

STATE OF BIHAR

v.

B DR. YOGENDRA SINGH COL. (RETD.)
AND OTHER

[P.N. BHAGWATI AND R.S. PATHAK, JJ.]

March 1, 1982

C *Bihar Private Medical Colleges (Taking over) Act 1978—Meaning and effect of sections 3 and 6, explained.*

D Dr. Yogendra Singh Col was appointed Professor of Surgery in the Magadh Medical College and as per the Regulations of the University he was entitled to continue in service until he reached the age of superannuation, which was fixed at 62. Pursuant to the provisions of sub-section (2) of section 6 of the Bihar Private Medical Colleges (Taking Over) Act, 1978, the State Government appointed a Screening Committee which, inter alia, recommended the retirement of all teachers beyond the age of 58 years and their re-employment upto the age of 62 years only if there were no qualified substitutes available. On 11-9-1980, the Principal of the Magadh College, based on the circular dated 3-9-1980 issued by the State Government, after accepting the recommendation of the Screening Committee, issued a notice to Dr. Col. informing him that his services will be terminated with effect from 10-10-1980. A writ petition filed in the High Court of Patna challenging the said order of termination of his services was allowed by the High Court taking the view that by virtue of sub-section (3) of section 3, the obligation to continue Dr. Col in service upto the age of 62 years devolved on the State Government on the taking over of the Magadh Medical College under sub-section (1) of section 3 and the State Government had no power under sub-section (3) of section 6 to terminate his services prior to his attaining the age of superannuation and hence the order dated 11-9-1980 was invalid.

F Allowing the appeal of the State, the Court

G HELD 1:1. The termination of the service of Dr. Col. was perfectly valid. Quite apart from the power expressly conferred under sub-section (3) of section 6, the State Government would have power to terminate the services of any person employed on an ad hoc basis. [339 G-H, 340 A]

H 1:2. It is elementary that when a person is appointed on an ad hoc basis his tenure is precarious and he cannot claim to continue in service until the age of superannuation. From and after the date of notification under sub-section (1) of section 3 of the 1978 Act Dr. Col. continued to serve the Magadh Medical College on an ad hoc basis in terms of the proviso to sub-section (1) of section 6 which declared that the staff employed in the College "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." In view of the clear and explicit terms of sub-

section (1) of section 6 providing that as from the date of the notification issued, under sub-section (1) of section 3, "all the staff employed in the college shall cease to be employees of the college body", the contract of Dr. Col with the owners of the Magadh Medical College under the letter of appointment given to him did not devolve on the State Government but came to an end and he became the employee of the State on an ad hoc basis, disentling him to the benefit of retirement at the age of 62. [338 C-G]

It was within the competence of the Screening Committee to make recommendation in regard to the age of superannuation of the teaching staff of the medical colleges taken over by the State Government. Sub-section (2) of section 6 undoubtedly provides that the Committee of experts appointed under that provision will examine the bio-data of each member of the staff and ascertain whether appointment promotion or confirmation of such person was made in accordance with the University Regulations and in keeping with the guidelines laid down by the Medical Council of India and will also take into consideration all other relevant material including length of service in the college and submit its report to the State Government. But sub-section (3) of section 6 also makes it clear that the Committee of experts appointed under sub-section (2) of that section can make recommendations in regard to "rank, pay, allowances and other conditions of service" of the teaching staff. [338 H, 339 A-C]

3. The State Government was clearly within its powers under sub-section (3) of section 6 to re-determine the age of superannuation and to provide that the services of all the teachers in the medical colleges taken over by the State Government shall be terminated after giving them one month's notice, if they have attained the age of 62 years or more than 58 years, but less than 62 years, in consonance with the age of retirement of all other Government employees. Under sub-section (3) of section 6 the State Government had power to re-determine the rank, pay, allowances and other conditions of service of the teaching staff and "other conditions of service" would include the age of superannuation. [339 E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3420 of 1981.

Appeal by special leave from the judgment and order dated the 29th July, 1981 of the Patna High Court in C.W.J.C. No. 3032 of 1980.

L.N. Sinha, Attorney General of India, *K.G. Bhagat* and *D. Goburdhan*, for the Appellant.

Dr. Y. S. Chitale, *B.P. Singh*, *Ranjit Kumar* and *S. Goswami* for Respondent No. 1.

A *P.P. Singh* for Respondent No. 2.

R.P. Singh for Respondent No. 3.

The Judgment of the Court was delivered by

B BHAGWATI, J. This is an appeal by special leave directed against a judgment of the Patna High Court quashing and setting aside the termination of service of the 1st respondent and directing that the 1st respondent shall continue in service until he reaches the age of 62 years. The facts giving rise to the appeal are few and may be briefly stated as follows.

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D The 1st respondent was appointed Professor of Surgery in the Magadh Medical College, Gaya in December, 1975 and he joined his post as Professor of Surgery on 27th December, 1975. The letter of appointment which set out the terms and conditions of service provided that the appointment would be subject to such regulations as might be in force from time to time in the Magadh University to which the Magadh Medical College was affiliated. These regulations provided that the age of superannuation shall be 62 years, and, therefore, the 1st respondent was entitled to continue as Professor of Surgery until he reached the age of 62 years. But in or about the middle of 1976 a drastic change took place, as the Bihar Private Medical Colleges (Taking of Management) Ordinance, 1976 (hereinafter referred to as the Ordinance) was promulgated by the Governor of Bihar authorising the State Government by a notification to take over the management of any private Medical College and to exercise such functions of management in regard to such College as might be specified in the notification. Pursuant to the Ordinance a notification was issued by the State Government taking over the management of the Magadh Medical College with effect from 1st July, 1978. The ordinance was subsequently replaced by the Bihar Private Medical Colleges (Taking Over) Act, 1978 (hereinafter referred to as the Act). Section 3 of the Act provided for taking over of private Medical Colleges and it read as follows :

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H "3 (1). The State Government may, by a notified order and from the date mentioned therein, take over a College and the management and control thereof shall thereupon be exercised by the State Government in such manner as may be laid down in the said Order;

(2) All the assets and properties of the College and the College body whether movable or immovable including lands, buildings workshops, stores, instruments, machinery, vehicles, cash balance, reserve fund, investments, taxes, furniture and others shall, on the date of take over, stand transferred to and vested in, and be deemed to have come into the possession of the State Government;

(3) All the liabilities and obligations of the College under any agreement or contract entered into *bona fide* before the date of taking over shall devolve and shall be deemed to have devolved on the State Government."

Section 6 dealt with the determination of terms of teaching staff and other employees of the Medical College taken over by the State Government and since the controversy in the present case has turned almost entirely upon the true meaning and effect of the provisions of this section, it would be convenient to set it out in full :

"6. Determination of terms of the teaching staff and other employees of the 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 Committee 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 taking 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

A 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, allowances and other conditions of service.

B (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 *mutandis mutandis* to such cases.

C It appears that pursuant to section 3 of the Act a notification was issued by the State Government taking over the Magadh Medical College with the result that the management and control of the Magadh Medical College became exercisable by the State Government and all the assets and properties of the Magadh Medical College stood transferred to and became vested in the State Government and all its liabilities and obligations also devolved on the State Government. The State Government thereafter appointed a Committee called the Screening Committee under sub-section (2) of section 6 and the Screening Committee made a report which contained *inter alia* the following recommendations :

E (a) All teachers beyond the age of 58 years may be retired subject to reappointment if there are no qualified substitutes. This should apply to all State Medical Colleges and the re-employment may be made up to maximum of 62 years of age.

F (b) In no case service of teachers who have already attained the age of 62 years be retained.

G The State Government on the basis of this recommendation issued a circular letter dated 3rd September, 1980 addressed to the Principals of various Medical Colleges taken over by the State Government which included the Magadh Medical College, advising the Principals that "services of all the Directly appointed teachers in the Medical Colleges who have attained the age of 62 years or more than 58 years but less than 62 years be terminated after giving them one month's notice." Now the 1st respondent had already attained

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the age of 58 years and the Principal of the Magadh Medical College, therefore, addressed a letter dated 11th September, 1980 to the 1st respondent informing him that since his age was more than 58 years, his service was being terminated after 30 days from the date of issue of that letter as per the order of the State Government. The result was that by virtue of this letter addressed by the Principal to the 1st respondent, the service of the 1st respondent was terminated with effect from 10th October, 1980,

The first respondent thereupon filed a writ petition in the High Court of Patna challenging the termination of his service by the Principal of the Magadh Medical College and claiming a declaration that he is entitled to continue in service until he reaches the age of 62 years. The High Court of Patna upheld the contention of the first respondent, and took the view that by virtue of sub-section (3) of section 3, the obligation to continue the first respondent in service upto the age of 62 years devolved on the State Government on the taking over of the Magadh Medical College under sub-section (1) of section 3 and the State Government had no power under sub-section (3) of section 6 to terminate the service of the first respondent prior to his reaching the age of superannuation and the termination of his service by the Principal of Magadh Medical College was therefore, invalid. The writ petition filed by the first respondent was accordingly allowed and a writ was issued quashing and setting aside the termination of service of the first respondent and declaring that he is entitled to continue in service until he reaches the age of 62 years. The State of Bihar thereupon preferred the present appeal after obtaining special leave from this Court.

We are of the view that it is impossible to sustain the judgment of the High Court. It proceeds upon a complete mis-apprehension of the true meaning and effect of the relevant provisions of sections 3 and 6 of the Act. Sub-section (1) of section 3 provides for taking over of private medical colleges and by virtue of the notification issued by the State Government under that provision, the Magadh Medical College was taken over by the State Government and its management and control became exercisable by the State Government. Whatever assets and properties appertained to the Magadh Medical College became vested in the State Government under sub-section (2) of section 3. Section 3 sub-section (3) provided for devolution of all the liabilities and obligations of Magadh

A Medical College on the State Government and therefore, if sub-section (3) were the only provision in the statute, it would have been possible for the first respondent to contend that by virtue of the contract contained in his letter of appointment, he was entitled to continue in service until the age of 62 years and this obligation of

B the Magadh Medical College devolved on the State Government. But section 6 dealt specifically with the subject of determination of terms of the teaching staff and other employees of the Magadh Medical College and if this special enactment contained any provision relating to termination of service of the first respondent, it would obviously prevail over the general provision enacted in sub-section (3) of section 3. Now sub-section (1) of section 6 provided in clear and explicit terms that as from the date of the notification issued under sub-section (1) of section 3 "all the staff employed in the college shall cease to be employees of the College body." The

C direct effect of this provision was that the first respondent ceased to be the employee of the owners of the Magadh Medical College. The proviso to sub-section (1) of section 6 proceeded to declare that the staff employed in the College "shall continue to serve the College on an ad hoc basis till a decision under sub-sections 3 and 4 is taken by the State Government." The first respondent, therefore, continued to serve the Magadh Medical College on an ad hoc basis from and after the date of the notification under sub-sec. (1) of section 3. The result

D was that the contract of the first respondent with the owners of the Magadh Medical College under the letter of appointment given to him, did not devolve on the State Government but came to an end and the first respondent became an employee of the State Government on an ad hoc basis. The first respondent could not thereafter contend that he was entitled to continue in service until he reaches the age of 62 years. That would be directly contradictory of the position that he continued to serve the State Government on an ad hoc basis. It is elementary that when a person is appointed on an ad hoc basis, his tenure is precarious and he cannot claim to continue in service until the age of superannuation.

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G Now the State Government appointed a Committee called the Screening Committee under sub-section (2) of section 6 and the Screening Committee recommended that all teachers beyond the age of 58 years may be retired subject to reappointment, if there are no qualified substitutes. The argument of the first respondent which

H appealed to the High Court was that the Screening Committee had no power under sub-section (2) of section 6 to make a recommenda-

tion in regard to the age of superannuation of the teaching staff of the Medical College taken over by the State Government. This argument is, in our opinion, fallacious, in as much as it is based on reading of sub-section (2) of section 6 as if it stood alone and does not take into account the effect of sub-section (3) upon it. Sub-section (2) of section 6 undoubtedly provides that the Committee of Experts appointed under that provision will examine the bio-data of each member of the staff and ascertain whether appointment, promotion or confirmation of such person was made in accordance with the University Regulations and in keeping with the guidelines laid down by the Medical Council of India and will also take into consideration all other relevant material including length of service in the college and submit its report to the State Government. But it is clear from sub-section (2) of section 6 that the Committee of Experts appointed under sub-section (2) of that section can also make recommendations in regard to "the rank, pay, allowances and other conditions of service" of the teaching staff. It was therefore, not beyond the competence of the Screening Committee to make recommendations in regard to the age of superannuation of the teaching staff of the Medical Colleges taken over by the State Government. But, even if we are wrong in taking this view, it is clear that under sub-section (3) of section 6 the State Government had power to redetermine "the rank, pay, allowances and other conditions of service" of the teaching staff and "other conditions of service" would include the age of superannuation. The State Government was therefore, clearly within its power under sub-section (3) of section 6 to redetermine the age of superannuation and provide that the services of all teachers in the Medical Colleges taken over by the State Government shall be terminated after giving them one month notice, if they have attained the age of 62 years or more than 58 years, but less than 62 years. Obviously, when a member of the teaching staff becomes an employee of the State Government, he would be governed by the same age of superannuation which is applicable to other governments servants, namely, 58 years and it was for this reason that the State Government redetermined the age of superannuation of the teaching staff of the Medical Colleges taken over by it at 58 years and directed that the services of those who have attained the age of 58 years should be terminated after giving one month's notice. We may point out that, quite apart from the power expressly conferred under sub-section (3) of section 6, the State Government would have power to terminate the services of any person employed on an ad hoc basis. The termination of service

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A of the first respondent was therefore, perfectly valid and the High Court was in error in granting relief to the first respondent.

B We accordingly allow the appeal, set aside the order passed by the High Court and dismiss the writ petition of the first respondent. Having regard to the fact that the first respondent is merely a teacher in a Medical College, we direct that there will be no order as to costs throughout.

S.R.

Appeal allowed.