

(2023) 02 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 250, 808 Of 2019

Balram Pandey

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 21, 23A

Bihar State Universities Act, 1976 — Section 35(2), 57A, 57A(6)

Citation : (2023) 02 PAT CK 0011

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Prashant Sinha, Satish Kumar Pandey, Madanjeet Kumar, Sanjay Singh, Deepak Kumar, Sanjeev Kumar Jha, Binay Kumar Singh, Kameshwar Kumar, S.K. Ranjan

Final Decision : Allowed

Judgement

1. The petitioners by way of this writ petition have prayed for quashing of the letter dated 23.09.2018, whereby the Education Department, State of Bihar has refused to release the grant for the teachers who were working in the various colleges under the Sanskrit University and were appointed by the University. In C.W.J.C. No. 808/2019, the prayer has been made to provide release of salary of petitioners since June 2011 which has been withheld by the authorities concerned inspite of several proposals made by the University concerned and reminder sent to the State Authorities.

2. Brief facts which required to be noticed are as under :-

In C.W.J.C. No. 250/2019, petitioner states that he had applied under an advertisement issued on 21.06.1979 for the post of Lecturer and he was appointed for a period of six months. The appointment was approved by the University and extension was granted till further orders with effect from 1st July 1983 vide order dated 30th November 1983. He continued to draw salary and University confirmed the services in terms of decision of the syndicate vide letter

dated 28.08.2010. Since February 2012, the petitioner's salary was stopped. The Education Department sent a letter to the University to get the recommendation of selection committee in case of such teachers who are appointed by the governing bodies of the respective colleges. He attained superannuation on 31st January 2016, but did not receive salary for want of confirmation of service in terms of Section 57 (A)(6) vide order dated 29.02.2016. The University upon recommendations of the selection committee regularized the services of the petitioners with effect from 01.09.1977 but his retiral benefits were not released. He filed C.W.J.C. No. 18751/2017 before this Court. During the pendency of the writ petition the impugned order dated 23.09.2018 was passed and granting liberty to the petitioner to challenge the said order, the writ petition was disposed of and therefore the present writ petition has been filed.

In C.W.J.C. No. 808/2019, it is stated that the petitioners had been appointed in several faculties against the sanctioned post of Assistant Professors in various affiliated colleges under the Kameshwar Singh Darbhanga Sanskrit University, Darbhanga after following due selection process. They were being granted salary till May 2011 as per U.G.C. pay scale but their salary was withheld by the authorities thereafter. Since June 2011, the same has not been released. Representations were made, whereafter the issue was taken up by the Government directing the Education Department to release the salary from June 2011. A C.W.J.C. No. 444/2018 was preferred by thirty seven teachers where directions were issued to the respondents on 11.05.2018 with following directions :-

"In view of above, the respondent-State, as well as the University are required to proceed further and ensure payment of salary within a maximum period of 3 months from the date of receipt/production of a copy of this order.

It is made clear that after Annexure 13, the State cannot take plea that the matter is pending at the level of the University, and in view of the para 19 of the counter affidavit of the State, the University cannot take plea that the matter is pending at the level of the State.

In view of the development noted above, the University and the State are required to see that the payments are made to the petitioners both arrears as well as current within the time frame indicated hereinabove.

With the aforesaid, the writ petition stands disposed of."

3. In spite of above directions, the respondents did not release the salary. The Additional Secretary of the Bihar Legislative Council also directed to release the salary vide its order dated 06.07.2018, but the same was also not complied with and an order rejecting claim was passed on 23.09.2018, therefore fresh writ petition was filed.

4. This Court passed an order on 20th August 2019 directing the State to file specific affidavit with regard to the recommendation of the University in C.W.J.C.

No. 808/2019. However, the same was not complied with. Again on 05.09.2022, this Court directed the respondents to file the affidavit. Thereafter, an affidavit has been filed by the Deputy Director, Higher Education, Patna stating that the petitioners were appointed as temporary teachers in different colleges under Section 35 (2) of the Bihar State Universities Act 1976 which only provides for appointment for a period of six months. The same has to be continued only after further approval from the State. The University in consultation with the management of the colleges allowed them to continue the petitioners and salaries were paid to them up to the year 2011, when it was brought to the knowledge of the State Government the payment of salaries for such teachers was stopped. It is further stated that so far as amendment made under Section 57(A)(6) of the State Universities Act is concerned the same is to extend the benefits to teachers of affiliated colleges which are being provided grants taking into consideration the performance of the students appearing in the examination and the said amendment was not meant for the teachers of deficit grant affiliated colleges. It is asserted by the State that provisions of Section 57(A)(6) would have no application relating to the teachers working in the colleges which are receiving deficit grant-in-aid and therefore, the request made by the University even after regularizing their services was not acceptable to the State Government and the letter dated 06.10.2022 has been placed on record to assert that the State grant is not required to be released for such teachers and they could not have been confirmed by the University. A similar stand has been taken by the State in C.W.J.C. No. 250/2019.

5. Learned counsel appearing for the petitioners has invited attention to the Section 57(A)(6) of the Bihar State Universities Act 1976 which has been brought in force from 27th August 2015 to submit that a selection committee was required to be formed for scrutinizing the cases of the teachers appointed without the recommendation of the Commission prior to 19.04.2007 in the affiliated degree colleges on the basis of the qualifications enforced at the time of appointment of six teachers till 31st March 2018. The petitioners who were appointed in the respective colleges cannot be excluded from the said provision on the basis of the nature of grant being issued by the State Government.

6. I have considered the submission. It would be apposite to quote the amendment made in Section 57 (A) of the Bihar Universities Act 1976 notified as on 27th August 2015 :-

"Preamble :- Whereas, the State Government has taken a policy to abolish the Vitta Rahit Shiksha Niti and to provide grants to the institutions including degree colleges vide resolution no. 1846, dated 21.11.2008. In course of distribution of grants amongst the teachers of the affiliated.

2. Amendment in Section 57A of the Bihar Act 23, 1976 –

In the Bihar State Universities Act, 1976 (Bihar Act 23, 1976), the following new sub-section (6) shall be added after sub-section (5) of Section 57A of Bihar Act

23 of 1976 :-

“(6) The Selection Committee, subject to this Act, will complete the scrutiny of the cases of the teachers of affiliated degree colleges appointed prior to 19.04.2007, without the recommendation of the Bihar College Service Commission on the basis of qualifications in force at the time of appointment of such teachers upto 31.03.2017, otherwise such appointments will not be treated valid. Thereafter the Governing Body of the college will accept the names recommend by the Selection Committee, which shall be finally approved by the concerned University.

Distribution of the amount of grant sanctioned by the State Government will be made amongst the teachers in the concerned affiliated degree colleges by its Governing Body upto 31.03.2017.”

7. It appears that vide gazette notification of Act of 2017, the Section 57(A)(6) was further amended and following provisions were added. The affiliated degree colleges has been added. The amendment which was made in 2017, was on the basis of a Preamble which requires to be noticed. From the perusal of the aforesaid amendments and the Preamble to the amendment made on 4th September 2017, it is apparent that the State Government wanted the Department to scrutinize all the cases of all those working teachers appointed without the recommendation of the Bihar College Service Commission without making any distinction between those who were receiving different kinds of grants namely the deficit grant or the grant against performance. It is noticed that the Vitta Rahit Shiksha Niti have been abolished by the State Government and therefore, no distinction could have been drawn by the State Authorities in between the teachers who were appointed in colleges which were receiving different types of grants. This Court, further finds that the University has in terms of provisions of Section 57 (A) exercise its power and scrutinize the cases of the petitioners and found them fit to be confirmed on their post. Recommendation for releasing of grant was sent to the State Government vide letter dated 25th March 2019 informing that the teachers have been duly recommended for release of the salary. Opinion of the Additional Advocate General had already also been taken by the University before sending the request for release of grant.

8. However, the Director, Education Department has rejected the request merely mentioning the provisions of Section 57 (A)(6). The letter does not mention any reasons for not releasing the grant. In the circumstances, the Director, Education Department was called by the Court to be personally present in the Court to explain. Whereafter, she is present in the Court and states that since there are two different kinds of grants being released by the State Government, the provisions of Section 57(A)(6) would apply only to the affiliated colleges which are receiving grant for performance and not for those which are receiving grant in deficit. It is further stated that the work of regularizing/ confirming the services of the teachers is that of the University and not of the State Government

and no approval is required from the State Government for the said purpose.

9. Having heard the Director, this Court finds that the University in its letter dated 25th March 2019 does not request the Director to approve the appointments of the concerned teachers but on the other hand, states that the University has finally approved their services in terms of Section 57(A)(6) and requests the Department to release their salary.

10. It appears that the State Government and their officials have adopted a stubborn approach and there is complete non application of mind on her part. In spite of their being a direction issued by this Court earlier. In C.W.J.C. No. 444/2018 dated 11.05.2018 (supra), the salary of the teachers who have worked for the University for more than almost thirty years has been withheld from 2011/2012. It is an admitted position that all of them have been performing their duties till their superannuation. Some of them are still working. Article 23 of the Constitution of India provides as under :-

"23. Prohibition of traffic in human beings and forced labour.

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

11. In fact no person shall be asked to perform duties without being paid their due salary. No plausible reasons are coming forward for not taking appropriate action at that relevant time to remove these teachers if they were not appointed in accordance with the law. The State Government has not passed any order directing the University to take any steps for removing them and in an arbitrary illegal manner contrary to the principles and ethos of the Constitution, direction has been issued to withhold the salary. Such action is an anathema to the ethos of the Constitution as laid down under Article 21 of the Constitution of India. The action is deprecated. This Court has reminded earlier in its order dated 11.05.2018 on similar footings. However, the State Government and its officials have failed to perform their duties as required and have passed orders without contesting the writ order passed by this Court in appeal. The action is contemptuous. However, instead of proceedings to initiate any contempt proceedings, this Court deems it appropriate to pass specific directions in the present case clarifying the entire position of law. Section 57(A)(6) carved out an exception to Section 57(A). It is to take care of the situation where the concerned colleges had appointed through their governing body teachers in a situation where the same were not available by the Commission. Said appointments were approved by the concerned University and they continued to perform their duties and were also being granted their due salary under the

U.G.C. pay scale. It appears that in 2011, 2012, the State officials arose from a slumber and objected to their appointment on the ground that their appointments had not been recommended by the concerned Commission. In 2000, the issue was taken up in Legislative Assembly and an amendment act was brought into force by issuing a notification on 27th August 2015 which provided for scrutiny of cases of teachers of affiliated degree colleges appointed prior to 19.04.2007. The distinction on the basis of different grants was not mentioned in the amendment. However, the State Authorities have proceeded to carve out the distinction between the two. Admittedly, the colleges where the petitioners were performing their duties are affiliated to the University. In view thereof, the scrutiny of their cases was required to be done in terms of the amendment made on 27th August 2015. It appears that the University has conducted that exercise and has made recommendations but the State Authorities did not accept it on a ground that the aid released is under the deficit grant and not under the grant against performance. Although, such a submission has been made before this Court and in the counter-affidavit the orders impugned do not reflect such a reason. Be that as it may, this Court is satisfied that there is no difference mentioned in the provision added to Section 57(A) vide notification dated 27th August 2015 and no distinction can be drawn between the teachers who are appointed without recommendation of the Bihar College Service Commission for the purpose of scrutinizing their cases or for the purpose of releasing the grant. Such an approach adopted by the State Government has resulted in unnecessary litigation before this Court. The action of the State is found to be wanting and in view of above, the impugned orders passed by the respondent dated 23.09.2018 as well as the orders passed subsequently dated 06.10.2022 by the Director are quashed and set aside with further direction to release the grant to the concerned University for further distribution of salary and other allowances to the petitioners. Those who have retired shall also be granted their due pensionary benefits in terms of the U.G.C. pay scales. The exercise shall be conducted positively within a period of one month from today.

12. The writ petition stands allowed.