

**(2011) 02 PAT CK 0100**

**Patna High Court**

**Case No:** CWJC No. 8489 of 2010

Dr. Sheela Rani Sinha

APPELLANT

Vs

The Hon"ble Chancellor of  
Universities and Others

RESPONDENT

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**Date of Decision:** Feb. 7, 2011

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Both the writ applications have been heard together and are being disposed of by a common order for the reason that the question of law coupled with the fact emerging from the pleadings are not at variance.

2. Both the petitioners were initially appointed on 4.7.1978 under what is known as Nalanda Mahila College, Biharsharif. At the relevant time it was under a Governing Body but subsequently the College in question was taken over by Magadh University. Petitioners thereafter have been transferred to other institutions depending upon their utility and the post being available in the Colleges concerned. Long time has gone past but their final status with regard to permanency, absorption and the benefits arising therefrom has not accrued to them because the University did not or could not take a decision under their understanding of law that the matter requires the approval of the Hon"ble Chancellor in this regard. Petitioners were supposed to have been appointed against the so-called 3rd and 4th sanctioned post for which recommendations are there but in absence of a final decision being taken at the level of the Hon"ble Chancellor, their status remains in a limbo. Procrastination on the part of the respondents has compelled them to approach the Court for suitable directions.

3. Learned Senior Counsel representing the two petitioners submits that the stand taken by the respondent Chancellor in the counter affidavit that no decision can be

taken on the status of the two petitioners in view of the fact that a decision rendered by a Division Bench in the case of Devanand Sharma and Others vs. Chancellor and Others (CWJC No. 7550 of 2002) has doubted the correctness of the decision rendered in the case of [Dr. Shiv Narain Yadav and Others Vs. The State of Bihar and Others](#), and the matter is pending before a larger Bench of the High Court. Till the Full Bench renders its decision there cannot be clarity as to what is to be done, which rule will apply or statute will govern the cases of regularization or absorption of lecturers including the two petitioners.

4. The stand of the learned Senior Counsel representing the petitioners is that Chancellor's stand does not seem to be correct in light of two facts--(i) that the relevant statute which will cover the cases of the two petitioners would be Statute No. 5, which had been notified on 18.11.1980 and is effective from 14.11.1980. Since the petitioners had already completed 24 months of service in July 1980 and 24 months of service was a pre-condition for consideration, with cutoff date being prior to 31.12.1980. Their case is squarely covered by Statute No. 5 and no other subsequent Statute has any role to play; and (ii) mere pendency of the matter or the issue dragging from one year to other or from one decade to next will not change the basic facts behind which the petitioners are claiming their right of regularization and other benefits.

5. It is also contended that in view of the decision which has already been rendered by the Hon'ble Supreme Court in the case of [State of Bihar and Others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others](#), there ought not to be any confusion on the issue as to which rules or statute will govern their cases. Attention of the Court has been drawn to paras 54, 55 and 56 of the said decision wherein the Hon'ble Supreme Court has given its interpretation to Section 35 as well as Section 4(1)(14) of the Bihar Universities Act as well as the subsequent amendment brought about u/s 57-A.

6. Paragraphs 54, 55 and 56 of the aforesaid decision are reproduced hereinbelow, which according to the counsel settles the law or removes the ambiguity if at all on such issue:--.

54. The two non-obstante clauses with slightly different wordings have thus to be harmoniously construed so as to fulfill the object of each one of them. On examination of the scheme of the Act and the relevant provisions, we find that Section 35, requiring prior sanction of the State Government for creation of posts and appointments, applies to all affiliated colleges. Compared with Section 35 Section 4(1)(14) has limited operation at a stage when a university enters into an agreement with the management or Governing Bodies of private institutions affiliated or non-affiliated for taking over its management, assets, liabilities and staff. The effect of non-obstante clause in Section 4(1)(14) is that the matter of absorption of staff of such institution/college proposed to be taken over, would be within the sole power and jurisdiction of the university concerned within whose

jurisdiction the affiliated college or institution falls. On the matter of absorption of staff of taken over institutions, Section 35 requiring prior sanction or approval of the State Government for creation of posts and appointment, would not be a constraint on the power of the university. It is different thing that the university in considering absorption of the staff of institution taken over may give due consideration to the legality/regularity or otherwise of a particular appointment but it would not be inhibited by the absence of prior sanction or approval of the State as contemplated in Section 35 of the Act. This is how the two non-obstante clauses have to be harmoniously construed and applied as giving overriding effect to each and restrict their operation within exclusive field assigned to each. In the matter of creation of posts and appointments in affiliated colleges in normal circumstances, requirement of prior sanction or approval of the State Government, as contained in Section 35, is not dispensed with because of the contrary provision contained in Section 4(1)(14) and the latter section is restricted in its operation to absorption of staff or a taken over institution by the university.

55. Clause (c) to sub-section (2) of Section 57-A was introduced by Act 3 of 1990 and has no retrospective application to the cases of affiliated colleges taken over as constituent colleges prior to the year 1990. The said clause (c) to sub-section (2) of Section 57-A requires further approval of the Bihar State University (Constituent Colleges) Service Commission before absorbing the services of teachers of the affiliated colleges converted into constituent colleges. The aforesaid piece of subsequent legislation amending the same Act can appropriately be taken as an aid to the interpretation of the unamended provisions of the Act. The amended provisions of the Act are an indication that the subject of absorption of staff of taken over affiliated colleges is treated as a subject distinct from regular recruitment to the posts in affiliated colleges which is to be made with prior sanction or approval of the State Government as provided in Section 35 of the Act. Similarly, sub-section (3) added to Section 35 by Act 17 of 1993 is also prospective in application and has no adverse effect on the absorption of the services of the teaching staff of the affiliated colleges taken over as constituent colleges prior to 1993. Sub-section (3) applies to normal mode of recruitment of staff (teaching or non-teaching) of affiliated colleges and is merely reiteration of the legal position that appointments and promotions made contrary to the provisions of the Act, statutes, rules and regulations would be invalid and liable to be terminated at any time. It also provides that any expenditure incurred by the university against such illegal, irregular, unauthorized appointments/promotions shall be realized from the officers found responsible for committing such illegality as a public demand under the provisions of the Public Demands Recovery Act, 1914. Clause (c) of Section 57-A(2) introduced in the year 1990 and subsection (3) of Section 35 introduced in the year 1993 being prospective in operation have no application to the affiliated colleges taken over as constituent colleges with the existing staff prior to the year 1990. Those provisions introduced subsequently in the year 1990 and 1993 are being referred to for a limited purpose

to show that the legislature has always treated differently the normal recruitment which has to be made with the approval of the State Government to teaching and non-teaching posts in affiliated colleges and the matter of absorption of existing staff appointed against sanctioned or non-sanctioned posts in the affiliated colleges taken over and converted as constituent colleges.

56. The two non-obstante clauses, although slightly differently worded, one in proviso to Section 4(1)(14) and the other in Section 35 of the Act have thus been construed harmoniously. Our conclusion is that they operate in two different fields--former to consideration of absorption of staff of taken over colleges and the latter to affiliated colleges when they are not under any proposal of being taken over by the university. The two provisions being intended to operate in two different situations and fields, both have an overriding effect on each other. That is why the legislature has employed a non-obstante clause in each.

7. In the background to the interpretation which has been given by the Hon"ble Supreme Court in the year 2005, the stand taken by the learned counsel for the Hon"ble Chancellor to that extent has no meaning because whatever be the observation which may have been given by the Division Bench of the High Court in the case of Dr. Shiv Narain Yadav (supra), the interpretation now given by the Hon"ble Supreme Court settles the issue.

8. When learned counsel for the Hon"ble Chancellor is confronted with this decision and the observation of the Hon"ble Supreme Court, he submits that now the position is otherwise, in the sense that the ball lies in the court of the University itself and the Chancellor has no role to play.

9. Whatever be the understanding of the situation by the counsel for the Chancellor the law being what it is as laid down by the Apex Court in the case of State of Bihar and Others vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others (supra), the University is competent enough to decide the cases of the two petitioners.

10. This Court has no conflict in its mind keeping the facts as well as the ratio laid down by the Hon"ble Supreme Court in the above quoted paragraphs of the decision. In light of the same, these two writ applications are disposed of with a direction upon the Vice-Chancellor of Magadh University to consider the claim of the petitioners within a reasonable time frame, pass an appropriate order and communicate the same to the two petitioners.

11. The writ application is allowed.