

(2011) 04 PAT CK 0128

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10445 of 2007

Anwari Khatoon

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0128

Judgement

Navaniti Prasad Singh, J.—In Patna City there is a College known as Oriental College affiliated to Singh, Magadh University. It is a declared minority institution. Petitioner was appointed as Lecturer in Urdu on the 3r post in 1971, which appointment was approved by the University and the Bihar State Constituent College Service Commission. After the College was declared minority institution, the State Government in the year 1980 took a decision that religious linguistic minority educational institution like Colleges would also be entitled to get the status of deficit grant College. This means that to the extent the College meets its financial obligations of payment, inter alia, towards salaries of teachers and non-teaching staff etc, it would be paid by the State through the affiliating University. The dispute in the present case is whether State is liable to pay the remuneration of Petitioner or not.

2. The stand of the State is that in 1985, pursuant to powers under Section-35 of the Bihar State Universities Act, 1976, sanctioned the third post of Urdu teacher in Petitioner's College with a rider that the salary payment for the third post would be paid by the College itself. It is much later that Petitioner's remunerations were stopped to be paid as there was neither money with the College nor money coming with the State. In the meantime, Petitioner had also been granted approval of promotion from the Constituent College Service Commission.

3. The University states that if money is given by the State then it has no problem in paying the College but independent of State it cannot be obliged to make payment to the Petitioner. In other words, they sink or swim together.

4. Mr. Chittranjan Sinha, learned Senior Counsel appearing for the Petitioner relies on Section-35 of the Bihar State Universities Act, 1976 and states that the entire stand of the State is misconceived. In terms of Section-35 of the Act, the provisions contained therein have no application to minority institution which are exempted. Therefore, there is no question of taking approval or sanction of the State for either creation of the post or appointment of the teaching staff. This position has some what in similar circumstances been decided in the case of State of Bihar and others Vs. Syed Asad Raza and others, There also the Apex Court held that so far as minority institutions are concerned, they require no approval or sanction under Section-35 of the Act from the State Government. It goes further to state that where there was an agreement between the Vice-Chancellor and the institution for seeking approval even though had no binding effect. It further held that State granting the status of grant-in-aid to one minority institution cannot refuse to grant it to another. All these three propositions have been decided by the Apex Court come in handy for deciding the present dispute. Firstly, it establishes that no approval or sanction in terms of Section-35 of the Act as required for either creation or appointment of teaching personnel in a minority institution. of course one must bear in mind that the institution has the responsibility of appointing personnel within the staffing pattern and not in any arbitrary manner. The second is having wrongly sought approval, which was granted though not required with a rider. Could the rider bind the persons or the officer? The answer is No. The reason is simple that if there was no requirement then nothing can be made condition to the grant where grant itself is not required. Here, grant is in respect of approval. Lastly, once State admitted the policy of deficit grant to the institution in question and Petitioner having been appointed within the staffing pattern, which is not in dispute as State itself sanctioned a post, it cannot discriminate and not pay the deficit in relation to the Petitioner. Whatever deficit is run up by the College and within the policy of the Government would have to be paid by the State so long as the College enjoys deficit grant status.

5. In view of the aforesaid, I, therefore, direct the State that within three months from today they should release all the funds that is required to clear the outstanding dues of the Petitioner as would be intimated to it by the College concerned through the University. The responsibility to comply with the same would be on the Principal Secretary, Department of Human Resources Development.

6. With these observations and directions, the writ petition stands disposed of.