

CASE NO.:
Appeal (civil) 1601-1602 of 2004

PETITIONER:
Veer Kunwar Singh University Ad hoc Teachers Association & Others

RESPONDENT:
The Bihar State University (C.C.) Service Commission & Others

DATE OF JUDGMENT: 18/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

S.B. SINHA, J. :

1. These appeals are directed against a judgment and order dated 02.02.2000 passed by a Division Bench of the Patna High Court disposing of the writ applications filed by the appellants herein on consent as also an order dated 23.11.2000 passed by another Bench of the said Court refusing to review the said order.
2. Appellant No. 1 is an Association of ad hoc teachers appointed in various colleges affiliated to Veer Kunwar Singh University.
3. The affairs of all the Universities situated in the State of Bihar including that of Appellant No.1-University admittedly are governed by the provisions of the Bihar State University Act, 1976.
4. Ad hoc appointments indisputably were made by various Universities in the State of Bihar. Ad hoc teachers of Ranchi University had filed writ applications for regularization of their services, which were dismissed by the Patna High Court by a judgment and order dated 22.05.1989. A special leave petition was filed thereagainst, which was marked as Special Leave Petition (Civil) No. 11078 of 1989. A writ petition was also filed before this Court, which was marked as Writ Petition No. 65 of 1989 inter alia, for a direction to the University to take steps to sanction posts against which ad hoc teachers were working for regularization of their services. An order of status quo was granted.
5. The writ petition as also the special leave petition were taken up for hearing by this Court together. By a judgment and order dated 06.12.1989, the said writ petition and special leave petition were disposed of. We would refer to the purport of the order of this Court, a little later.
6. However, we may notice that allegedly during the pendency of the said matter before this Court Magadh University which was the predecessor of Appellant No.1-University had sent its proposal for creation of 1467 additional posts of lecturers to the Government, which included 426 additional posts which were required for Appellant No.1-University, which was a part of Magadh University at the relevant time. State of Bihar and the University, however, have a different story to tell.
7. This Court by reason of the said judgment dated 06.12.1989, inter alia, noticed the unsatisfactory situation created by repeated appointments of ad hoc teachers. This Court deprecated the common practice purported to be existing in some of the colleges of Bihar to appoint ad hoc teachers at the instance of/or without reference to the Vice Chancellor and even without any sanction therefor. It was held that appointments of ad hoc teacher like employees were neither good for Universities nor for students.

8. We may notice that the petitioners therein, inter alia, contended that adequate number of posts should be sanctioned so as to conform to the ratio of teachers and students. This Court in its judgment directed :

"(i) The University Service Commission shall advertise the posts available for direct recruitment within four months.

(ii) The Government shall consider the workload in each University and sanction such additional posts that may be required, within the said period. Such additional posts shall also be filled regularly either by direct recruitment or by promotion as per rules and not by ad hoc appointment.

(iii) The University/Government shall relax the maximum age prescribed for direct recruitment of teachers to the extent of service rendered by persons as ad hoc teachers.

(iv) All the ad hoc teachers in service on February 10, 1989 against sanctioned posts shall continue till selection is made by the University Service Commission and they shall be paid in terms agreed for the period in which they actually worked.

(v) Other ad hoc teachers who have worked till that day must also be paid.

(vi) The payment shall be made within one month."

9. It is not in dispute that on an allegation that the said order had not been complied with, a contempt petition was also filed before this Court. As would be noticed hereinafter, this Court discharged the rule issued against the contemnor.

10. Appellant No.1-University was created in the year 1992. On or about 23.11.1993, an advertisement was issued by the Bihar State University (Constituent Colleges) Service Commission for appointment of teachers in different Universities. Allegedly, at that point of time, additional posts were not sanctioned. It is furthermore not in dispute that ad hoc teachers made a representation before the Chancellor for regularization of their services. The University Service Commission had also issued a corrigendum in the said advertisement asking the candidates to appear in the Bihar Eligibility Test (BET) for appointment of teachers in different Universities/Constituent Colleges.

11. A writ petition was filed before the Patna High Court by the Federation of the University Ad hoc Teachers Associations of Bihar, which was marked as CWJC No. 4001 of 1995. One Dr. Umesh Prasad Singh also filed a writ petition, which was marked as CWJC No. 4138 of 1993. A Division Bench of the Patna High Court took notice of the said judgment of this Court and furthermore noticed that all ad hoc teachers were allowed the benefit of continuation till final selection was made by the University Service Commission irrespective of the fact as to whether they were appointed against the sanctioned posts or not. It also noticed that unfortunately the time frame prescribed by the Supreme Court had not been adhered to. It was noticed that having regard to an ordinance that was issued in the year 1993 followed by Act 17 of 1993 as also amendment thereto in the year 1995 by way of an ordinance followed by Act 12 of 1995 prescribing additional eligibility conditions such as passing Bihar Eligibility Test or the National Eligibility Test, and in the alternative, holding of Ph. D or M. Phil Degree had been laid down for recruitment to the said posts. It was in the aforementioned premise that another advertisement was issued by

different Universities and about 1374 candidates were ultimately selected for appointment and in fact were appointed.

12. Before the High Court, contention of the appellants, inter alia, was that as thousands of posts were still lying vacant which were to be filled up within the time frame set by this Court, which if had been adhered to in letter and true spirit, the appellants would have been found eligible therefor. According to the learned Judges the controversies raised before it did not give rise to any serious dispute in law, rather involved a careful balancing of equities, with a view to give effect to the judgment and order of the Supreme Court.

13. In that situation when the learned counsel for the petitioners therein as also the learned Advocate General agreed to a consent order, the same was accepted by the High Court finding it to be fair and equitable. One of the terms of the consent order is as under :

(ii) The vacant posts shall be identified by a committee consisting of the Vice-Chancellors of the various Universities concerned with Hon'ble Mr. Justice S. Sarwar Ali (retired) as its Chairman and the Secretary, Higher Education as its Member Secretary. Within a period of four months from today, the vacant posts as on the relevant date i.e. 30th May, 1990 shall be identified by this committee. The finding of the committee on this question shall be final and shall not be challenged by any one in any proceeding."

14. Appellants were not satisfied therewith. They filed an application for review which by reason of an order dated 23.11.2000 has been dismissed.

15. Appellants are, thus, before us.

16. Various interlocutory applications by different persons have also been filed, but it is not necessary to deal therewith separately.

17. Mr. P.S. Misra, learned Senior Counsel appearing on behalf of the appellants, inter alia, would submit that the High Court committed a manifest error in passing the impugned judgment and order dated 02.02.2000 and refusing to review its order, insofar as by reason of the consent order, it neither could have modified the terms of the order passed by this Court, nor could it in contravention of the provisions of the Bihar State University Act as also the statutes framed thereunder, appoint a committee of the Vice Chancellors in place and stead of the Bihar University Service Commission, which is a statutory body.

18. It was urged that the State has taken recourse to suppressio veri inasmuch in its affidavit it had reduced the number of sanctioned vacant posts only to 55, despite the fact that there are materials on records to show that there were 289 vacant posts in Magadh University, 249 posts in Ranchi University and 292 posts in Bhagalpur University.

19. The learned counsel would submit that that the order passed by this Court was binding on the parties and the time frame set therein was required to be strictly adhered to. No additional financial burden, the learned counsel would contend, shall be placed on the exchequer if the directions of this Court are followed and thereby only the students will be benefitted.

20. It was, however, very fairly stated before us that both the University Service Commission and the College Service Commission have since been abolished and, therefore, this Court should issue a direction to the State of Bihar or the Selection Committee to fill up the vacancies by constituting the selection committee, as may be found necessary.

21. Mr. Gopal Singh, learned counsel appearing on behalf of the State of

Bihar, on the other hand, has drawn our attention to the statements made in the Counter Affidavit filed on behalf of Respondent Nos. 3 and 4 and affirmed by one Qamar Ahsan, Registrar of Appellant No.1-University, which are in the following terms :

"6. That it is submitted that the University has already identified the vacant sanctioned post in different colleges and sent to the University Service Commission for advertisement and recommendation. Pursuant to the recommendation of the commission appointments were made in the years 1996 and 2003.

7. That the ad hoc teachers appointed without authority of law may be treated as contractual agreement and payment was made on per class basis. Such appointment was made merely on agreement without the consent of the University which was made from time to time and cannot be treated as valid appointment.

8. That the Secretary, Higher Education vide his letter dated 9.7.2003 has also informed the University that the Govt. has complied the order dated 6.12.1989 as directed by the Hon'ble Supreme Court."

22. Our attention has also been drawn to the Counter Affidavit filed on behalf of the State of Bihar, some relevant paragraphs whereof are as under :

"8. I say that in respect of this Hon'ble Court's direction at Sl. No. 1 all the Universities were asked to report the available vacancies to the University Service Commission.

9. I say that in respect of this Hon'ble Court's direction at Sl. No. 2 Universities of the State were requested vide Department letter No. 14/MI-021/89 MA-210 dated 15.2.1990 to send proposal for creation of additional posts according to the workload by 15th March, 1990. The Universities were reminded vide letter No. 427 dated 28.4.1990 and again vide letter No. 506 dated 5.5.1990. Many more reminders were also sent. In response to these letters, proposals were received from Magadh, Ranchi and Bhagalpur Universities. Other Universities did not send any consolidated proposal for creation of additional posts in accordance with the workload. Therefore, it was presumed that they did not have requirement for additional posts of teachers.

10. I say that on the basis of workload 55 additional posts have been sanctioned for three concerned Universities. The concurrence of Government for sanctioning these posts has been communicated to the concerned Universities to enable them to send requisition to University Selection Committee.

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12. I say that in respect of direction given at S. No. 4, 5 & 6, the Universities were asked to comply. A contempt petition no. 145/91 was filed in this Hon'ble Court for not complying with the order of this Hon'ble Court dated 6.12.1989. The State Government filed an

affidavit in the contempt petition and produced advertisement for 98 posts including 55 additional sanctioned posts for Ranchi, Bhagalpur and Magadh Universities and this Hon'ble Court discharged the rule of contempt on 23.9.1991.

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16. That the present petitioners of this Special Leave Petition have been claiming that they are ad hoc teachers of Veer Kunwar Singh University which had been bifurcated from Magadh University. That in case of Magadh University, the Department of higher education had given concurrence in creation of additional posts in some subjects on the basis of workload. It is also important to point that it was found that there had been already excess posts in many subjects on the basis of workload. So this finding and creation of additional posts applying equally to the Veer Kunwar Singh University which had been part of Magadh University during 1989 to 1991."

23. It was submitted that an advertisement had been issued in the year 1997, for filling up the 55 sanctioned vacant posts. Our attention has also been drawn to the fact that rule in the contempt proceeding, which was issued had been discharged by this Court upon satisfying itself that there had been a substantial compliance of this Court's order.

24. The learned counsel would contend that in terms of the provisions of the Bihar University Act and the statutes framed thereunder, vacancies must be filled up in accordance with law and in view of the fact that the appellants had been appointed in violation of the provisions of the said Act as also the statutes framed thereunder, their appointments were illegal.

25. Applicability of the provisions of the Act and the statutes framed thereunder in the matter of recruitment to the post of teachers in constituent and affiliated colleges is not in dispute. Section 57 of the said Act reads as under :

"57. (1) Subject to the provisions of this Act and the statutes, the Bihar State University (Constituent Colleges) Service Commission shall, as far as may be, perform, in respect of appointment to the post of teachers and officers (other than Vice-Chancellor, Province-Chancellor and the Dean of faculty) of the University the same functions as are assigned to the State Public Service Commission in respect of the State Services under Article 320 of the Constitution of India."

26. In terms of the aforementioned provisions, thus, all sanctioned vacant posts were required to be filled up by candidates who were qualified therefor and who had been selected by the University Service Commission, which is a statutory body. Clause (a) of sub-section (1) of Section 58 of the said Act provides for appointment on temporary basis without following the procedure prescribed in Section 57 of the Act; but such appointments shall not exceed a period of six months.

27. It is now a well-settled principle of law that any appointment made in violation of the constitutional scheme of equality as adumbrated under Article 14 of the Constitution of India as also in violation of the provisions of the Act and the subordinate legislations framed thereunder would be wholly illegal and without jurisdiction. It has been so held by a Constitution Bench of this Court in Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1].

28. The ratio of the said decision has since been followed in a large number of cases, e.g. R.S. Garg v. State of U.P. and Others [(2006) 6 SCC

430], Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad and Others [(2006) 7 SCC 684], State of M.P. and Others v. Lalit Kumar Verma [(2007) 1 SCC 573], Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd. [(2007) 1 SCC 408], Municipal Corporation, Jabalpur v. Om Prakash Dubey [(2007) 1 SCC 373], Accounts Officer (A&I), AP SRTC v. K.V. Ramana and Others [(2007) 2 SCC 324], Punjab Water Supply & Sewerage Board v. Ranjodh Singh and Others etc. [(2007) 2 SCC 491], State of Punjab and Others v. Lakhwinder Singh and Others [(2007) 2 SCC 502], Yamuna Shankar Sharma v. State of Rajasthan and Others [(2007) 2 SCC 611], and Post Master General, Kolkata & Others v. Tutu Das (Dutta) [2007 (6) SCALE 453].

29. The legal position obtaining in this behalf is not in dispute. The question which, however, falls for consideration is as to whether the State of Bihar or the Universities constituted within the State of Bihar were bound to act in terms of the judgment of this Court.

30. There cannot be any doubt whatsoever that the judgment of this Court must be respected by all concerned including those who were not parties thereto, in view of the provisions contained in Articles 141, 142 and 144 of the Constitution of India. If the time frame fixed by this Court for complying with this Court's order was not adhered to, a proceeding under the Contempt of Courts Act was maintainable.

31. We have noticed hereinbefore, the stand of the State of Bihar. According to it, the orders of this Court had been complied with and only 55 posts are lying vacant. We have also noticed hereinbefore that the contempt notice issued by this Court has also been discharged. There exists a dispute with regard to the actual number of vacancies.

32. The Respondent-University, according to the State of Bihar did not make any recommendation for creating any additional posts of teachers having regard to the teacher-student ratio. In the affidavits, the State and the Respondent-University clearly stated that there were only 55 vacant posts. Order of this Court did not say that for filling up the vacancies of one university, ad hoc teachers appointed in other universities should be considered.

33. However, in the Rejoinder Affidavit to the Counter Affidavit, it is stated :

"10. That in reply to para 9 of the counter affidavit, it is most respectfully submitted that in response to the letters written by the respondent no. 5 and 6 seeking proposal for creation of additional posts, according to the workload the Ranchi, Magadh and Bhagalpur Universities sent their respective proposal for the creation of 6447 posts of teachers. It is most respectfully submitted that out of 6447 posts, the Magadh University sent a proposal for creation of 1467 posts. After the Division of Magadh University, out of 1467, 424 posts came to the share of Veer Kunwar Singh University.

11. That in reply to para 10 of the counter affidavit, it is most respectfully submitted that the creation and advertisement of 55 vacancies only as against the proposal for creation of 6444 posts by no stretch of imagination can be said to be the compliance of the directions given by the court. Such statement has been made simply to mislead this Hon'ble Court by projecting that the order of the Hon'ble Court are being complied with. It is further submitted that under various Universities in various colleges various departments have been

opened. However, for want of regular appointments various colleges are being run by the ad hoc teachers since 1982.

13. That in reply to para 12 of the counter affidavit, it is most respectfully submitted that on 23.09.1991 the respondents 5 and 6 projected before this Hon'ble Court that in compliance of the direction of this Hon'ble Court, they have already started taking steps. It is reiterated that as against the proposal for creation of 6447 posts sent by the Universities, creation of only 55 posts, by no stretch of imagination can be said to be the compliance of the judgment of this Hon'ble Court. It is most respectfully submitted that at the time of hearing of the Hon'ble Court when the fact of proposal for creation of 6447 posts was brought to the notice, the statement was made that it was only a beginning and further post would be created and filled in."

34. It is neither possible nor advisable to go into the aforementioned disputed questions of fact. The stand of the University is clear from the affidavit affirmed by its Registrar. Without anything more it is not possible to reject the averments made therein.

35. Creation of sanctioned posts is a sine qua non for recruitment to the post of lecturers. Adherence to the statutory provisions therefor is imperative in character. No doubt the qualification for holding the post of lecturer has since been changed in terms of the ordinance promulgated in the year 1993, but then the same was done as per the directions of the University Grants Commission. The colleges whether constituent or recognized must have lecturers who are qualified to hold the post. Qualification to hold the post of lecturer is fixed by the University Grants Commission. A University can ignore the directions of the University Grants Commission in this behalf only at its own peril and risk of derecognition. Neither it is permissible for a University to contravene the directions of the University Grants Commission nor, in our opinion, is it permissible for a court of law to issue a direction contrary thereto. Evidently, the endeavour on the part of the appellants and interveners herein was to obtain a direction from this Court that their cases may be considered by a Public Service Commission or in its absence by the State or by the University on the basis of a qualification held by them prior to 1993. In our opinion, no such direction at this point of time can be issued. We will assume that the State and/or Universities had failed to adhere to the time frame fixed by this Court, but even if a violation of this Court's order in that behalf had taken place, the same by itself would not lead to an inference that the respondents were still to obey the order of this Court, despite the change in law, which had taken effect in this behalf. Such a direction cannot be given at this stage in view of the decision of the Constitution Bench of this Court in *Umadevi (supra)*, wherein it was directed :

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their

instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents."

36. It may be, as was submitted by the learned Senior Counsel, that ad hoc teachers have been working for the last 20 years or more, but it is also beyond any dispute that they had been doing so pursuant to orders passed by this Court or by the High Court from time to time. Even this Court in its order dated 06.12.1989 had issued such a direction. But for the orders of the superior courts, their services would have been terminated by the University.

37. There has been a sea change in the legal position in view of the decision in Umadevi (supra) and a large number of decisions of this Court following it. In a situation of this nature, when a subsequent event has occurred and when there exists a dispute as to whether order of this Court has substantially been complied with or not, it would not be proper for us to put the parties to the same position to which they were in 1989.

38. The practice to appoint ad hoc teachers must be deprecated. If a Government of a State or a University which is also a State within the meaning of Article 12 of the Constitution of India, despite the repeated observations of the superior courts of the country, continue to do so, such a practice must be condemned.

39. Directions can be issued to the State to act within four-corners of the statute and to declare any action taken in contravention thereof to be a nullity; but it would not be permissible for this Court to go beyond the provisions of the statute and issue a direction that cases of all the appellants must be considered irrespective of the fact as to whether their appointment even as ad hoc teachers was against a sanctioned post or they have been working against the non-sanctioned posts or not.

40. We may at this stage notice that even before the High Court it had been conceded that many teachers have been appointed on an ad hoc basis on non-sanctioned posts. We fail to understand how this could be validly done. Those teachers who could compete with others having requisite qualification must be appointed by the University Service Commission in accordance with the provisions of the Bihar State Universities Act. Appellants may have the requisite qualification at the relevant point of time, but we must also consider that since then a large number of other persons must have acquired the requisite qualification for being appointed to the said posts, who cannot be deprived of their right to be considered for appointments along with other eligible candidates in terms of Article 14 of the Constitution of India.

41. We, therefore, are of the opinion that having regard to the legal position obtaining, it is not possible to agree with the submissions of Mr. Misra. It may be that the High Court should not have constituted a committee but then constitution of a committee was directed with consent.

By consent the statutory provisions cannot be violated. By consent jurisdiction cannot also be conferred. Here, however, is a case where parties consented to find out the actual number of additional posts which were required for the benefit of the students. However, in view of the order proposed to be passed, we may not enter into the said question.

42. In B.S. Bajwa and Another v. State of Punjab and Others [(1992) 2 SCC 523], to which our attention was drawn by Mr. Misra, this Court held : "6. Obviously on this conclusion alone the writ petition should have been dismissed by setting aside the judgment of the Single Judge allowing the LPA without any caveat. However, the Division Bench, after reaching the above conclusion, proceeded to grant the benefit of a much earlier date, namely, 6-4-1964 as the date of appointment on the basis of a concession of the Additional Advocate General made therein without considering the effect of the same or of taking into account the inconsistency with its earlier finding. We have no doubt that the concession on this point, being one of law, it cannot bind the State and, therefore, it was open to the State to withdraw as it has been done by filing a review petition in the High Court itself\005"

43. In Swami Krishnanand Govindanand v. M.D. Oswal Hosiery (Regd.) [(2002) 3 SCC 39], this Court observed :

"4. The learned counsel next contended that the statement of the learned counsel for the respondent should be treated as a compromise as the Court granted five years' time to the respondent for vacating the suit premises. In our view, this contention has to be rejected. The compromise like a contract postulates consensus between two parties. A statement of a counsel conceding the grounds of eviction and seeking some time for the respondent to vacate the premises, cannot be termed a compromise."

44. We may, however, notice that in Employers in relation to Monoharbahal Colliery Calcutta v. K.N. Mishra and Others [AIR 1975 SC 1632] , the power of an advocate to make concession on behalf of his client as envisaged under Order III of the Code of Civil Procedure has been recognized. There are only certain exception thereto, e.g. when such consent is against law or otherwise not binding on the parties.

45. We, however, are of the opinion that it is not necessary for us to go into the said question.

46. We, therefore, are of the opinion that the interest of justice would be subserved if it is directed that the respondents herein in filling up of the vacant posts must take into consideration the cases of all those teachers also who have the requisite qualifications, upon relaxation of age, if permissible by law along with other eligible candidates. We may, however, direct that it would be open to the State of Bihar as also the concerned Universities to forthwith terminate the services of those teachers not working against sanctioned posts or who do not fulfill the requisite educational qualifications or whose services are otherwise not required.

47. The appeals and connected interlocutory applications are dismissed with the aforementioned observations. In the facts and circumstances of the case, however, there shall be no order as to costs.