

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.83 of 2016

In

Civil Writ Jurisdiction Case No.5651 of 2012

-
1. The State Of Bihar
 2. The Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna.
 3. The Secretary, Department of Human Resources & Development (Higher Education), Govt. Of Bihar, Patna.
 4. The Director, Higher Education, Govt. Of Bihar, Patna.
 5. The Director, Higher Education, Deptt. of Human Resources Development, Govt. Of Bihar, Patna.

... .. Appellant/s

Versus

1. Vijay Kumar Sharma S/O Late Sukhdeo Prasad Sharma Lecturer, Deptt. Of Zoology, Rural Institute Of Higher Education, Birauli, P.S. Pusa, Distt. Samastipur, R/O Village Marg Vijay Bhawan, Sri Krishnapuri, Kashipur, P.O. Kashipur, P.S. Samastipur, Distt. Samastipur.
2. Birendra Prasad S/O Sri Kapildeo Prasad Lecturer, Deptt. In Chemistry, Rural Institute Of Studies, Birauli, P.S. Pusa, Distt. Samastipur, At R/O P.O. + P.S. Tarigan, Chapra, Distt. Saran.
3. Dr. Krishna Chandra Diwedi S/o late Ram Hari Prasad Diwedi, Lecturer, Department of Political science, Rural Institute of Higher Studies, Birauli, p.s-Pusa, Distt Samastipur, R/o Vill- +Po-Dema Fatehpur, P.s-Khijarsarai.District Gaya.
4. Dr. Ashok Kumar Jha S/o late Mahendra Narayan Jha, Lecturer, Department of Cooperation ,(Rural Economics and Co-Operation), Rural of Higher Studies , Birauli, P.s Pusa District -Samastipur, ,At R/o Po. Rajpur, P.;s Belhar, Distt Banka.
5. The Rural Institute(Birauli), Society, A Society Registered Under the Society Registrtion Act. 1860, Having its Registered Office at Birauli, P.s Pusa , Distt Samastipur, through its Secretary.

... .. Respondent/s

with

Letters Patent Appeal No. 1604 of 2016

In

Civil Writ Jurisdiction Case No.8878 of 2012

-
1. The State of Bihar.
 2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
 3. The Secretary, Department of Human Resources & Development (Higher Education), Government of Bihar, Patna.
 4. The Director, Higher Education, Government of Bihar, Patna.
 5. The Rural Institute (Birauli) Society, a society registered under the Society Registration Act, 1860 having its registered office at Birauli, P.S. Pusa, Dist. Samastipur through its Secretary.



... .. Appellant/s

Versus

Krishan Keshav Prasad Sinha S/o Late Yogendra Prasad Sinha R/o at + P.O. - Rohua, P.S. - Warisnagar, District - Samastipur.

... .. Respondent/s

with

Letters Patent Appeal No. 143 of 2016

In

Civil Writ Jurisdiction Case No.12120 of 2012

1. The State Of Bihar
2. The Principal Secretary, Education Department , Govt. of Bihar, Patna
3. The Secretary, Education Department, Government of Bihar, Patna null null
4. The Director , Higer Education Government of Bihar,Patna.

... .. Appellant/s

Versus

1. Dr. Binda Thakur S/o late Makko R/o Mohalla- Srikrishnapuri, P.s Samastipur, Distt Samastipur
2. The Rural Institute (Birauli), Socieity A Society Registered under the Society Registration Act, 1860, Having its Registered Office at Birauli, P.s Pusa Distt Samastipur through its Secretary

... .. Respondent/s

with

Letters Patent Appeal No. 315 of 2016

In

Civil Writ Jurisdiction Case No.9177 of 2012

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Secretary, Department of Human Resources and Development (Higher Education) Government of Bihar, Patna.
4. The Director, Higher Education, Govt. of Bihar, Patna.
5. The Director, Higher Education, Deptt. of Human Resources Development, Govt. of Bihar, Patna.

... .. Appellant/s

Versus

1. Chandeshwar Prasad Singh Son of Late Yugalpriya Singh R/o At + P.O. - Dhruvgama, Police Station - Kalyanpur, District - Samastipur.
2. The Rural Institute (Birauli) Society a society registered under the Societies Registration Act 1860, having its registered office at Birauli, P.S. - Pusa, District - Samastipur through its Secretary.



... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 83 of 2016)

For the Appellant/s : Ms Shilpa Singh, GA 12
Mr. Ranjan Kumar, AC to GA 12
For the Pvt. Respondents: Mr Rajendra Prasad Singh, Sr. Advocate
Mr Rajeev Kumar Singh
Mr Rajesh Kumar Singh
For Respondent 5 : Mr. Shashi Bhushan Singh

(In Letters Patent Appeal No. 1604 of 2016)

For the Appellant/s : Mr. Pratik Kumar Sinha, AC to GA 5
For Respondent 5 : Mr. Shashi Bhushan Singh
For the Pvt. Respondent : Mr Mritunjay Kumar

(In Letters Patent Appeal No. 143 of 2016)

For the Appellant/s : Mr. Sheo Shankar Prasad, SC 8
Mr Sanjay Kumar, AC to SC 8
For Respondent 5 : Mr. Shashi Bhushan Singh
For the Pvt. Respondent : Mr. Mritunjay Kumar

(In Letters Patent Appeal No. 315 of 2016)

For the Appellant/s : Mr. Arun Kumar Prasad
For Respondent 5 : Mr. Shashi Bhushan Singh
For the Pvt. Respondent : Mr. Mritunjay Kumar

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 03-04-2018

All these Letters Patent Appeals have been preferred by the State of Bihar against a common order dated 17.10.2014, which came to be passed by a learned Single Judge in the batch of writ applications, which came to be clubbed and heard together. Since the writ applications were allowed by giving a direction upon the respondent authorities, which include the State as well as what is known as Rural Institute (Birauli), a society registered under the Societies Registration Act, to enhance the age of



retirement to its employees to 65 years, appeals have been preferred.

2. There has been a long history behind the present litigation because this is not the first litigation of its kind in relation to the status and the service conditions of the Institute.

3. Originally, the Institute was set up by Government of India to impart education in rural development. That was way back in fifties. The funding was also being done by the Central Government but subsequently the Union of India decided to withdraw support from the Institution and it left it to the State to decide what they would like to do. The State of Bihar after certain deliberations decided to give it an independent status by registering the Institution under Societies Registration Act. That was the first step towards the status of the Institution. The Institution, therefore, was not killed after the withdrawal of the support from the Union of India.

4. Naturally, certain demands started arising from the employees, who were working in the Institute in question, some of them were employees who were on deputation and some were even recruited by the Institute for taking care of its day to day affairs. One of the earliest writ applications, which came to be filed, was CWJC No.3229 of 1990 where teachers and non-



teaching employees of the Institute moved the High Court seeking a direction upon the State authorities to treat them as State Government employees and also confer upon them benefits of pay scales, seniority, promotion avenues etc. as members of Bihar Education Service. A prayer was also made for a direction upon the State Government to take over the Institute.

5. Vide order dated 21.08.2000, direction was issued upon the respondent authorities to form a committee and take a decision as to the status which is required to be conferred upon them. An LPA was preferred against the said order. The LPA was dismissed looking at the nature of the direction issued by the learned Single Judge. Yet another writ application was filed, which was CWJC No.3231 of 1990, seeking similar kind of relief for declaration of the employees as State Government employees but by that time the Institute had been given an autonomous status by registering it under the Societies Registration Act. In that litigation, the State Government decided to attach the Institute with L.N.Mithila University and extend them the benefit which the teachers of the University of a graduate college was decided to be extended. This writ application of 1990 came to be decided on 21.06.1999 again giving a direction to the State Government to fix the service conditions of the employees.



6. In furtherance to the direction issued in the writ, a three member committee was constituted by the State Government, which held its meeting on 19.02.2001, in the background of the observation and direction issued in the writ. The three member committee made certain recommendations which included the fact that the Institution should be attached or affiliated to L.N.Mithila University and they be given the same working conditions, pay and privileges which govern such employees of an affiliated college. However, despite the recommendations, nothing much was done, therefore, a contempt application was moved against the respondents which compelled the State authorities to make a notification on 19.03.2004. This notification, issued by the Department of Higher Education, Government of Bihar, more or less adopted what was recommended by the three member committee.

7. Even though the 19.03.2004 notification was labelled as 'Seva Sharta Niyamawali, 2004', but from perusal of the notification, it is not clear whether this Rule had any statutory force or not because the notification does not seem to indicate as to under what power and authority this Rule had been made. If this be so, then it is more in terms of the guidelines which will govern



the service conditions of the employees of the Institute rather than having any statutory force as such.

8. This notification of 2004 Rules, giving the status of the employees akin to employees of an affiliated college, obviously did not make the employees very happy as there were many a reasons like no regular payments. The payments too were not even respectful and there are whole lot of other issues which compelled the employees not to accept the 'Rules'. They preferred to file CWJC No.12538 of 2001. This writ application was filed against the decision and recommendation of the three member committee, even before the so-called Rules of 2004 came to be notified.

9. CWJC No.12538 of 2001 finally came to be heard and decided on 14.03.2005. The argument before the learned Single Judge in the above writ application was that they would like to be treated at par with the Bihar Education Service Class-II rather than as employees of an affiliated college which this Institution was declared. The whole argument through and through noticed by the learned Single Judge that they be given status of Bihar Education Service Class-II scale and service benefits. The learned Single Judge after having taken note of the arguments and submissions had this to say :



“Taking the argument of the State and the petitioner into consideration and the different resolutions of the State Government and the proceedings of the Committee as discussed above, one aspect which is clear is that the Institute today is an autonomous Institute and the Lecturers of the Institute have been treated as at par with those officers of Bihar Education Service Class-II both so far as pay is concerned as well as service conditions. Counsel for the petitioner also contends that main thrust of their argument is with regard to the service condition of the petitioner and the like.

In view of admitted facts, this Court has no difficulty in holding that so far as the pay scale and the service conditions both of the petitioner and their like are concerned, their service conditions are the same/at par with the employees of the Bihar Education Service Class-II.

The writ application succeeds to the extent that both the pay scale and the service condition of the employees of the Institute, i.e. in the grade of petitioner, would be at par with those of Bihar Education Service Class-II but he would not be a Government employee as he is an employee of an autonomous institution.”

10. From a perusal of the order quoted above, it is evident that the employees of the Institute came to be conferred status and service conditions which was available to Bihar Education Service Class-II. The Court, however, made it



absolutely clear that they will not be treated as Government employees but continue to be employees of an autonomous body or Institution which it was as it was registered under Societies Registration Act.

11. It is also of significance that while CWJC No.12538 of 2001 was adjudicated and disposed off, the State Government through a counter affidavit did bring on record the '2004 Rules', which were already in vogue by that time, but since neither the petitioners insisted on enforcement of the said 'Rule' and the thrust of their argument was to be given status of Bihar Education Service Class-II, therefore, the adjudication was made conferring them the benefit and status of a Bihar Education Service Class-II. The so-called 2004 Rules, which anyway did not seem to be statutory, was given a go-bye by all for all practical purposes. The 2004 Rules was a dead letter because the declaration made by the learned Single Judge vide order dated 14.03.2005 became the benchmark for deciding the service conditions and entitlement of the employees of the Institute. The Court has also noticed through the pleadings and materials on record that after the said decision the employees of the institute started deriving benefit of the pay scales and pay revision which came to be extended by the State of Bihar to Bihar Education Service Class-II. In addition to that, they



also derived benefit of stagnation scheme like ACP etc. and they were paid the benefit thereof.

12. The order dated 14.03.2005 passed by the learned Single Judge in CWJC No.12538 of 2001 somehow again did not satisfy some of the employees and they decided to file CWJC No.7107 of 2007 as well as a Civil Review No.107 of 2007. Since the issues raised more or less related to the service conditions and status of the employees and the Institute, both the writ application and the review application came to be clubbed and heard together which in turn was dismissed on 04.01.2012.

13. The learned Single Judge, while dealing with CWJC No.7107 of 2007 and the review application, taking the background under which the earlier writ was decided on 14.03.2005 and the direction issued therein, refused to grant any benefit or prayer made in the writ application and refused to review the previous order since the order in question was passed on the submissions made on behalf of the employees of the Institution. It does not matter as to who exactly were the petitioners and it also indicates that some of the petitioners therein are also common in subsequent litigations. The Court, therefore, takes note of the fact that since some of the earlier litigations were not adjudication *in personem* but *in rem* and related to service



conditions of all the employees, therefore, nit picking, which was sought to be raised by the learned senior counsel, is of no significance. They may or may not have been there in the previous round of litigation but that does not make any difference as to what was adjudicated and decided as to the entitlement of the employees of the Institute.

14. The writ application as well as review application was dismissed. The Court also took notice of the fact that pursuant to the direction issued by the previous writ court giving status to the employees of the Institute equivalent to Bihar Education Service Class-II, the follow up notification dated 28.02.2007, which was issued for implementation of the judicial direction, was also not held to be bad. The Court, in fact, opined that there was no illegality in the order dated 28.02.2007. In other words, the status conferred upon the employees of the Institute came to be formalized by the notification issued by the Department of Education dated 28.02.2007. Though as a parting shot, the learned Single Judge did observe and gave liberty to the petitioners to rely on the Rules published under order dated 19.3.2004, as the rules had neither been held to be ultra vires by this Court, under order dated 14.3.2005, nor superseded by the State Government under the order dated 28.02.2007.



15. Emboldened by the said observation, a new round of litigation started when a batch of writ applications came to be filed, which were clubbed and decided together on 17.10.2014, against which the present set of appeals have been filed.

16. The prayer made in that batch of writ applications was for a direction upon the respondents to enhance the superannuation age of the petitioners from 60 years to 65 years. They sought a direction upon the respondents that Rule 4 (ii) of the Rural Institute, Birauli (Samastipur) Service Condition Rules, 2004, should be enforced and any action taken by the respondents to retire the employees at the age of 60 years should be held to be bad since they had been given status of an affiliated college employees.

17. In some of the writ applications, a prayer was also made in the alternative that they be given the status of Bihar Education Service Class-II as well as be treated as State Government employees.

18. Learned GA 12, representing the State in all these appeals, makes a very pointed and categorical submission that the conduct of the respondents, who are employees of the Rural Institute, has been far from honest. They have been taking variable stand and seeking diverse kind of relief from time to time



demanding what suited them. When they were given benefit at par with an affiliated college employees, they did not feel very happy looking at what was on offer for them. They decided not only to challenge the 2001 recommendation of the three member committee by filing a writ application but also insisting that they be given the same status as a Bihar Education Service Class-II employees and they be also treated as State Government employees. The High Court, while dealing with the writ application of the year 2001, on the insistence of the employees of the institute gave them status of Bihar Education Service Class-II, but by the time judgment came into place, they found greener pasture because UGC recommendations for college employees came to be notified and the employees perceived better service conditions and pay scales for the University employees rather than Bihar Education Service Class-II.

19. It was in this background that the legal battle started to shake off the Bihar Education Service status which was given to them by the judgment and order 14.03.2005 and which was further fortified by the order passed in CWJC No.7107 of 2007 and Civil Review No.107 of 2007. The order dismissing the writ and the review application is dated 04.01.2012.



20. In other words, the employees of the Institute have been blowing hot and cold and even without caring about adjudications made in relation to their claims earlier. They have been filing repeated writ applications seeking one benefit or the other and ignoring what was decided in previous round of litigations and the advantage and benefit which they have drawn by virtue of conferment of the status of Bihar Education Service Class-II.

21. As already noticed in earlier part of the order since the 2004 Rules was very much brought to the notice of the learned Single Judge when he was adjudicating CWJC No.12538 of 2001 and nothing much was said about the said Rule while conferring the status of Bihar Education Service Class-II, this is the reason why the Court had said that the 2004 Rules was neither statutory in nature nor it was given any effect thereto during and after the judicial pronouncement by maintaining silence by the petitioners of the case and the Court not taking note of the 2004 Rules deliberately. The 2004 Rules, which was kind of a guideline not statutory rule, was declared a dead letter and the direction, which was given by the writ court giving status of Bihar Education Service Class-II, became the benchmark for the service conditions and became applicable to the employees of the Institute. Once



such a declaration was made and a subsequent notification was issued on 28.02.2007 for enforcement of the direction of the writ court. By virtue of dismissal of another writ application as well as the review application, the matter should have rested at that but it did not.

22. Unfortunately, the employees of the Institute are a restless soul. They do not believe in giving up despite the principles of *res judicata* having come into play and even keeping in mind the long history of adjudications and directions, they decided to file yet another batch of writ applications for a common issue that their age of superannuation should be 65 years and Rule 4 (ii) of the 2004 Rules should be given effect to.

23. By the simplicity of submissions made before the learned Single Judge and by not highlighting and bringing out past orders and directions issued in earlier adjudications, the learned Single Judge fell for the argument despite the past orders, which had come to occupy the field and which had already been implemented by the State Government in favour of the employees of the Institute. Since the '2004 Rules', which is a misnomer, was no longer in operation after the judgment dated 14.03.2005, therefore, it was out and out a dishonest prayer made by the petitioners, who are respondents in these appeals, to demand



declaration and a direction that their age of superannuation should be guided by Rule 4 (ii) because they were University employees of an affiliated college. Since the past orders and directions were not pointed out even by the State counsel before the Court, the learned Single Judge taking the 'Rule' of the year 2004 to be still in operation and sacrosanct passed an order that the employees of the Institute would superannuate at par with the affiliated college employees, which means that they will superannuate at the age of 62 prior to 01.07.2010 and after 30.06.2010 their age of retirement will be treated to be 65 years.

24. With due respect to the counsels, who had assisted the learned Single Judge in adjudication of the matter, neither have been fair nor honest in the assistance and, therefore, a serious error has crept into the order passed by the learned Single Judge dated 17.10.2014. Court cannot be used as a play ground and for wagering on behalf of such litigants. History of past adjudications cannot be wished away on one hyper submission or tricks of advocacy and, therefore, such litigation ought not be encouraged and such litigants must be put in their place. In fact, the Court was inclined to impose exemplary cost on the employees of the Institution for having misled the Court and misused the judicial forum with dishonest intention and conduct.



25. All these employees will be treated to be Bihar Education Service Class-II and the benefit, which they will derive, will be the same benefit, which has been extended by the State Government to Bihar Education Service Class-II though they will not be treated as State Government employees as that is what has been declared by the learned Single Judge in the order dated 14.03.2005.

26. Some developments have taken place thereafter. A new set of Rules have been enforced in the year 2015. It is known as Rural Institute Birauli, (Samastipur) Service Condition Rules, 2015. It goes without saying that this Rule will take effect with regard to the employees who are now appointed or governed by the said Rule with effect from 06.05.2015.

27. The counsel representing the Institute decides to toe the line and stand which has been taken by the State Government in toto and his arguments are in similar line as that of the State counsel. He also submits that the writ applications, which have been moved from time to time by the employees of the Institute seeking different kind of reliefs ignoring the previous adjudications so made in relation to the employees, are far from honest exercise of assertion of rights of these employees. In fact, these employees deserve to be dealt with heavily.



28. In totality of the circumstances, therefore, the impugned order dated 17.10.2014 has to be quashed and is quashed. All the appeals are allowed for the reasons indicated as above.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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