

Md. Ashfaque Ahmad Vs. State of Bihar and ors.

Md. Ashfaque Ahmad Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/515428

Court : Jharkhand

Decided On : Jan-02-2003

Reported in : [2003(2)JCR12(Jhr)]

Judge : S.J. Mukhopadhyaya, J.

Acts : Service Law

Appeal No. : CWJC No. 7165 of 2000

Appellant : Md. Ashfaque Ahmad

Respondent : State of Bihar and ors.

Advocate for Def. : M.S. Anwar, Sr. Adv. and; N. Honda, Adv.

Advocate for Pet/Ap. : Sarita Gupta, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

S.J. Mukhopadhyaya, J.

1. The petitioner has challenged the Notification No. 19/2000 bearing memo No. SKU/G/R/94/2000 dated 10th June, 2000 whereby the Vice-Chancellor, Siddhu Kanhu University, Dumka ('University' for short) terminated his service and three

others on the ground that they did not possess the requisite qualification at the time of their appointment.

2. The case of petitioner is that he was appointed as lecturer, Political Science in Millat College, Parsa, District Godda against first sanctioned post by governing body's letter dated 5th July, 1997. The Bihar Universities Service Commission, Patna ('Commission' for short) given temporary concurrence vide letter dated 6th February, 1978 whereinafter the then University namely, Bhagalpur University approved his service vide letter dated 30th September, 1978. A Committee constituted by the Hon'ble Chancellor recommended his name for regular appointment vide its decision dated 6th July, 1982 which was challenged by one Md. Jahangir In CWJC No. 283/1983 before the Patna High Court. The Court vide its order dated 17th May, 1990 directed the Vice-Chancellor to dispose of the representation of Md. Jahangir, but no decision has been taken therein.

3. The Millat College Parsa, District Godda and many other colleges were made constituent Colleges under different Universities in the 4th phase by the Government of Bihar vide its resolution dated 13th August, 1986. Thereafter, dispute relating to legality and propriety of appointment of one or other teacher of 4th phase constituent colleges having cropped up the salary was not paid to the teachers. The 'Bihar Raj Mahavidyalay Shikshak Avam Shiksheketar Karamchari Kalyan Mahasangh' had moved before the Patna High Court for payment of salary of teachers of 4th phase constituent colleges. A Division Bench of the Patna High Court vide its judgment reported in 1997 (1) PLJR page 533, Bihar Raj M.S.E.S.K.K. Mahasangh and Anr. v. The State of Bihar, held that the House Committee of legislature cannot and does not have any statutory authority to decide regularity or otherwise the appointment of lecturers. In case of a criminal offence investigation may be made but any such Committee cannot determine the legality and propriety of appointment of lecturers. The Division Bench directed the Universities to take steps for regularization of service of teachers of 4th phase colleges under different Universities as per State Government's decision dated 16th December, 1989 and to maintain status quo till such decision.

4. The matter moved up to Supreme Court which on hearing the parties vide interim order dated 12th October, 2001 constituted one man Committee of Hon'ble Mr. Justice S.C. Agrawal {Rtd. Judge of Hon'ble Supreme Court) to determine the terms of reference, as reported in 2002 (1) PLJR (SC) page 85, State of Bihar v. Bihar Raj M.S.E.S.K.K. Mahasangh.

5. According to University the petitioner and three others do not possess the requisite qualification of higher second class master degree so, therefore, their services have been terminated. On the other hand, according to petitioner as the question of legality and propriety of appointment to be looked into by one man Commission constituted by the Supreme Court it was not desirable for the University to decide the question of legality and propriety of appointment of petitioner to deprive him from scrutiny by One Man Commission.

6. Similar cases of Shyam Sundar Prasad Singh, CWJC No. 2958/2000) and Birendra Pratap (CWJC No. 2964/2000) fell for consideration before this Court. In those cases similar orders of termination passed by Vinoba Bhave University were under challenge. This Court vide (un-reported) judgment dated 16th August, 2002 held that the teachers of 4th phase college should get an opportunity to be considered for scrutiny by One Man Commission of Hon'ble Mr. Justice S.C. Agarwal as per the Supreme Court's order and set aside the orders of termination.

In this background, the cases of Shyam Sundar Prasad Singh, (supra) and Birendra Pratap, (supra) and the present case being similar, the Notification No. 19/2000 dated 10th June, 2000 is set aside. The petitioners stand re-instated with continuity of service subject to the report, as may be submitted by One Man Commission of Hon'ble Mr. Justice S.C. Agrawal and the final decision as may be given by the Supreme Court. The petitioner also be not given salary of the intervening period, till a favourable decision is taken by the Commission of Hon'ble Mr. Justice S.C. Agrawal and the Supreme Court. However, the petitioner shall be entitled for salary, on re-instatement as per interim order of the Supreme Court as reported in 2002 (1) PLJR (SC) 85, if he was in roll on the date of takeover of the College.

The writ petition is allowed with aforesaid observations and directions.

