

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.417 of 2015

In
Civil Writ Jurisdiction Case No.15597 of 2006

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1. Mrityunjay Pandey @ Mritunjay Pandey, S/ O-Late Devta Pandey, resident of Village & P.O.- D. K. Shikarpur, P.S.- Shikarpur, Distt. West Champaran.
 2. Md. Reyaz Ahmad, son of Md. Nooral Hassan Khan, R/o Village- AkhawaJanunia, P.O.- Narkatiyaganj, P.S.- Shikarpur, Distt.- West Champaran.
 3. KashiRaut, son of Late ChattuRaut, R/o -Block Road Narkatiaganj, P.O.- Narkatiaganj, P.S.- Shikarpur, Distt.- West Champaran.
 4. VidyanandVerma, son of Late KishoriNandVerma, R/O Village+ P.O.- D. K. Shikarpur, P.S.-Shikarpur, Distt.- West Champaran.
 5. NathuniChaudhary, son of Late RamanandRaut, R/O Village- Chihutahan, P.S.- Mainatar, Distt.- West Champaran.
 6. RamayanSah, son of Late Ram Prasad Sah, R/O Village + P.O.- D.K. Shikarpur, P.S.- Shikarpur, Distt.- West Champaran.
 7. Devendra Nath Chaubey, son of Late Surya Choubey, R/o Village-Balawa, P.O.-DyainMarwa, P.S.-Ramnagar, Distt.- West Champaran.
 8. SurajLal, son of Late Vishwanath Prasad, R/O- Narkatiaganj, Pawani Bazar, P.O.- Narkatiaganj, P.S.- Shikarpur, Distt.- West Champaran.

... .. Appellants

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Human Resources Development Deptt. Govt. of Bihar, Old Secretariat, Patna.
2. The Chancellor, Universities of Bihar, Raj Bhawan, Patna.
3. The Addl. Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
4. The B.R. Ambedkar, Bihar University, Muzaffarpur through its Registrar.
5. The Vice- Chancellor, B.R. Ambedkar Bihar University, Muzaffarpur.
6. The Registrar, B.R Ambedkar Bihar University, Muzaffarpur.
7. T.P. Verma College, Narkatiyaganj, West Champaran, through its Principal.
8. The Principal, T.P. Verma College, Narkatiaganj, West Champaran.
9. Anand Kumar Verma, Son of Late Kapildeo Prasad resident of Village - Semari, P.S.- Sathi, District- West Champaran.
10. Sushila Chandra, Wife of Late Balram Chandra, resident of Village - D.K. Shikarpur, P.S. - Shikarpur, District - West Champaran.
11. Pundeo Mahto, Son of Late Bhigrasan Mahto, resident of Village - Bhaunharwa Shikarpur, P.O & P.S. - Shikarpur, District - West Champaran.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Rajendra Pd. Singh, Sr. Advocate Mr. Mukesh Kumar Singh, Advocate
For the State	:	Mr. Krishna Kant Singh, AC to SC-10



For the University : Mr. Mrigank Mauli, Advocate
Mr. Prince Kumar Mishra, Advocate
Mr. Sanket, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 29-03-2018

Heard learned Senior Counsel for the appellants, counsel for the respondent University and the State.

There were three writ applications, which were taken up together and were disposed off by a common order dated 06.08.2014. Only two LPAs. came to be filed. No LPA has been preferred in C.W.J.C. No. 5871 of 2008.

So far the present appellants are concerned, there were 11 petitioners in C.W.J.C. No. 15597 of 2006, but only 8 chose to prefer the LPA because some of the petitioners are stated to be dead. There is a long history behind the present litigation and this is not the first of its kind. The origin of the present dispute relates to the period when T.P. Verma College, Narkatiaganj became a constituent unit of B.R. Ambedkar, Bihar University, Muzaffarpur. As usual, a clamor to get on to the bandwagon to become a Government servant with all the perks and privileges started which lead to a mad scramble to get into the institution and show themselves as employees duly appointed either on Class-III or Class-IV post. Since for a long period of time no clear status was



emerging about a large number of employees, way back in the year 1992, one Mr. Rafi Ahmad and others (petitioners in C.W.J.C. No. 5820 of 1992 and other analogous cases) filed writ applications for absorption and regularization of their service under the T.P. Verma College. The Court disposed off the writ application with a direction upon the University and the State authorities to consider their cases in terms of the staffing pattern as laid down in a Full Bench decision, which was the case of Braj Kishore Singh Vs. State of Bihar, reported in 1997(1) PLJR 509.

Deliberation was done and on the basis of inputs provided by the College as well as the University an order dated 07.12.2005 was issued by the erstwhile Human Resources Development Department(Higher Education), Government of Bihar. Claim of these appellants was rejected primarily on the ground that no inputs or information relating to their appointment or engagement was provided either by the College or University or that if such appointment at all was made it was held to be suspicious, so were declared ineligible.

Much arguments were made on behalf of these appellants. Efforts were made to show that there was due advertisement. Process of selection by interview was carried out by the College authorities, and, therefore, their appointment was as valid as some



of the other cases who have earned regularisation. However, on a very critical analysis of the facts and assertions, the learned Single Judge had this to say in the following paragraphs :

“10. This is not in dispute that the State Government had decided to convert 108 Colleges, affiliated to different Universities of the State of Bihar, into constituent Units of the concerned Universities vide letter No.882 dated 24.7.1980. Subsequently, by a communication dated 24.1.1981 the State Government decided to convert 30 more affiliated Colleges including the present College as constituent Unit of the concerned University. The present T.P.Verma College was converted into constituent Unit of the then Bihar University, Muzaffarpur (Now Baba Saheb Bhim Rao Ambedkar University, Muzaffarpur). It was specifically mentioned in the said letter dated 24.1.1981 that the conditions as contained in letter no.881 & 882 dated 24.7.1980 by which 108 Colleges were decided to be made constituent Units shall apply also to the present 30 Colleges being converted into constituent Units of the Universities. The date, 12.7.1980 is of great relevance for the adjudication of the present cases as that was the cut off date fixed by the State Government in the letter No. 881 dated 24.7.1980 and employees appointed till that date by the Governing Bodies of the affiliated Colleges were decided to be absorbed upon conversion of such Colleges into constituent



Units. There cannot be a dispute that this College was also converted into a constituent Unit on the same terms and conditions as laid down in letter nos.881 & 882 dated 24.7.1980, by which other Colleges were converted into constituent Units.

11. From the pleadings of the petitioners which have been noted above, it would appear that their appointment letters are said to have been issued after the said date i.e. 12.7.1980, the cut off fixed by the State Government in letters no. 881 & 882 dated 24.7.1980.

12. It is the petitioners' case that their appointments were made against post deemed to have been sanctioned under admissible limits of staffing pattern and they have a right to be regularized in service in terms of the Full Bench judgment of this Court in case of Braj Kishore Singh Vs. State of Bihar reported in 1997(1) PLJR 509 as they have continuously worked as non-teaching employees in the College for more than 17 years.

13. Learned counsel for the petitioners have placed reliance upon a Division Bench judgment of this Court delivered in LPA No. 1492 of 2009 (State of Bihar Vs. Dinesh Thakur and ors) to contend that though the letter nos.881 & 882 dated 24.7.1980 fix the cut off date of appointment i.e. 12.7.1980, the requirement stood whittled down as it was not mentioned in the agreement entered upon



between the Managing Committee of the College of the University; applying the doctrine of desuetude.

14. As regards the plea of the petitioners of CWJC No. 5871 of 2008 and CWJC No. 15597 of 2006 that they had right to be regularized in service in terms of Full Bench judgment of this Court in case of Braj Kishore Singh vs. State of Bihar (supra) is concerned, I am of the view that such plea is misplaced in the facts and circumstances of the case. It is true that the case of petitioner of CWJC No. 5871 of 2008 has been rejected by the impugned order on the ground that no information as regards the fact that he was working in the College could be received from the University, from the pleadings of the writ application I find that even on the basis of such pleadings, he has not been able to make out a case for regularization. The pleadings make, the petitioner's claim that he was duly appointed in the College, suspicious one inasmuch as, as per his own averment notice inviting applications for the post of Librarian was published on 30th June, 1980 in a local daily "Kunti". 30th June, 1980 was the last date for submission of application. The said periodical is said to be bi-monthly and in the issue 15 to 30th June 1980, the post was said to have been advertised. It is said that he appeared for interview on 3.7.1980. The entire claim of the petitioner of CWJC No. 5871 of 2008 as raised in writ petition has no credence and the Court in exercise of power



under Article 226 of the Constitution of India is not required to grant any relief on the basis of such pleadings which has made the petitioner's case and claim doubtful and suspicious. As I have indicated above, the petitioner's claim that he was appointed on 16.7.1980 on the basis of an advertisement published in June, 1980 after the cut off date fixed by the State Government in the letters no. 881, 882 dated 24.7.1980 containing decision to convert 108 affiliated Colleges into constituent Units of various Universities. There is no controversy about the fact that subsequently 30 more affiliated Colleges including the present College were sought to be converted into constituent Units on the same terms and conditions as occurring in letter No. 882 dated 24.7.1980. From Annexure-10, which is an agreement dated 3.3.1981 between the Governing body of the College in question on the one part and the Registrar of the University of Bihar, Muzzfarpur on the other, it will appear that it was agreed upon between the parties that the Government sanctioned conversion of the T.P. Verma College into a constituent College of the Unit of Bihar under the provisions of Section 4(14) of the Bihar State Universities Act, 1996 subject to the conditions mentioned in letter Nos. 881 and 882 dated 24.7.1980 as also letter No. 1254 dated 01.10.1980 issued by the Joint Secretary to the Government, Education Department, Patna and Bihar University letter dated 26.2.1981. Letter Nos.



881 and 882 dated 24.7.1980 in fact form part of Schedule to the said agreement as Schedule I. Even the petitioners have not disputed the fact that the aforesaid letter Nos. 881 and 882 dated 24.7.1980 required that services of such persons appointed after 12.7.1980 would not be absorbed after conversion of the College into a constituent Unit. In my opinion, the petitioners cannot raise a claim beyond the agreement between the governing body of the College and the Registrar of University. Copies of letter nos. 881 and 882 both dated 24.7.1980 have been brought on record by way of Annexures A & B to the counter affidavit filed on behalf of respondent nos. 1 and 3 (the State of Bihar). Reference of these letters have been made in the said agreement for conversion of the College into a constituent Unit as have been noted above. From the letter as contained in memo no. 881 dated 24.7.1980, it will appear that it was specifically mentioned in the said communication that no appointment could be made after 12.7.1980. A plea has been taken that the said communication dated 24.7.1980 should be treated as dead letters in view of the Division Bench judgment of this Court in case of State of Bihar Vs. Dinesh Thakur dated 6.4.2010 (LPA No. 1492 of 2009). Emphasis has been led on paragraph 19 of the said order which reads thus:-

“19. In the Francis Bennion’s Statutory Interpretation, this aspect has been dealt at page



441 & 442 of 1984 Edn. Wherein it has been stated that desuetude is a legal process by which, through disobedience and lack of enforcement over a long period, a statute may lost its force without express or implied repeal. In Craies Statute Law (7th Edn.) it has been stated at page 7 that desuetude is a process by which an Act of Parliament may lost its force without express repeal. It is, however, clarified therein that the concept of desuetude does not however consist merely of obsolescence or disuse rather there must also be a contrary practice, which must be of some duration and general application. The Apex Court in the context in the case of Municipal Corporation for City of Pune and Anrs. Vs. Bharat Forge & ors. reported in 1995(3) SCC 434 has held as follows:-

“.....34. Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process. We find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary, practice being in use, he is still required to act as per the “dead letter”. We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country also. Our soil is ready to accept this principle: indeed, there is need for its implantation, because persons residing in free India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their being say, prosecuted and punished for violation of a law which has become “dead letter”. A new path is, therefore, required to be laid and trodden.....”

15. The principle laid down by this Court in case of State of Bihar Vs. Dinesh Thakur (supra) shall have no application in the facts and circumstances of the case since I am of the view that the petitioner's claim has to be tested in terms of the agreement arrived at between the Governing



body of the College and the University. The petitioners, in my view are bound by such agreements as they are raising claim for their absorption in terms of the said agreement. Further, it is not the plea of the petitioners that the said letters no. 881 and 882 dated 24.7.1980 were never acted upon in order of attract the said principle laid down by Division Bench of this Court. There is absolutely no pleading that persons have been absorbed after conversion of other affiliated Colleges into constituent units dehors the conditions laid down in the said letters No. 881 and 882 dated 24.07.1980.”

The Court has taken liberty of reproducing the findings and the rationale provided by the learned Single Judge only to avoid repetition of what emerged from the pleadings and evidence available in the writ applications. Having perused the materials, the evidence and the reasoning provided by the learned Single Judge in earlier part of the order, we do not get persuaded by the learned Senior Counsel for the appellants that these appellants had been discriminated or there was a deliberate mischief to keep them out of the benefit of regularization. Since the foundational facts and materials are mired in controversy, if not suspicion, then obviously the High Court in exercise of power under Article 226 of the Constitution of India cannot provide its own input or



material for overcoming the decision dated 07.12.2005, which was Annexure -24 to the writ application.

In totality, therefore, even this appeal deserves to be dismissed. No interference is warranted with the impugned order dated 06.08.2014.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.04.2018
Transmission Date	NA

