

Md Nasimuddin and Ors Vs. Human Resources Department

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Court : Jharkhand

Decided On : Nov-03-2017

Appellant : Md Nasimuddin and Ors

Respondent : Human Resources Department

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No.5258 of 2014

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1. Md. Nasimuddin, son of late Nooruddin, resident of village and P.O. Hansdiha, P.S. Hansdiha, District Dumka, Jharkhand.
2. Md. Yaseen son of late Md. Ahmad Ali, resident of village and P.O. Kaithia via Basant Roy, P.S. Basant Roy, District Godda, Jharkhand.
3. Md. Zafir Alam, son of late Md. Mojib Alam, resident of Mohalla Jabbarchak, P.O. & P.S. Tatarpur, District Bhagalpur, Bihar.
4. Dr. Shyam Nath Singh, son of late Amarnath Singh, C/o. Shri J.C.Malhotra, at Girija Mukteshwar Colony (near D.M. Residence), P.O. & P.S. Mayaganj, District Bhagalpur, Bihar.
5. Md. Siddique, son of late Md. Tamijuddin, resident of village Sinpur, P.O. Banarchuha, P.S. Mahagama, District Godda, Jharkhand.

6. Abdul Aziz Khan, son of late Abdul Halim Khan, resident Bijlichak, P.O. & P.S. Tatarpur, District Bhagalpur, Bihar.

7. Md. Shahid Rizwan Wajid, son of Dr. Md. Irfan, resident of village & P.S. Chaknathu via Ekchari, P.S. Sanhoula, District Bhagalpur, Bihar. Petitioners VERSUS1 The State of Jharkhand.

2. The Secretary, Higher Education, Human Resources Development Department, Govt. of Jharkhand, Ranchi.

3. The Director, Higher Education, Human Resources Development Department, Govt. of Jharkhand, Ranchi.

4. Sido Kanhu Murmu University, Dumka through its Vice-Chancellor.

5. The Registrar, Sido Kanhu Murmu University, Dumka. ... Respondents.

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For Petitioners : Mr. Jai Prakash Jha, Sr. Advocate Mr. Arshad Hussain, Advocate
Mr. Afaq Ahmad, Advocate For Respondent-State : Mr. Prem Pujari Roy,
Advocate For Respondents-University : Mr. Mithilesh Singh, Advocate

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With W.P. (S) No.5941 of 2014

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Md. Reyaz Maqubool, son of Md. Maqubool Hussain, resident of Amir Hasan Lane, Tatarpur, P.O. Bhagalpur City, P.S. Tatarpur, District Bhagalpur (Bihar).
Petitioner 2 VERSUS1 The State of Jharkhand.

2. The Secretary, Higher Education, Human Resources Development Department, Govt. of Jharkhand, Ranchi.

3. The Director, Higher Education, Human Resources Development Department, Govt. of Jharkhand, Ranchi.

4. Sido Kanhu Murmu University, Dumka through its Vice-Chancellor.

5. The Registrar, Sido Kanhu Murmu University, Dumka.

6. The Finance Officer, Sido Kahnu Murmu University, Dumka. ... Respondents.

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For Petitioner : Mr. Ranjan Kumar Singh, Advocate For Respondent-State : Mr. Prem Pujari Roy, Advocate For Respondents-University : Mr. Mithilesh Singh, Advocate

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK C.A.V. on 10.08.2017
Pronounced on 03/11/2017 Dr. S.N. Pathak, J.

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. Since facts in both the writ petitions are same and similar, they are disposed with a common order.

3. The petitioners in both the cases have approached this Court with a common prayer for a direction upon the respondents to release the arrears as well as the current salary to the petitioners, who have been working in Millat College, Parsa since 1987 and University vide its notification No. 60/2006 dated 07.11.2016 (Annexure-12) has also absorbed the services of the petitioners subject to the approval of the Human Resources Development Department as per provision contained in Section 4.1.14 of Jharkhand State University Act, 2000. Further prayer has been made for a direction upon the respondent Nos. 1, 2 & 3 to issue normal approval letter of absorption.

4. The factual exposition as has been delineated in the writ petition is that the petitioners are working as Lecturers in Millat College, Parsa under S.K.M. University since 1987. The said college was established by Minority Community in the year 1968 and was affiliated to Bhagalpur University. On 13.11.1985, a communication was forwarded by Finance Officer, Bhagalpur University to stop the financial operation as it is being made a constituent College. Upon receiving such communication, the College moved to the Honble Patna High Court in C.W.J.C. No. 6145 of 1985, in which the Honble Court has granted stay order on 19.12.1985 and the financial operation was restored to the College. It is the further case of the petitioners that vide letter dated 19.08.1986, the State of unified Bihar gave direction to the Universities regarding conversion of 36 viable affiliated

Colleges into constituent college in the 4th phase. Thereafter, the College made a representation to the Registrar, Bhagalpur University regarding objection to the cut-off date as the matter being subjudice and there was stay order dated 19.12.1985 in favour of the College.

5. It is the case of the petitioner that the Honble Patna High Court has finally decided the CWJC No. 6145 of 1985 on 02.08.1988 dismissing the said writ, para 15 of which reads follows:- Accordingly, this writ application is dismissed subject to the direction that the State Government and the University shall exercise their power vis--vis the College treating the said College as an affiliated College till the agreement is executed between the College and the University in terms of Section 4(14) of the Act after which it becomes a constituent College. In the circumstances of the case, there shall be no order as to costs.

6. After passing of the said order, a letter dated 27.08.1988 was issued by Bhagalpur University, Bhagalpur to the Principal Incharge in relation to execution of an Agreement for making it a constituent unit of the said University. Thereafter, on 30.08.1988, an Agreement was executed between the Bhagalpur University and Millat College, Parsa, it was agreed that the cut- off date 30.04.1986 will not be applicable for this College rather 30.08.1988 will be considered as cut-off date for all purposes. It is the further case of the petitioners that the Honble Apex Court in Civil Appeal No. 6098 of 1997 vide its order dated 12.10.2001, appointed Honble Mr. Justice S.C. Agarwal, a retired Judge of the Honble Supreme Court as One Man Enquiry Commission so as to identify employees who are entitled to be observed and who did not deserve such absorption. After constitution of the said commission, the petitioners have approached through their Sangh Shikshak Kalyan Mahasang to the said Commission. Thereafter, the Agarwal Commission submitted its report on 19.12.2003, in which the terms of references 1 and 2 were answered but inadvertently, the commission left the names of 19 teaching staff of the said college considering the cut-off date as 30.04.1986 instead of 30.08.1988. 4 After submission of the report, the Mahasangh filed an objection affidavit before the Honble Supreme Court of India on 07.04.2004 to the fact that the Commission while considering the terms of reference Nos. 1 and 2 has left altogether 19 teaching and 19 non-teaching employees of the Millat College. Since the

grievances of the petitioners have not been redressed, the petitioners have knocked the door of this Court.

7. Mr. Jai Prakash Jha, learned senior counsel assisted by Mr. Arshad Hussain and Mr. Ranjan Singh, learned counsels appearing for the petitioners strenuously urges that the petitioners are entitled to get current as well as arrears of salary in view of the fact that they are continuously working as Lecturers in different subjects in Millat College, Parsa since long and the respondent-University as per the provisions of Section 4(1)(14) of Jharkhand Universities Act, 2000 and its subsequent approval by the syndicate held on 02.09.2006, in relation to the absorption of teachers, report of the Agarwal Commission and judgment of the Honble Supreme Court passed in Civil Appeal No. 6098 of 1997 and keeping in view the long services of the petitioners their services have been provisionally approved vide notification No. 60/06 dated 07.11.2006 issued by the Registrar, Sido Kanhu Murmu University, Dumka. The respondents are bound to grant and make payment of arrears as well as current salary in favour of the petitioners in view of the fact that the petitioners are continuously working as Lecturers in different subject in Millat College, Pasra since long. Learned counsel further submits that in spite of the fact that the sanctioned/ recommended posts are available and lying vacant, the petitioners absorption against the said post require to be approved as the petitioners have requisite qualification and have been working on the said post since long. Learned counsel lastly submitted that the action of the respondents is discriminatory and violative of Articles 14 and 21 of the Constitution of India.

8. Learned senior counsel empathetically argued that the respondent- State cannot go beyond the Agreement executed on 30.08.1988 between the Bhagalpur University and Millat College, Parsa. Learned counsel draws the attention of the Court towards Annexure-7 and argues that as per the Agreement, the cut-off date 30.04.1986 will not be applicable and it is only 30.08.1988, which can be fixed as a cut-off date. Learned counsel further argued that even Justice S.B. Sinha Commission has opined the view that the date of agreement should be the cut-off date i.e. 30.08.1988 and not 30.04.1986. In view of the agreement and in view of the opinion of Justice 5 S.B. Sinha Commission, the cut-off date should be fixed as

30.08.1988 and the petitioners be paid arrears of salary as well as other consequential benefits which they are entitled.

9. Per contra counter-affidavit has been filed by the respondents. Mr. Prem Pujari, learned counsel appearing for the respondents vehemently opposes the contention of the learned counsel for the petitioners and submits that the Honble Supreme Court has only given liberty to the University to make necessary rectification with regard to mistakes in the names and descriptions of the employees. It has not given authority to the University to go beyond the report of the Honble Agrawal Commission and take decisions contrary to the report of the Honble Commission. Learned counsel further submitted that the State Government has fixed the cut-off date of the College as 30.04.1986. This date has been accepted by the Honble Agrawal Commission as well as the Honble Supreme Court and as such, the claim of the petitioners that the recommendation for the sanction of additional posts was sent vide letter No. A/386 dated 27.07.1987 was within the cut-off date is wrong and misleading. Therefore, the claim of the petitioners that they come under the zone of consideration under the category of R1/s is not acceptable.

10. Learned counsel for the respondents draws the attention of the Court towards several paragraphs of the counter-affidavit dated 16.04.2015, para-5 of which is reproduced herein below:- 5 (v) That it is stated that from terms number 2 and 4 of the aforesaid Terms and Reference fixed by the Honble Supreme Court it is clear that the cut-off date for the college of the petitioners was accepted by the Honble Supreme Court as 30.04.1986 because the name of the College figures in the list of 36 colleges attached with the letter dated 19.08.1986 of the Bihar State Government by which cut-off date for the colleges were fixed as 30.04.1986. 5 (ix) That it is stated that in the light of the aforesaid direction of the Honble Supreme Court the cut-off date is acceptable as it has been fixed by the State Government by its letter dated 19.08.1986 and has also been accepted by the Honble Agrawal Commission. It is further stated that as it has been stated in aforesaid para of this counter affidavit the Honble Supreme Court by its order dated 12.10.2001 has decided the Terms of Reference for the Honble Commission and as per 2nd Terms and Reference the cut-off date for the college has been fixed as

30.04.1986. So the claim of the petitioners that the cut-off date for the college is 30.04.1988 is wrong and misleading. 5 (x) That from Annexure-13 of the writ petition it is clear that the petitioners were appointed in the month of November and December of 1987 i.e. much after the cut-off date fixed for the college. So the claim of the petitioners for absorption in the college is against the report of the Honble Agrawal Commission and the judgment of Honble Supreme Court passed in Civil Appeal No. 6098 of 1997. 5 (xi) That in Annexure-III A of the report of the Honble Agrawal Commission for this College the name of the petitioners do not figure. The said Annexure is the list of teachers who were working on the date of conversion arranged subject wise. 5(xii) That it is stated that the Honble Agrawal Commission has submitted its report to the Honble Supreme Court on 19.12.2003. The name of the petitioners do not figure in Annexure-IV A of the report of the Honble Commission related with the college of the petitioner, Annexure-IV is the list of teaching staffs submitted by the Honble Commission eligible to be considered for absorption. 5 (xiii) That from the aforesaid facts it is clear that the Honble High Court has not found the petitioners eligible for being considered for absorption in the College. The report of the Honble Commission has been accepted by the Honble Supreme Court and the objections filed against the report has been rejected. So the petitioners cannot be given any benefit against the report of the Honble Commission and the order of the Honble Supreme Court in Civil Appeal No. 6098 of 1997.

11. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that there is no illegality on the part of the respondents. These writ petitions requires no interference as the issue involved in the instant cases has already been decided by the Honble Agarwal Commission and has been affirmed by the Honble Apex Court. Going through the records of the two writ petitions, I find that main controversy in these writ petition is that what would be the cut-off date for treating the College as a constituent college. Whether it will be the date of agreement executed between the Millat College and the University or the date fixed by the Honble Agarwal Commission and duly accepted by the Honble Apex Court i.e. 30.04.1986 or 30.08.1988, as claimed by the petitioners in the present writ petitions? It transpires from the records that Honble Supreme Court has only given liberty to the University to make necessary

rectification with regard to mistake in the names and descriptions of the employees. It does not give authority to the University to go beyond the report of the Agarwal Commission and take decision contrary to the report of the Honble Commission. It is clear that cut-off date of the college is 30.04.1986. The petitioners have got illegal entry in the college after the cut-off date. The post recommended for creation after the cut-off date cannot be said to be a valid 7 post. The services of the petitioners cannot be absorbed in the service of the College in light of the recommendation of the Honble Commission and the judgment of Honble Supreme Court passed in Civil Appeal No. 6098 of 1997. The services of the petitioners are not fit for being absorbed in the services of the College so they are not entitled for payment from the public exchequer. It can comfortably be inferred that the cut-off date of the college is 30.04.1986 and in no way it can be fixed as 30.08.1988, as claimed by the petitioners. Even Justice S.B. Sinha Commission has rejected the claim regarding cut-off date and has opined that it cannot be interfered as the cut-off date has already been fixed as 30.04.1986 and no interference can be done on the ground of agreement entered into by the College and University. The Honble Agarwal Commission has already fixed the cut-off date as 30.04.1986, which has been affirmed by the Honble Supreme Court and as such, it cannot be changed by the State or by the University and cannot be interfered with.

12. The issue regarding absorption and payment of salaries were taken into consideration by the Honble Apex Court in its judgment rendered in case of State of Bihar Vrs. Bihar Rajya M.S.E.S.K.K. Mahasangh, reported in (2005) 9 SCC129. The Honble Apex Court was very much aware that surreptitious entry into services of erstwhile affiliated colleges in connivance with the members of the Governing Bodies of the said colleges so as to take advantage of conversion of those colleges into constituent college and as such, setting up of Enquiry Commission by Supreme Court and Commission identifying employees entitled to absorption - University to take decision under Section 4(1)(14) of the Bihar State Universities Act, 1976, in the matter of absorption in the constituent colleges on the basis of the report of the said Commission and in the light of the present judgment. The Honble Supreme Court in para 73 of the said judgment has held as under:-

73. In view of this judgment and the directions made herein to the University to take a final decision based on the report of the enquiry commission, all the applications for impleadment as parties and objections filed to the enquiry report are rejected. It is for the University to take a final decision concerning the individual employees. For the same reason, no further orders are required on the Interlocutory applications seeking certain directions pending the appeal and for modification of earlier orders made. Other interlocutory applications also need no further directions or orders. They all stand disposed of. 8 13. In view of the direction of the Honble Apex Court to the University and the respondent-State for taking a decision under Section 4(1)(14) of the Bihar State Universities Act, 1976 in the matter of absorption in the constituent colleges on the basis of the report of the said Commission and in the light of the judgment rendered in the case of State of Bihar Vrs. Bihar Rajya M.S.E.S.K.K. Mahasangh (supra), the State as well as the University are directed to take a decision regarding the cut-off date as 30.04.1986, taking into consideration the aforesaid judgment.

14. As a cumulative effect of the aforesaid rules, guidelines, observations and judicial pronouncements, this Court is of the considered view that no interference is required in the instant writ petitions and as such, both these writ petitions are hereby dismissed. (Dr. S.N. Pathak, J.) kunal/-

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