

(2013) 1 PLJR 933

Patna High Court

Case No: CWJC No"s. 1377, 9650 and 14013 of 2010

Laliteshwar Mishra
"Lalitesh"

APPELLANT

Vs

The State of Bihar and
Others
 Sudhir
Kumar Jha and Others
Vs The State of Bihar
and Others
 Dr.
Ram Binod Prasad
Singh and Another Vs
The State of Bihar and
Others

RESPONDENT

Date of Decision: Sept. 21, 2010

Acts Referred:

- Bihar State Universities Act, 1976 - Section 2(v)

Citation: (2013) 1 PLJR 933

Hon'ble Judges: Navaniti Pd. Singh, J

Bench: Single Bench

Advocate: Rajendra Prasad Singh, Abhinav Srivastava, Bal Mukund Pd. Sinha, Anil Kumar, Ashutosh Ranjan Pandey, Anshuman, Ramanuj Tiwary, Purushottam Kr. Jha, Sanjay Kumar, Dipak Kumar, Madhuresh Singh, Sharad Kumar Sinha, Subhas Chandra Jha, Amit Kumar Anand, Sunil Kumar Singh and Sitiesh Chandra Mitra, for the Appellant; Sanjay Kumar No. 2, Sanjay Kumar @ Sanju, Ms. Shail Kumari and Nilu Agrawal for the State, Vinay Kirti Singh, Shivendra Kishore, Anil Singh, Ajay Behari Sinha, Yugal Kishore, Harendra Kumar Tiwari, Pushkar Narayan Shahi and Sarvesh Kumar Singh for the Universities, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Navaniti Pd. Singh, J.

There being a common question involved in all these writ applications, counter affidavits and rejoinders having been filed, all necessary parties having appeared, with consent, the cases were taken up for disposal at this stage itself. The dispute relates to Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor working in various Universities established under and controlled by the Bihar State Universities Act, 1976. In short, the dispute arises from a decision taken by the State Cabinet on 6.6.2006 whereby following judicial pronouncements, the State Cabinet decided to redesignate the Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor as Demonstrator. This is being effectively undone by the impugned Circular, hence the writ petitions. The significance of this decision is that Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor is a non-teaching post whereas Demonstrator is a teaching post as defined by Section 2(v) of the Bihar State Universities Act, 1976 which is quoted hereunder:--

Section 2(v)

"Teacher" includes Principal, University Professor, College Professor, Reader, Lecturer, Demonstrator and other person imparting instruction in department, college or institute maintained by the University;

2. Once these people became Demonstrators, Demonstrator being Teacher, they would get the promotional opportunities as substantial number of Lab Assistant/Lab Technician/Lab. Incharge/Lab Instructor were Doctorate degree holders though the basic qualification was only Graduation and Intermediate in some cases.

3. It is pursuant to this Cabinet decision dated 6.6.2006, which is not disputed, that the Communication No. 1115 dated 14.6.2006 was issued by the Department of Human Resources Development (Higher Education) (Annexure-1 to the first writ petition). This circular clearly states about the decision of the State Government. It clearly states that the Government has taken a conscious decision that the Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor, on acquiring requisite academic qualification, being redesignated as Demonstrator, the post of Demonstrator would continue till their superannuation and upon their superannuation, the post of Demonstrator would stand surrendered. In paragraph-3 of the Circular, it was clearly stated that pursuant to redesignation of these persons as Demonstrators, they would be entitled to all benefits and promotional rights of the Demonstrator. There was no ambiguity in the said communication.

4. This Circular was clarified immediately on 1.8.2006 (Annexure-2) by the Department. The Department now clarified that to the extent of persons, who were required to be redesignated as Demonstrators in different Colleges, the post of Demonstrator would be deemed to be sanctioned for the period it is occupied by the said redesignated persons whereafter the post would cease. It further clarified that the entitlement to be redesignated as Demonstrator would be from the date they acquired the necessary

academic qualification to be designated as Demonstrator. I may observe here that this was so because, as noted above, for some post, the initial qualification was Intermediate but the minimum qualification for a Demonstrator was Graduation and for being promoted to Lecturer, it was Post Graduate with certain minimum percentage of marks that was required. Thus, the clarification that upon acquiring requisite qualification, they would be redesignated as Demonstrators and the benefits would arise from the date they acquire the qualification. This is Memo No. 1456 dated 1.8.2006 (Annexure-2). The first writ petition deals with Tilka Manjhi Bhagalpur University, the facts of which are representative and referred to by this Court.

5. The University then, pursuant to the said Government Circulars, conducted an exercise of evaluating the academic qualification of such Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor for the purposes of redesignating them as Demonstrator. Having done that exercise, by Office Order No. 177 of 2007, the University, under the signature of the Registrar dated 5.7.2007, published the detailed list also indicating therein the date from which the benefit would be given. In the said Office Order, it was clearly stated that they would be entitled to wages and other benefits of Demonstrators from the dates indicated therein.

6. Meanwhile, State released funds for all Universities for payment of wages and pensions. One of the said orders is Annexure-5 to the first writ petition being dated 12th June, 2007. By this Government decision almost Rupees 600 (Six Hundred) crores was released to various Universities for the payment aforesaid. In paragraph (8) thereof, the earlier stand was reiterated. It was clearly stated that those Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor, who were redesignated as Demonstrators, would be entitled to all benefits of Demonstrators including pay scale and other admissible allowances. Accordingly, Universities fixed pay scales and made payments. The University also sent utilisation certificate, and in some cases, demanded some more money on this account.

7. In June 2008, again substantial funds were released and once again State made it clear that payment would, accordingly, be made to such redesignated Demonstrators.

8. Then comes the change in attitude. The change is by the impugned Government Circular dated 18th December, 2008 (Annexure-10). At this stage, I may note that by this time, large number of redesignated Demonstrators who, as per the Cabinet decision, were to be treated as Demonstrators for all intents and purposes having been treated as Teachers in term of Section 2(v) of the Bihar State Universities Act, 1976, were granted promotions by being made Lecturers depending on their academic qualifications. Now this impugned Circular is issued. This Circular dated 18th December, 2008 in Clause (xii) creates a new controversy. It says that in view of the decision of the Apex Court, the Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor were only to be redesignated as Demonstrators and would, accordingly, be entitled only to the pay scale and admissible allowances of a Demonstrator but they cannot be treated as Teachers, it was further

clarified that they would get this benefit only from the date of issuance of the letter of the State Government pursuant to decision of the Cabinet or individual letters in that regard.

9. The effect of the impugned Circular dated 18.12.2008 was two folds. Firstly, the date of entitlement of the pay scale or financial benefits as a redesignated Demonstrator got shifted from the date of acquisition of requisite academic qualification to the date of issuance of letter. The second was that they were not to be treated as Teachers, ignoring the definition of "Teacher" as given under the Bihar State Universities Act, 1976 itself. Thus, they were disentitled to promotion as Lecturer or Reader and in all such cases, they would be demoted back to the redesignated post of Demonstrator as a non-Teacher and, thus, substantially bringing down their remuneration as well. This has been then followed by subsequent Circulars and directives of the State Government and University communications on the same deviant lines which all are under challenge.

10. On behalf of petitioners, it is submitted that State had itself considered the whole situation, when the State Cabinet considered the matter. It considered it in the right perspective but subsequently, forgetting the history, just to save money, such a perverse decision was taken and circulated. In my view, the submission of the petitioners appears to be correct. The reasons are as under.

11. Before proceeding further in the matter, it must be noted that this case relates more to the interpretation and understanding of judicial pronouncements rather than interpretation of statute. For this purpose, we must keep two well known interpretative principles in mind.

12. The first, as noticed by the Apex Court in the case of [Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others](#), and, in particular, what is said in paragraph-11 of the said reports:--

11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.....

13. The second, as noticed by the Apex Court in the case of [The State of Orissa Vs. Sudhansu Sekhar Misra and Others](#), and, in particular, what is said in paragraph-13 of the said reports:--

(13)A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what

logically follows from the various observations made in it. On this topic this is what Earl of Halsbury LC said in *Quinn vs. Leathern*, 1901 AC 495.

Now before discussing the case of *Allen vs. Flood*, 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

It is not a profitable task to extract a sentence here and there from a judgment and to build upon it.....

14. If we look to the Supreme Court judgment which prompted the Cabinet decision being judgment in Civil Appeal No. 4215-16 of 2002 Reported in [State of Bihar and Another Vs. Radha K. Jha and Others etc. etc.](#), dated 22.7.2002, the Apex Court dismissed the two appeals before it, one by the Teachers (Lab Assistants claiming promotional avenue) and the other by the State Government.

15. While dismissing the appeal of the State Government against the finding by the Division Bench of this Court that the Lab Assistant and their like were entitled to be considered for upgradation as Demonstrators, their Lordships observed thus:--

... .. Presently dispute is confined to compliance of the order passed in Writ Petition No. 387/95(R) and thereafter in contempt proceedings....

16. They dismissed the appeal of the Teachers, as above, holding that Division Bench of this Court was correct in holding that the single Judge could not issue mandamus to treat the Lab Assistants as Demonstrators and give them promotion as Lecturers as no such specific prayer was made. That was dependent on question of fact not properly pleaded.

17. In order to understand this observation, one has to go straight back to the judgment of this Court in CWJC No. 387 of 1995(R) being judgment dated 7.9.1995 from where this controversy started. A perusal of the said judgment would show that the writ petition had been filed by Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor making a grievance that they have absolutely no promotional avenues. They would join and retire from the same post. Demonstrator's post must be made available to them subject to them acquiring the qualification for the same and once they become Demonstrators that would open up the promotional avenue to them as Teachers. That precisely was the dispute. This Court noticed the dispute in detail. It noticed judgments of Supreme Court

on the issue. It noticed earlier judgments of this Court in that regard. It specifically held that the claim was bona fide, genuine and legal but was to be considered by the State at the first instance. This Court, therefore, issued mandamus to the State to consider the matter and pass appropriate orders. State mechanically passed orders rejecting the claim. That became subject matter of contempt proceedings being MJC No. 508 of 1995(R) which was disposed of on 25.3.1996 wherein the order of the State Government rejecting the claim was set aside and they were directed to reconsider the matter in light of the judgment as delivered in the writ petition.

18. Thus seen, the claim of the like of the petitioners was virtually accepted by this Court but this Court wanted the order to be passed by the State as State was the authority in this regard. Again, that was not done.

19. That led to the second round of litigation being CWJC No. 2176 of 1996(R). The said writ application was allowed by judgment and order dated 3.4.1997. By the said judgment, this Court held that petitioners" like, who were the writ petitioners, were entitled to the relief for being considered for redesignation as Demonstrator which would give them the right to seek promotion as a Teacher but this Court, while doing so, issued mandamus to the State to act accordingly and redesignate them as Demonstrators and to treat them as Teachers.

20. State appealed intra Court against this decision which led to the judgment in LPA No. 274 of 1997(R). The Letters Patent Appeal was partly allowed by judgment dated 9th December, 1998. The Division Bench of this Court held that so far as the entitlement is concerned, the learned single Judge rightly held in favour of the petitioners but so far as the second part with regard to issuance of mandamus directing State to treat them as Teachers is concerned, the Division Bench vacated that part of the order on the ground that neither there was any specific prayer in the writ petition in that regard nor were facts adequately pleaded because to be designated as Teacher, there were some minimum qualification that was required.

21. State was aggrieved with the first part of the judgment of the Division Bench. The petitioners like were aggrieved by the second part of the judgment and that is how the two sets of appeals were filed before the Supreme Court both of which were dismissed clearly observing that the true import was compliance of order as passed in CWJC No. 387 of 1995(R) and the contempt therefrom being MJC No. 508 of 1995(R).

22. Thus, completing the full circle of events, what one has to see is what was in issue? What was decided? Was the Cabinet decision consistent with the decision? These questions are necessary to be looked into in view of the principles as enunciated in the two judgments of the Apex Court, referred to above, namely, Ashwani Kumar Singh (supra) and State of Orissa (supra).

23. In my opinion, what was decided and what was sought to be done by this Court, as was not interfered by the Supreme Court, was that the right of the like of the petitioners to be treated as Demonstrators and, thus as Teachers giving them promotional avenues, as such, on being redesignated as Demonstrators. Consequently, the Cabinet decision conferring upon Lab Assistant etc. redesignated as Demonstrator all rights of the Demonstrator was also correct. The natural consequence would be that all those Demonstrators, who had the requisite qualification of being promoted to the post of Lecturer, would, accordingly, be entitled to get those promotions because there already exists Universities Statute for promotion of Demonstrator to the post of Lecturers. That is contemplated in the scheme of things itself. That is what those petitioners wanted and that is what they got. That being so, the subsequent change in stand of the Government whereby it holds that redesignated Demonstrators would not be treated as Teachers would not only be in teeth of Section 2(v) of the Bihar State Universities Act, 1976, it would be in teeth of the Cabinet decision which is consistent with the judicial pronouncements. The whole controversy was about promotional avenue as Teacher which was ultimately granted by the State Cabinet on 6.6.2006 but was wrongly sought to be taken away by Circular dated 18.12.2008 and Circulars following it ostensibly only to reduce the financial burden of the State.

24. The result is that the State Government's Circular issued in the Department of Human Resources Development being Memo No. 12 dated 18.12.2008 (Annexure-10) and similar Circulars/Communications/Notifications issued and follow up communications on similar line to that contained in Clause 2(xii) thereof which holds that redesignated Demonstrators cannot be treated as Teachers has to fail and cannot be sustained. The consequence would be that all the redesignated Demonstrators, who have got promotion under the Universities Statute or otherwise as Lecturers or Readers, as the case may be, in whichever University in Bihar, would continue accordingly. They cannot be reverted nor their remuneration reduced.

25. The second result would be that they would be entitled to the benefits of Demonstrators not from the date of Cabinet decision nor from the date of any communication issued thereafter but from the day when they acquired requisite qualification for the same as per the conventional decision, which date in cases of Tilka Manjhi Bhagalpur University is to be found in the Office Order No. 177 of 2007 dated 5.7.2007. There would be no question of reverting the promoted Lecturers/Readers to the post of Demonstrators or the redesignated Demonstrators to the post of Lab Assistant/Lab Technician/Lab Incharge/Lab Instructor.

26. Before parting, I would like to clarify that this Court, having settled the law in this regard, it would apply to all Universities governed by Bihar State Universities Act, 1976 without any individual discrimination. All the writ applications are, thus, allowed and all orders of the State and Universities following the order of the State Government starting from Annexure-10 dated 18.12.2008 in the first writ application would, thus, stand quashed.