

(2011) 08 PAT CK 0159

Patna High Court

Case No: CWJC No. 4864 of 2007

Dr. Santosh Kumar Pathak and
Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: Aug. 26, 2011

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Mihir Kr. Jha, J.

Heard counsel for the parties. The prayer of the two petitioners in this writ application reads as follows:--

That this application is being filed challenging the notification dated 31.1.2007-issued by the Department of Medical Education and Indigenous Medicine to the extent if includes the names of the petitioners from the list of absorbed Gazetted employees of the Government Maharani Rameshwari Bhartiya Chikitsa Vigyan Sansthan, Mohanpur, Darbhanga, with effect from 10.1.1985, i.e. the date of the taken over of the College. The petitioners further prays that in the facts of the instant case a direction be also issued to the respondents to absorb the services of the petitioners forthwith, as petitioners are on similar footing as other employees mentioned in the impugned notification.

Mr. Amit Prakash, learned counsel for the petitioners, in support of the aforementioned prayer would submit that it is an admitted position that Maharani Rameshwari Bhartiya Chikitsa Vigyan Sansthan, Darbhanga Hospital was taken over by the State Government on 10.1.1985 in terms of the provisions of Bihar Private Medical (Indian System of Medicine) College (Taking Over) Act, 1985 (hereinafter referred to as "the Act") and after due consideration of the case of the petitioners the Government had ultimately absorbed the services of the petitioners by an order dated 20.5.1997 alongwith the other teaching and non-teaching staff found suitable

by the Screening Committee in terms of Section 6(2) of the Act. He would, accordingly, submit that the respondents thereafter cannot keep the case of the petitioners hanging in balance in view of the condition imposed in the said notification dated 20.5.1997 which also envisaged obtaining concurrence from the Bihar Public Service Commission. He would submit that a period of 25 years should be held to be sufficient for deciding the case of the petitioners and if the respondents till date have not given finality to such a decision, the petitioners now at the verge of their retirement genuinely apprehend that their retirement benefits would be withheld on the ground of lack of approval of their services by way of the recommendation of the Commission.

2. Mr. Jawahar Prasad Karn, learned Senior Counsel appearing on behalf of the State, on the other hand, has submitted that in the case of the petitioners as they were to be absorbed in Government service on Gazetted posts the concurrence of the Bihar Public Service Commission was sought to be obtained but the Bihar Public Service Commission in its recommendation while agreeing in principle that the petitioners like other teachers of the College could be regularized in service had given discretion to the Government to be satisfied as with regard to initial appointment of the petitioners and one Dr. Shambhu Kant Jha figuring at SI. Nos. 12, 13 and 14 of the list sent by the Commission, Mr. Karn submits that it is this process of the Government being satisfied which is under consideration and now the Government in this regard has decided to first issue a show cause notice to the petitioners to justify their initial appointment.

3. In the considered opinion of this Court the aforesaid because service of the petitioners have already been absorbed in terms of Section 6(3) of the Act which reads as follows:--

6. Determination of terms of the teaching staff and other employees of the College.--(1) From the date of the notified order, all the staff employed in the College shall cease to be the employees of the College body:

Provided that they shall continue to serve the College on ad hoc basis till a decision under sub-sections (3) and (4) of this section is taken by the State Government.

(2) The State Government will set up one or more committees of experts and knowledgeable persons which will examine the bio-data of each member of the teaching staff and ascertain whether appointment, promotion or confirmation was made in accordance with the Act, Statute or Regulations of the University concerned and in keeping with the guidelines laid down by the Indian Medical Council of India and take into consideration all other relevant materials including length of his service in the College; and submit its report to the State Government.

(3) The State Government on receipt of the report of the Committee or Committees, as the case may be will decide in respect of each member of teaching staff on the merits of each case whether to absorb him, in Government service or to terminate

his service or to allow him to continue on an ad hoc basis for a fixed term on contract and shall, where necessary redetermine the rank, pay allowances and other conditions of service.

(underlining for emphasis)

4. It is not in doubt that that when the College was taken over with effect from 10.1.1985 the enquiry as envisaged in terms of Section 6 of the Act was conducted by more than one committee and ultimately the Government having obtained opinion of the Finance Department and the Law Department had issued an order for absorption of the services of the petitioners which was final in terms of Section 6(3) of the Act. Thereafter the concept of Viniyaman (regularization) is not the requirement of Section 6 of the Act, inasmuch as the Government had to only take a decision for absorption and such a decision has already been taken in the case of the petitioners by the order dated 20.5.1997 which is in no uncertain terms says that the Government had decided to absorb their services in the Government service. Once such a decision was taken and communicated to the petitioner the issue of regularizing such absorption could not have given the Government or the Commission power to now go into any issue of the alleged infirmity in initial appointment of the petitioners made by the private management. All these issues of initial appointment of the petitioners made way back in the year 1983 much before take over of the Institute could have been only subjected to any scrutiny at the time of their absorption but once the Screening Committee had found the petitioners fit for absorption and their services were also absorbed in the light of finding and recommendation of the Committee, the act of absorption as contemplated u/s 6(3) of the Act stood completed.

5. This Court in fact would find it difficult to accept the plea being advanced by the learned Addl. Advocate General on behalf of the State that it could still go into the question of initial appointment of the petitioners. Sections 6(2) and (3) read together leaves nothing for speculation that such exercise of power has to be done by way of one time exercise and once that was done, that could not have been reopened in the name of regularizing the services of the petitioners. It is true that the post of Demonstrator/Lecturer in a Government Ayurvedic College is a Gazetted post and therefore, any final order of regularizing the services could be issued with the prior concurrence of the Bihar Public Service Commission but then the role of B.P.S.C. is also totally restricted, inasmuch as in a taken over Institute which had no earlier Governmental Control the only enquiry with regard to their appointment could be made restricted to their having prescribed qualification on the date of their appointment by the private management and also their continuing in service of the College on the date of take order. In none of the three things the petitioners' case have been found to be wanting and so the entry was made in the proceedings of members of the Commission that since in other cases of the private Institute the order of appointment was issued by the Registrar of such private College and

Hospital and in the case of the petitioners such appointment letter was issued by the Deputy Superintendent, that alone could not have been made the ground to now even withhold regularization of such persons including the petitioners whose take over of services by way of absorption was already notified by the State Government.

6. Considering all these aspects of the matter this Court would find that there is now no justification for the State Government to even issue a show cause notice to the petitioners, inasmuch as it is not in doubt that the case of the petitioners was already screened on two occasions by duly constituted Screening Committee and the case of the petitioner was specifically referred to the Finance Department as also to the Law Department before taking a final decision which was also notified by the duly authenticated Government order dated 12.10.1991. As a matter of fact after the Government was fully satisfied that it had issued direction to the Principal of the College vide letter No. 921 dated 11.6.1990 that even payment of salary to the petitioners was made in the taken over college from the Government funds and in that view of the matter, this Court would not find any justification to deprive the petitioner to now get the same benefit which their counterparts are receiving after the order of absorption in their cases was followed by regularization of services issued on 31.1.2007.

7. That being so, this Court would direct the respondents now to issue a formal order of their regularization of services in the same terms as was issued in the case of their counterparts vide Annexure-13 dated 31.1.2007. This exercise must be completed within a period of three months from the date of receipt/production of a copy of this order. With the aforementioned observation and direction, this application is disposed of.