

Patna High Court - Orders

Nirmalendra Kumar Singh vs Babasaheb Bhimrao Ambedkar Bih on 22 June, 2010

IN THE HIGH COURT OF JUDICATURE AT PATNA

CWJC No.7170 of 1994

NIRMALENDRA KUMAR SINGH, son of Sri Bhupendra Prasad
Singh, resident of Aghoria Bazar Chowk, P.S.
Muzaffarpur Town, District Muzaffarpur

... Petitioner

Versus

1. BABA SAHEB BHIM RAO AMBEDKAR, Bihar University,
Muzaffarpur through its Registrar
2. Vice Chancellor, Babasahab Bhimrao Ambedkar Bihar
University, Muzaffarpur
3. Finance Officer, B.B.A.Bihar University,
Muzaffarpur ... Respondents.

with

CWJC No.762 of 1995

NIRMALENDRA KUMAR SINGH, son of Sri Bhupendra Prasad
Singh, resident of Aghoria Bazar Chowk, P.S.
Muzaffarpur Town, District Muzaffarpur

... Petitioner

Versus

1. The Chancellor, BABA SAHEB BHIM RAO AMBEDKAR,
Bihar University, Raj Bhawan, Patna
2. The Vice Chancellor, Babasahab Bhimrao Ambedkar
Bihar University, Muzaffarpur
3. Baba Saheb Bhimrao Ambedkar Bihar University,
Muzaffarpur, through its Registrar
4. Principal, Rameshwar Mahavidyalay, P.O., P.S. and
District Muzaffarpur
5. Sri Jibaneshwar Prasad Singh, son of Sri Binod
Prasad Singh, resident of village Jarang Dudhi,
P.S. Gayaghat, District Muzaffarpur claims to be
working as Lecturer in the Department of Botany,
Rameshwar Mahavidyalay, Muzaffarpur

... Respondents.

with

CWJC No.3659 of 1995

NIRMALENDRA KUMAR SINGH, son of Sri Bhupendra Prasad
Singh, at present resident of Mohalla Gumipur, P.S.
Muzaffarpur Town, District Muzaffarpur

... Petitioner

Versus

1. BABA SAHEB BHIM RAI AMBEDKAR, Bihar University,
Muzaffarpur through its Registrar
2. The Vice Chancellor, Babasahab Bhimrao Ambedkar
Bihar University, Muzaffarpur
3. The Registrar, Babasaheb Bhimrao Ambedkar Bihar
University, Muzaffarpur
4. The Finance Officer, Babasaheb Bhimrao Ambedkar
Bihar University, Muzaffarpur
5. The Principal, Rameshwar Singh College,
Muzaffarpur ... Respondents.

For the petitioner : Mr. S.N.Jha, Sr.Adv., Mr. A.K.Upadhya, Adv. & Mr. Ashim Jha, Adv.

For the State : Mr. S.B.Kumar, S.C.16 For respondent no.5: Mr. Ashok Kumar Singh, Sr.Adv.

Mr. Vinay Kirti Singh, Adv.

For the University : Mr. Ajay Behari Sinha, Adv.

18. 22.6.2010 The petitioner, common in all these three cases, has sought a direction for payment of salary in two of them, namely, C.W.J.C.No. 7170/1994 and C.W.J.C.No. 3659/1995, whereas in C.W.J.C.No. 762/1995 he seeks to challenge the order of absorption of respondent no.5 on the ground that such absorption would mean automatic termination of the service of the petitioner, inasmuch as the post of Lecturer in Rameshwar Singh College, Muzaffarpur is being claimed both by the petitioner and respondent no.5.

It is also not in doubt that the said College in question was an affiliated College and was taken over by the University in the year 1981 pursuant to a decision of the State Government to take over 103 Colleges (3rd phase of takeover). The condition of takeover was already formulated by the State Government and the University could have taken over service of teaching and non-teaching employees only as per the conditions imposed by the State Government in its decision with regard to takeover of 103 Colleges.

In this case there is an appointment letter issued in favour of the petitioner by the Principal of the College which is not backed by any advertisement. Counsel for the petitioner, however, has stated that there was an advertisement prior to the order of appointment issued by the Principal of the affiliated College.

On the other hand, respondent no.5 in his counter affidavit in C.W.J.C.No. 762/1995 has categorically asserted that an advertisement in newspaper was published only in the month of March, 2000 and therefore, the claim of the petitioner of being appointed on the basis of advertisement has been seriously questioned. In any event when the petitioner's appointment is said to be made in the month of January, 1980 by the Principal of the College and there is a recommendation of the College Service Commission on 13.9.1980 as with regard to only a leave reserved post, the records will have to show that the college/the commission had infact advertised the said leave reserve post on the basis of which the Commission would have given its approval as is sought to be conveyed by the document in question filed by the petitioner showing temporary recommendation of the College Service Commission for a period of one year or till the availability of the sanctioned post on which the petitioner's approval/ concurrence was sought to be given by the Commission.

Counsel for the petitioner, however has submitted that this Court is not required to go into all these questions because there is an order of suspension issued by the University which was ultimately withdrawn by the University and that by itself will at least go to show that after the College had become a constituent unit of the University the service of the petitioner had been taken over and he could continue at least till the date of consideration of his case for absorption by the University which infact had rejected his case for being absorbed on the post and on which respondent no.5 has been ultimately absorbed by the University In the opinion of this Court even in an affiliated College the appointment of Lecturer was well regulated by the provisions of the Act and the Statutes whether under 1960 Act or under 1976 Act. Such regulation never provided for appointment by the Principal of the College.

The next issue, therefore, would be when the Commission also has given concurrence on a post of leave vacancy to the petitioner and that too for a limited period of one year, it would be difficult to understand that the service of the petitioner could be ever taken over in terms of section 4(14) of the Act read with the condition imposed by the State Government in the order taking over 103 Colleges in the year 1980.

Unfortunately there is a complete silence on the part of the University to give any details on these aspects and in fact there is counter affidavit on behalf of the University explaining these aspects.

This Court in fact would also find it difficult to decide the question as to whether the mark-sheet submitted by the petitioner of his qualifying Master of Science Examination was forged or otherwise, inasmuch as the University while allowing absorption of respondent no.5 through its Absorption Committee had found the mark-sheet submitted by the petitioner to be forged. Counsel for the petitioner, however, would submit that on an earlier occasion the Absorption Committee of the University had found some other ground and had advised the petitioner to seek absorption under different Statutes. The whole question in fact would be whether the petitioner was qualified under any of the Statutes framed by the Chancellor for being absorbed as a teacher of the College. This aspect again involving question of facts can be gone into in a graphic manner by the author of the Statutes himself, namely, Chancellor of the University.

The scope of enquiry to be
undertaken by the Chancellor of course

unlimited u/s 9(4) of the Act being quite vast, it will be also open for the Chancellor to go into the legality of appointment of the petitioner and respondent no.5 so as to confer him the benefit of being absorbed in the College.

In that view of the matter, this Court would deem it expedient that the matter is decided by the Hon'ble Chancellor who in exercise of his power u/s 9(4) of the Act will examine as to whether the appointment of the petitioner and absorption in the College was permissible so as to allow him to question the order of absorption passed in favour of respondent no.5. Since everything will depend on the outcome of the legality of appointment/ absorption of the petitioner, the validity of

absorption order of respondent no.5 will only be gone into after it is held that the appointment of the petitioner was valid.

Since these writ petitions have remained pending for a very long period from 1994 onwards, this Court would only hope that the Chancellor would find time to dispose of the matter as early as possible preferably within a period of six months from the date of receipt/production of copy of this order.

With the aforementioned observation and direction, these writ applications are disposed of.

(Mihir Kumar Jha,J.) Surendra/