

CASE NO.:
Appeal (civil) 2096-97 of 2000

PETITIONER:
STATE OF BIHAR

Vs.

RESPONDENT:
S.A. HASSAN AND ANR.

DATE OF JUDGMENT: 05/03/2002

BENCH:
S.N. Phukan & P. Venkatarama Reddi

JUDGMENT:

Phukan, J.

These two appeals by special leave arise from the judgment dated 05-02-1999 of the Patna High Court, Ranchi Bench. Briefly stated facts are as follows:-

The MGM Medical College used to be run by a private registered society. The respondents in these two appeals were employees of the College. By Bihar Private Medical Colleges (Taking Over) Act, 1977 (for short 'the Act'), the State Government by issuing a notification under sub-section (1) of Section 3 of the Act took over the management of the college on 22nd of January, 1979. In terms of the provisions of the Act both the respondents continued as employees of the college on an ad hoc basis and, thereafter, their services were regularised in terms of Section 6 of the Act. They retired from the service on attaining the age of superannuation and their pension and pensionary benefits were granted counting the period of service from the date of taking over of the college till the date of retirement. Both the respondents filed two separate writ petitions before the High Court claiming that they are entitled to get the benefit for the period of service from the initial appointment in the college under the private management till their date of retirement. Both the petitions were heard together and by the impugned judgment, writ petitions were allowed and the benefits were directed to be given by the State Government. Hence, the State is in appeal before this Court.

From the impugned judgment we find that the matter came up before a learned Single Judge of the High Court who after noticing two conflicting decisions on the subject directed the matter to be placed before the Full Bench after obtaining the order of the Hon'ble Chief Justice. In the impugned judgment, the Division Bench was of the opinion that it was not a fit case that may be referred to a Full Bench as the point involved was no longer res integra 'inasmuch as the question has already been decided in several cases by the Division Bench of this Court'. Reference was made by the Division Bench to some earlier judgments of the court. Accordingly, by the impugned judgment, relief as prayed for was granted by allowing both the writ petitions.

Mr. Ashok Mathur, learned counsel for the State of Bihar has drawn our attention to some other decisions of the High Court wherein a contrary view was expressed. Therefore, Mr. Mathur has submitted that these conflicting views have to be resolved by this Court so that similar disputes which may come up in

future may be decided in terms of law laid down by this Court. The learned counsel has fairly stated that in case the impugned judgment is set aside, State will not ask for refund of any pension or pensionary benefits granted to the employees of the college. In regard to the present appeals, the learned counsel has stated that as there was no stay order by this Court of the impugned judgement, the benefits to both the respondents ought to have been granted and if not granted it will be so done by the State Government and the result of these appeals would not affect their cases.

We have perused some of the judgments of the High Court, copies of which are on record and we find that High Court has not assigned any reason for counting or refusing to count the period of service for the purpose of pensionary benefit while the employees were serving in the college before it was taken over. In fact no reference was made by the High Court to the provisions of the Act, more particularly Section 6. Therefore, we have to examine the present dispute with reference to the relevant provisions of the Act.

Section 6 of the Act deals with the determination of terms of teaching staff and other employees of the medical colleges taken over by the State Government and as the present controversy has turned almost entirely upon the meaning and effect of the provisions of this section, it will be convenient to extract the said section.

"6. Determination of terms of the teaching staff and other employees of college.-

1. As from the date of the notified order, all the staff employed in the college shall cease to be the employees of the College body.

Provided that they shall continue to serve the College on an ad hoc basis till a decision under sub-section (3) and (4) is taken by the State Government.

2. The State Government will set up one or more Committees of experts and knowledgeable persons which will examine the bio-data of each member of the teaching staff and ascertain whether appointment, promotion or confirmation was made in accordance with the University Regulations and in keeping with the guidelines laid down by the Medical Council of India and take into consideration all other relevant materials including length of service in the college, and submit its report to the State Government.

3. The State Government on receipt of the report of the Committee or Committees, as the case may be, will decide in respect of each member of teaching staff on the merits of each case, whether to absorb him in Government service or whether to terminate his service or to allow him to continue on an ad hoc basis for a fixed term or on contract and shall, where necessary, redetermine the rank, pay, allowance and other conditions of service.

4. The State Government shall similarly determine the term of appointment and other conditions of service of other categories of staff of the college on the basis of facts to be ascertained either by a Committee or by an officer entrusted with the task and the provisions of sub-section (2) and (3) shall apply mutatis mutandi to such case."

Sub-section (1) of Section 6 of the Act provides in clear and explicit terms that from the date of the notification issued under sub-section (1) all

members of the staff employed in the college shall cease to be employees of the college body. The effect of this provision is that the respondents ceased to be employees of the erstwhile management of the college. At the same time, the proviso to the said sub-section (1) declares that the staff employed in the college shall continue to serve in the college on an ad hoc basis till a decision under sub-sections (3) and (4) is taken by the State Government. Therefore, both the respondents continued to serve the college on an ad hoc basis and as a result, whatever the contract of employment which the employees had with the erstwhile Management, came to an end. Thus, from the date of taking over the college, the respondents ceased to be employees of the erstwhile management and they became employees of the State Government on an ad hoc basis. This ad hoc appointment was subsequently regularised and, therefore, they became permanent employees of the State Government. As on the date of taking over the college, the terms of appointment between the erstwhile management and the respondents ceased to exist and they became employees of the State Government on an ad hoc basis, they cannot claim any benefit for the service rendered by them in the college while it was under private management, there being no specific provision to count the previous service to any extent.

Mr. Raju Ramchandran, learned senior counsel appearing for the respondents has submitted that the private management was liable to pay service benefits to the respondents such as pension etc. and as the college was taken over by the State Government, this liability has passed on to the State Government. In this connection learned senior counsel has drawn our attention to sub-section (3) of Section 3 of the Act. The said sub-section reads as follows:- "3.(3) All the liabilities and obligations of the College under any agreement or contract entered into bonafide before the date of taking over shall devolve and shall be deemed to have devolved on the State Government."

Sub-section (1) of Section 3 of the Act provides for the taking over of a private medical colleges by issuing a notification and according to sub-section (2) of the said section whatever assets and properties the college had, these would vest in the State Government and sub-section (3) provides for devolution of all the liabilities and obligations of the College on the State Government. This sub-section (3) would operate where the assets of the college were taken over by the State Government in terms of sub-section(1). According to the learned senior counsel for the respondents, these liabilities would also include pension and other pensionary liabilities of the respondents while they were employees of the college before it was taken over. But there is no material on record to show that the erstwhile Management was liable for any pension or pensionary liabilities in relation to its employees. Moreover, Section 6 which deals specifically with the subject of determination of terms and conditions of the teaching staff and other employees of the college, but it does not mention anything about giving weightage of past service for any purpose. There is also no order of State Government in this regard in terms of sub-section (3) of Section 6. We, therefore, do not find any force in the contention of Mr. Raju Ramchandran, learned senior counsel for the respondents.

Learned senior counsel for the respondents has submitted that the High Court by various decisions has settled the position that the employees are entitled to get their pension and other retiral benefits after counting their past service in the College prior to its taking over by the Government and therefore on the principle of stare decisis this court may not reinterpret the Act and upset the settled position. This contention has no force inasmuch as from the judgments made available to us and the judgment of the learned Single Judge we find that there are conflicting decisions of the High Court as stated earlier and, therefore, the present appeal has been filed.

Learned senior counsel for respondents has submitted that as the Act is completely silent on the question of counting the previous service towards pension and in the absence of any specific provision, there is a legitimate expectation of respondents to get their pension and other retiral benefits after counting the past period of service in the college. There is neither factual nor legal basis for such principle. The legislature in explicit and unambiguous terms

has laid down in Section 6 of the Act that after taking over of the college the employees shall cease to be employees of the erstwhile management and they shall continue as ad hoc employees of the Government till such time as they are absorbed in accordance with the procedure laid down in the Act. Therefore, this contention has no force.

Learned counsel for the appellant has drawn our attention to the Bihar Pension Rules more particularly Rule 58 and has submitted that a government employee can claim pension only if he qualifies the conditions laid down in the rule. We may extract below the relevant portions of Rule 58 of the said Rules:-

"58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-

First The service must be under Government.

Second The employment must be substantive and permanent.

Third The service must be paid by Government.

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Rule 58 is clear that a Government servant does not qualify for pension unless he conforms to three conditions viz. (1) his service must be under Government, (2) the employment must be substantive and permanent, and (3) service must be paid by the Government. In view of this Rule the respondents cannot claim the period of their service before the college was taken over as they were neither under the employment of the Government nor their salaries were paid by the Government. Under the specific Rule 58 the past service rendered by the respondents in the college while it was under the private management cannot be counted.

We are, therefore, of the opinion that the respondents are not entitled to claim the benefit of the period of their service while they were under the employment of the erstwhile management for the purpose of calculation of their pension and pensionary liabilities. Consequently, we hold that the findings of the High Court are not sustainable in law. Accordingly, appeals are allowed by setting aside the impugned judgment. The judgment rendered by us will come into effect prospectively i.e. apply to the cases of employees who retire on superannuation after the date of this judgment. The State Government shall not be entitled to claim refund of any pension or pensionary benefits already granted to any employees and also to the respondents. We are giving this direction especially for the reason that the State Government allowed a number of judgments in adverse to it to become final and there was consequent uncertainty in legal position.

Appeals are allowed by setting aside the judgment. Parties to bear their own cost.

J.
[S.N. Phukan]

J.
[P. Venkatarama Reddi]

March 05, 2002