

PATNA UNIVERSITY AND ANR.

v.

DR. (MRS.) AMITA TIWARI

AUGUST 27, 1997

[SUJATA V. MANOHAR AND M. JAGANNADHA RAO, JJ.]

Service Law :

Bihar State Universities Act, 1976 :

Sections 9(7)(ii) and 74.

Regularisation—Ad hoc appointment as Lecturer—Not possessing qualification for regular appointment provided under the relevant Act—Order of Chancellor to regularise the services on compassionate grounds—Held, cannot be sustained.

Power of the Chancellor to issue directions under Section 9(7)(ii) of the Act to the Universities in "administrative and academic interest"—Order passed by the Chancellor directing the University to regularise the services of the Respondent on compassionate grounds" (in view of respondent's resigning her previous job to join the ad hoc engagement)—Held, not protected by Section 9(7)(ii) of the Act—Further held, such order was also not protected by Section 74 which permitted the Chancellor to issue an order "for removal of difficulties" because exercise of power under Section 74 has to be consistent with the Act and the Statutes of the University.

The Respondent, who held degrees of B.Sc. (Home Science) and M.A. in Sociology, was working as lecturer in college X of the appellant-University, in the Home Science department. She applied to college Y for appointment as lecturer in Home Science and was appointed as such on *ad hoc* basis. At the relevant time the statute provided the qualification for appointment as lecturer P.G. Degree in Home Science or in an "allied subject". The respondent did possess P.G. degree in an "allied subject", viz. Sociology. Subsequently the statute passed by the University prescribed post graduate qualification in Home Science. The respondent did not possess the requisite qualification as prescribed by the statute. A Committee headed by Vice Chancellor and other top officials opined that the

- A respondent fulfilled the qualification laid down by the UGC and the State Government. The Chancellor under Section 9(7)(ii) of the Bihar State Universities Act passed orders for her regularising services on compassionate grounds viz. she had resigned from the earlier college as lecturer to join the instant service. However her services were not regularised.
- B Thereafter, the respondent filed a writ petition for implementation of the orders of the Chancellor for regularisation and it was allowed by the High Court. Hence this appeal by the University.

Allowing the appeal, the Court

- C HELD : 1. The case of the respondent cannot be brought within sub-clause 7(ii) of section 9 of the Bihar State Universities Act. The orders in question are not passed in administrative exigencies or in academic interest. The order of the Chancellor directed that the respondent's services are to be regularised purely on "compassionate grounds" (as she was
- D working as lecturer in a different college of the appellant-University before joining the instant job of lecturer). In fact, in the same Section 9, sub-clause (4) says that the Chancellor may annul any proceedings or order of the University which is not in conformity with the Act, the Statutes, Ordinances, or Regulations. In that setting, it is not possible to hold that
- E sub-clause 7(ii) of Section 9 would permit the Chancellor to pass an order "in the administrative or academic interest" if the order is to be in conflict with the Act or Statute. No provision has been brought to the notice of this Court which permits the Chancellor to direct regularisation of the services of a lecturer on "compassionate grounds". In the present case the respondent was appointed on *ad hoc* basis till regular appointments were to be
- F made and regular appointments required a qualification which the respondent did not possess and further, regular appointment could not be made except by consulting the relevant Service Commission. [578-E-H]

- G 2. Section 74 of the Act deals with a situation before the constitution of the authorities of the Universities and apart from the limited scope of its application, consultation with the Vice Chancellor was also necessary. The present case does not fall within the limited scope of section 74 nor is there any finding that the Chancellor was feeling it necessary to pass such an order under Section 74. In any event, orders under Section 74 must be
- H consistent with the provisions of the Act and statutes, as is expressly

provided in that section. Hence Section 74 is of no avail to the respondent. **A**
The High Court was therefore not correct in directing the enforcement of
the said orders. [578-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 259 of
1993. **B**

From the Judgment and Order dated 24.4.92 of the Patna High Court
in C.W.J.C. No. 6824 of 1991.

Amarendra Sharan for the Appellant.

A.K. Thakur, Anil K. Chopra and Ram Ekbal Roy for the **C**
Respondent.

B.B. Singh for Intervenor.

The Judgment of the Court was delivered by **D**

M. JAGANNADHA RAO, J. This Civil Appeal has been preferred by
the Patna University and the Vice-Chancellor of the said University against
the judgment of the Patna High Court dated 24.4.1992 in CWJC No. 6824
of 1991 allowing Writ Petition filed by the respondent and directing
implementation of two orders of the Chancellor of the University. The first **E**
order dated 18.9.1990 of the Chancellor directed the Patna University to
regularise the services of the respondent Writ Petitioner "on compassionate
grounds" while the second dated 22.6.1991 directed implementation of the
direction contained in the earlier letter of the Chancellor dated 18.9.1990.

The facts of the case are as follows : **F**

The respondent holds a degree of B.Sc. (Home Science) with
specialisation in Foods and Nutrition from the University of Udaipur and
also an M.A. in Sociology from Patna University. (Later she also obtained **G**
a Ph.D from the same University). In 1981, Patna Women's College opened
the Department of Home Science. Initially, the respondent was working in
Siddharth Mahila College. As per the statutes of the University in force at
that time, the qualification for appointment as Lecturer was P.G. degree
in Home Science or in an "allied subject". Respondent resigned her job and
applied to the Patna Women's College as she had a P.G. degree in an **H**

- A "allied subject", viz, Sociology. The respondent was appointed on 1.10.1982 on an *"ad-hoc"* basis to take up the P.G. Home Science Classes and the Principal by letter No. 5/1983 dated 13.1.1983 requested the Vice-Chancellor to permit the respondent to *"engage"* P.G. Classes on an *ad hoc* basis and be paid per lecture. The Vice- Chancellor, by letter No. 47 dated 25.1.1983
- B gave approval and on that basis, the Education Department of the Govt. of Bihar wrote to the Patna University on 24.2.1983 that Governor has accorded sanction for *two posts of lecturers on ad hoc and purely temporary basis* and for paying an honorarium of Rs. 25 per lecture subject to a maximum of Rs. 1250 p.m. The letter also stated :
- C *"Please take necessary steps for regular appointment against these posts immediately because the aforesaid arrangement has been approved only on purely temporary basis."*

- On 26.2.1983, the University informed the Principal of the Patna Women's College that the respondent was *"allowed for engaging P.G. classes"* on Rs. 25 per lecture subject to maximum of Rs. 1250. It was also stated :
- D

"This is purely on ad hoc arrangement till a regular appointment is made in accordance with the provisions of law."

- E It is not in dispute that therefore, statutes passed by the University in 1983 (see para 9 of the Counter filed in the High Court) prescribed post graduate qualification in Home Science (at least II class) as the requisite qualification for appointment as lecturer in Home Science. Unfortunately,
- F the respondent did not possess a post-graduate degree in Home Science. Possession of the Post Graduate degree in Sociology, as an 'allied subject' did not suffice.

- It appears that the respondent represented for regularisation and her case was referred to the Chancellor through the letter dated 10.12.1986 of the Registrar, Patna University. But the Chancellor stated he would *"not interfere"* in the matter. This was conveyed by the Governor to the Registrar by letter PU-53/96 dated 20.12.1996 with copy to the respondent.
- G

- Meanwhile, the respondent filed CWJC 5664/1986 and the same was
- H disposed of on 28.2.1987 by a Division Bench of the High Court stating that

the respondent could avail of alternative remedies available to her. A

After the communication of the rejection of the representation of the respondent by the Chancellor as communicated by the Govt. through letter dated 20.12.1986, the respondent filed a fresh Writ Petition CWJC 758/1987 for regularisation and the same was dismissed on 2/10.3.1987 by a Division Bench, stating as follows : B

"Heard, learned counsel for the writ petitioner as well as the learned Advocate General. This Writ application is dismissed in limine." C

The matter was again pursued by the respondent. The Principal of the College wrote a long letter to the Vice-Chancellor on 29.4.1988 stating that the respondent was working continuously from 1.10.1982 taking classes for the P.G. students on posts sanctioned on 24.2.1982, that a Committee consisting of Dr. S.P. Singh, Pro Vice-Chancellor, the Registrar the Development Officer and the Principal as well as Head of the Departments of Home Science opined that the respondent "fulfilled the statutory qualifications laid down by the UGC and the State Government", for appointment as a lecturer; and that she had earlier resigned from the Siddharth Mahila College and joined in this College in 1982. It was stated that the essential qualifications for appointment as a Lecturer were changed "in 1985" and that the Chancellor may be requested by the Government to give his concurrence for her appointment "as per old statutes prevalent at the time of her appointment". D E

It appears also that by a further letter dated 16.6.1988, the University again recommended her case to the Chancellor. On 18.9.1990, the Secretary to the Chancellor communicated the order favourably issued by the Chancellor in favour of the respondent. The said order reads : F

"It is a fit case where the services of Mrs. Tiwari should be regularised on *compassionate grounds* - order may accordingly be issued." G

On 4.9.1991, the University requested the Chancellor to let them know "as to under which statute the services of the petitioner could be regularised." (vide para 11 of the counter affidavit in the High Court). The H

A Chancellor however, informed by letter dated 22.6.1991 that the regularisation may be made as suggested in the University's letter dated 16.6.1988. Thereafter, it appears that the University requested the Chancellor to review his earlier orders.

B When the question of regularisation was at that stage, the respondent filled the present writ petition for implementation of the letters of the Chancellor dated 18.9.1990 and 22.6.1991 and sought a direction for regularisation. A Division Bench of the High Court allowed the writ petition by judgment dated 24.4.1992 and directed regularisation as per the orders of the Chancellor. Against the said judgment, the University and C the Vice-Chancellor have preferred this appeal.

We have heard the submissions of the learned counsel for the University and also of the Government of Bihar. We have also heard the submissions of the learned counsel for the respondent writ petitioner.

D The point for consideration is : whether the respondent's services as Lecturer in Home Science could be directed to be regularised on the basis of the letters of the Chancellor dated 18.9.1990 and 22.6.1991 and whether the Chancellor's directions could be brought within the provisions of the Bihar State Universities Act 1976 or other statutes of the Patna University?

E It is true that when the respondent was "engaged" on an "*ad hoc*" basis to take up the post-graduate classes in Home Science, the respondent perhaps satisfied the requirement of the 'statute' in force at that time inasmuch as she was an M.A. in Sociology apart from having a Bachelor's degree in Home Science. It is also true that the respondent resigned her F job in the Siddharth College and joined the Patna Women's College on the basis of the statutes then in force. But the fact remains that the approval granted by the University on 24.2.1983 was for *ad hoc* appointment only and the orders of the Registrar dated 26.2.1983 also described her appointment as purely "*ad hoc*" till regular appointments were to be made.

G It may however be noticed that as per the requirement of the relevant provision of the Bihar State Universities Act, 1976 namely, Section 56 read with the statutes, the post had to be filled by and upon recommendation of the Bihar Public Services Commission. Later, Commission for constituent colleges was separately established. Inasmuch as the respondent H was not recruited by following the said procedure, it was not possible to

give her a regular appointment to the post of Lecturer. In addition, the statutes of the University which were passed after 1981, provided that the essential qualification would be P.G. degree in the subject concerned, i.e. Home Science. The respondent was not having a P.G. degree in Home Science. A

No doubt a statute was made on 16.11.1978 for regularisation of certain teachers appointed before 1977 and another statute was issued [letter No. G 240 G.S. (1)] on 18.11.1980 for regularisation of teachers who had completed 24 months by 31.2.1980 and para 8 of that statute clarified that those purely appointed on temporary basis and who were on their posts on 19.11.1977 could be regularised. But the respondent did not come under this category because her appointment was on 1.10.1982. Nor can she come within the scope of a latter statute dated 29.1.1986 (B.S.U.-25/85-283-G.S.(1), which permitted regularisation of those appointed on a temporary basis on or before 28.2.1982 and who possessed at least a second class Master's Degree in the subject. These statutes did not take within their sweep, a person like the respondent who was appointed on 1.10.1982. B C D

Learned counsel for the respondent submitted that the Chancellor's orders could be brought within S. 74 of the Bihar State Universities Act, 1976 which provides for 'Removal of difficulties'. That section reads as follows : E

"S.74 - Removal of difficulties by the Chancellor at the commencement of this Act : If any difficulty arises in respect of establishment of the University, or in the first implementation of the provisions of this Act or Statutes or otherwise the Chancellor may, cut any time, before the Constitution of all the authorities of the universities, by order consistent with the provision of this Act and Statutes, as far as possible, make any appointment or perform any other function, which seems necessary or proper for him for the removal of the said difficulty; and all such orders shall take effect in the same manner as by the said appointment or function has been done in the manner provided in the Act." F G

Provided that before issuing such an order, the Chancellor shall elicit the opinion of the Vice-Chancellor and of such appropriate authority of the University, as may have been constituted, on the proposed order and give considerations thereon." H

A We are unable to see how S. 74 can help. The said Provision deals with a situation before the constitution of the authorities of the Universities and apart from the limited scope of its application, consultation with the Vice-Chancellor was also necessary. The present case does not fall within the limited scope of S. 74 nor is there any finding that the Chancellor was feeling it necessary to pass such an order under S. 74. In any event, orders under S. 74 must be consistent with the provisions of the Act and statutes, as is expressly provided in that section. Hence S. 74 is of no avail.

B Reliance is also placed for the respondent on sub-clauses 7(ii) of S. 9 of the Bihar Universities Act, 1976. That provision reads as follows :

C "S. 9(i) the Chancellor : The Governor of Bihar shall be the Chancellor..... 7(i)..... 7(ii) The Chancellor shall have the power for issue directions to the Universities in the administrative or academic interest of the Universities which he considers to be necessary. The directions issued by Chancellor shall be implemented by the Vice-Chancellor, Syndicate, senate and other bodies of the University as the case may be.

D We are of the view that the case of the respondent cannot be brought within sub-clause 7(ii) of S.9 of the Act either. The orders in question are not passed in administrative exigencies or in academic interest. The orders of the Chancellor dated 18.9.1990 and 22.6.1991 directed that the respondent's services are to be regularised purely on 'compassionate grounds'. In fact, in the same section 9, sub-clause (4) says that the Chancellor may annul any proceeding or order of the University which is not in conformity with the Act, the statutes, Ordinances or Regulations. In that setting, it is not possible to hold that sub-clause 7(ii) of Section 9 would permit the Chancellor to pass an order "in the administrative or academic interest" if the order is to be in conflict with the Act or Statutes. No provision has been brought to our notice which permits the Chancellor to direct regularisation of the services of a Lecturer on 'compassionate grounds'. In the present case the respondent was appointed on *ad hoc* basis till regular appointments were to be made and regular appointments required a qualification which the respondent did not possess and further, regular appointment could not be made except by consulting the relevant Services Commission.

The result is no doubt unfortunate but we are unable to find any provision to sustain the orders of the Chancellor dated 18.9.1990 and 22.6.1991. The High Court was, therefore, not correct in directing the enforcement of these orders. We accordingly allow the appeal, set aside the judgment of the High Court and dismiss the writ petition. Orders passed by the University consequent to the judgment of the High Court are also set aside. There shall be no order as to costs.

R.K.S.

Appeal allowed.