.

Having regard to the facts and circumstances, the case is remitted to the Vice Chancellor, Vinoba Bhave University who will enquire into the matter and if it is found that the services of the petitioners were regularized w.e.f. 17th November, 1997, vide Notification dated 14th/15th October, 1998, as referred above, the University will pay salary in favour of petitioners in the regular scale w.e.f. 17th November, 1997 for which period the petitioners had actually worked and performed duties including the current salary.

If there is paucity of fund, the University will make appropriate requisition from the State for compliance of the Court's order.

On the other hand, if the Respondents reject the claim for one or other ground, will communicate the ground(s) to the petitioner.

The Registrar of the University will ensure compliance of this order within three months from the date of receipt/production of a copy of this order.

The writ petition stanch; disposed of.

7. It appears from the record of the C.W.J.C. No. 3845 of 2000 that only the said observations made in paragraph 7 of the aforesaid writ petition-C.W.J.C No. 3739 of

1995(R) was placed before this Court Apparently petitioners deliberately suppressed paragraph 6 in which it was held that their appointment was illegal. Had paragraph 6 been brought to the notice of this Court, there was no occasion to remit the matter for enquiry. In the present writ petition also purposely, similar suppression has been made by the petitioners quoting only paragraph 7 in the writ petition and omitting paragraph 6 of C.W.J.C. No. 3739 of 1995(R).

8. However, on enquiry, the Vice Chancellor found that two Class IV employees were wrongly promoted. Therefore no vacancy was created by such promotion against which petitioners could be regularized and moreover the said Notification of regularization of petitioners dated 14/15.10.1998 was not withdrawn in spite of his order. He ordered to issue show cause notice against the officers responsible for not complying with such order, and withdraw the said Notification dated 14/15.10.1998. In sum and substance, the Vice Chancellor found that there were no sanctioned and vacant posts against which petitioners could be regularized.

9. Thus in spite of the clear finding recorded in paragraph 6 of this Court in C.W.J.C. No. 3739 of 1995(R), that petitioners were illegally appointed, they were regularized by the Registrar. There was no direction even in the observations made in the said order. The order is quoted above in paragraph 4. When this illegality came to the notice of the Vice Chancellor, he ordered to withdraw the Notification dated 14/15/10.199 but it is surprising that such order was not obeyed, and petitioners were allowed to continue, till the impugned order was passed. (It may be noted that the petitioners have been paid their salary for the period they worked).

10. It is the categorical stand of the University that the posts have not been sanctioned by the State Government. Therefore the order passed C.W.J.C. No. 3739 of 1995(R) holding that appointment of the petitioner were illegally made against non-existing post still holds good.

11. u/s 35 of the Bihar State University Act 1976 there is a bar on creating posts involving financial liabilities without prior approval of the State Government. Mr. V.P. Singh relied on Annexure 12/A, said to be a list of sanctioned post and vacant post of Class III and IV employee the genuineness of which have been seriously denied and disputed by the respondents.

12. Thus in view of the order passed in C.W.J.C. No. 3739 1995(R), petitioners are not entitled to any relief. Further following judgments relied by Mrs. Choudhary can be noted. In (1993) BLJR (sic) Manoj Prasad v. Ranchi University it was inter alia held that the appointments made in breach of mandatory provisions of Section 35, the appointments made in absence of sanctioned post were illegal. In the case reported in [Akhilanand Pandey and Others Vs. Ranchi University and Others](#), it was inter alia held that in the absence of sanctioned posts no appointment can be made and if such appointments are made in violation of the mandatory provisions of the statute, they are nullity and cannot be encouraged by the Court. It was also said that writ

jurisdiction should not be exercised if it would result in restoration or revival or perpetuation (sic) illegality. In [Ashwani Kumar and Others Vs. State of Bihar and Others](#), it was inter alia held that appointments in excess of sanctioned posts were illegal an void and that the candidates appointed against non-existent vacancies cannot be allowed to continue.

13. In view of the facts and circumstances and the legal position noticed above and in view of the order passed in C.W.J.C. No. 3739 (sic) 1995 (R), I am not inclined to interfere with the impugned order as the same will amount to restoration of the order of regularization which will be clearly in the teeth of the order passed in 3739 of 995(R) and also the legal position noted above. In the result, this writ petition is dismissed with cost for abusing the process of law by deliberately suppressing paragraph 6 of the order passed against petitioners in C.W.J.C. No. 3739 of 1995 (R); in C.W.J.C. No. 3845 of 2000 and also in this writ petition. However, a nominal cost of Rs. 100/- each is imposed on the petitioners.