
(2009) 04 PAT CK 0059
In the Patna High Court
Case No : C.W.J.C. No. 1519 of 2009

Bharat Kumar

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Bar Council of India Rules, 1975 — Rule 8
Bihar Inter University Board Act, 1981 — Section 5(2)

Citation : (2009) 122 FLR 1047 : (2009) 3 PLJR 80

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—Petitioners are practicing advocates of Patna High Court and different Civil Courts. They are aggrieved on account of requisite qualifications mentioned in the notice published by Patna University for appointment of part-time lecturer in Patna Law College on 14 sanctioned posts. Patna University has published notice dated 6.1.2009 in daily newspapers vide Advertisement No. G/Admn/011/2009 (Part-time lecturer, Patna Law College), inviting applications from eligible candidates.

Prayer of the petitioners is for quashing this advertisement, as requisite qualification mentioned in the advertisement do not mention about 5/10 years practicing experience at Bar as requisite qualification for appointment as part-time lecturer rather it discloses that only candidates who have cleared NET or similar test as graded by UGC can apply.

2. Petitioners have been working as part-time lecturer in Patna Law College for several years. Some ad hoc teachers of Patna Law College had filed C.W.J.C. No. 5598 of 2006 for a direction seeking permanency of their appointment and to make payment of remuneration for the time consumed in their re-selection. This writ application was disposed of directing the University to advertise vacancies and appoint teachers on the vacant posts of lecturers within a period of 6 months from the date of constitution of Selection Committee. University was restrained

from engaging any person apart from existing permanent teachers on any basis, apart from the ad hoc basis in the college, after expiry of nine months from the date of the order. In order to meet this deadline, vacancies for appointment of part-time teachers were advertised. In this advertisement there is no provision for appointing practicing advocates as part-time teachers, having 5/10 years practicing experience at bar. In the notice published by Patna University dated 6.1.2009, only those persons are eligible to apply who besides fulfilling other qualifications have cleared the NET or similar test as graded by University. NET and Ph.D. being made compulsory requirement for submitting applications, candidates other than those who have not cleared NET and Ph.D. are debarred from applying for the post.

3. The impugned notice has been challenged on the ground that it is against the Government's own resolution contained in Memo No. 1581 dated 10.6.1976 relating to part-time lecturers of the University and affiliated Law Colleges of Bihar. Petitioners case is that notice is also against revised statutes of Patna University amended and approved by the Chancellor dated 15.12.1999, whereby only practicing advocates could be appointed as part-time lecturers in Law Colleges. Notice published by Patna University dated 6.1.2009 has been assailed by petitioners stating that requisite qualification as mentioned in the notice, in a way completely debars advocates, having 5/10 years experience from applying for the post.

4. Counsel for the petitioner's has contended that the University and its authorities while inviting applications for appointment of part-time lecturers did not consider that law teaching cannot be equated with general course of humanity or other social sciences. Law is a professional course and its teaching is specialized teaching. Considering this aspect only. Bar Council of India was empowered u/s 7(h) and (i) of Advocates Act to promote, lay down standard and decide syllabus of law teaching in consultation with the Universities of India, imparting such education. Under the Bar Council of India Rules requisite qualification for appointing Principal and full-time teachers of Law Colleges is Master Degree in law. But so far part-time teachers are concerned, graduate in law with minimum experience of five years practice at Bar for bachelor course and 10 years experience for master course has been decided as requisite qualification. Revised statute contained in letter No. BSU-25/83-2377GS(i) dated 9.9.1998 and BSU-1189-3748GS(i) dated 15.12.1990 were also issued according to Bar Council of India Rules. Requisite qualification as provided u/s 11 of the statute for appointing teacher was LLM degree with good academic record, but these qualifications were not to be insisted upon where practicing advocates were going to be appointed by the University as part-time teachers. In this statute of 1990 a provision was made for appointing practicing advocates as part-time teachers, for the reason that the law degree are usually obtained for joining legal profession and practical knowledge is required for joining legal profession. Law course being professional course, for its teaching importance of teachers who are directly in thick of things was acknowledged under 1990 statute. This

was the reason that 5/10 years practice experience at bar was treated equivalent to Ph.D. Degree. However, a new statute has been enacted by the Chancellor of the Universities of Bihar in consultation with the Bihar Inter-University Board and on recommendation of State Government vide letter No. 1614/GS dated 29.6.2005 minimum qualification for appointment of part-time teachers and full-time regular teachers, as provided u/s 5(2) of Bihar Inter-University Board Act is same. Only candidates having postgraduate degree with at least 55% marks from any recognized University having cleared eligibility test (NET) can be appointed as part-time teachers. Under the new statute no provision has been made for appointing advocates as part-time teachers having 5/10 years practice experience despite the fact that law course are specialized teaching course.

5. Patna University in its counter affidavit has emphasized that the University is bound to follow the statute. Since, minimum qualification for appointing part-time teachers for Law Colleges are same as for appointing regular teacher, unless candidates will fulfil requisite criteria, they cannot apply for the post. The statute provides that the candidates must have cleared eligibility test (NET) or have Ph.D. Degree, notice has been published inviting applications for appointment, in terms of statute. Mr. Ram Balak Mahto, Sr. Advocate appearing for Chancellor of University have rightly submitted that the University cannot act against the statutory provisions.

6. But it was also essential that while enacting the statute, the Bar Council of India Rules should not have been ignored and overlooked. Bar Council of India is statutory body empowered to monitor the legal education throughout country. Advocates Act provides functions and duties of Bar Council of India which includes (i) to promote legal education; (ii) to lay down standard of such I education in consultation with the University imparting such education, (iii) to I recognize degree in law for enrolment as an advocate. The Bar Council of India I has got a vital role so far law degrees are concerned. The Law degree cannot be treated as any other course of humanity or social sciences, as it is a professional training course. Importance of teachers who are in the thick of things cannot be under valued. Under new statute this aspect has completely been ignored. The law degree has been treated as any other humanity and social sciences. For law degree besides full-time teachers, such teachers who have practical experience has got importance. Primary purpose of Law Colleges is to prepare its students for practicing law. In this view, it is essential that the Law Colleges be staffed with two categories of teachers, those who joined after post-graduate in law without having any experience at the bar and second category consisting of lawyers at least five years standing at bar to teach bachelor course and ten years standing at bar to teach post-graduate course. The law teachers are like technical experts and the law course are tools used in the work shop for handling problems faced by lawyers in day to day practice. A teacher of law who deals with the practical legal problems can be more efficient than an academician law course requires research and legal profession is based on research. A full-time teacher may be very good in academic but so far the problems with which a legal

professional is faced with, on day to day basis that experience is always there with a professional teacher. This was the reason that Bar Council of India while fixing the minimum qualification for appointing a law teacher, besides other degrees, provided five years professional experience at bar 5/10 years experience at bar for part-time teachers. The present statute dated 29.6.2005 did not recognize this aspect of law teaching specially while deciding the requisite qualification for part-time lecturer in Law Colleges.

7. I.A. No. 1034 of 2009 has been filed by the petitioners in order to bring revised statute on record. The amended statute, issued vide letter No. 2181 dated 26.6.2008 provides minimum qualification for appointment of lecturers in Law Colleges wherein besides other qualification the qualification prescribed by Bar Council of India/AICTE has also been prescribed for appointment of lecturer in Law Colleges.

8. Mr. Ram Balak Mahto Sr. Advocate appearing on behalf of Chancellor of the University, in order to justify the statute has stated that it is as per the guideline of UGC. The Government of Bihar has accepted the UGC package relating to salary and other service conditions of teaching and non-teaching staff of the University. Clause 10 of UGC package prescribes minimum qualification for part-time lecturers. The University had to comply it otherwise they will not get grants from UGC. It has also been submitted by Mr. Mahto that so far Rule 8 of Bar Council of India Rules is concerned it is only a enabling clause and not mandatory to be followed by the Universities. I find that the word "may" used under Rule 8 of Bar Council of India cannot be treated as enabling clause, considering the nature of education imparted to law students and role played by Bar Council of India in recognizing law degree. In the present case the word "may" can be interpreted as shall. In this circumstance the rule framed by Bar Council of India so far law course are concerned is mandatory to be followed by the Universities and Colleges imparting law education.

9. Counsel for the petitioners to support this contention that Bar Council of India Rules are mandatory to follow had placed reliance on a decision in the case of Bar Council of India v. Board of Management, Dayanand College of Law and others 2007 (51) AIC 170 (SC) = (2007) 2 SCC 202. In this decision the Apex Court has held that the Bar Council of India may not have been exercising direct control over legal education in the sense for which same is entrusted to University. Still the Bar Council of India retains adequate power to control courses of studies in law, the power of inspection, the power of recognition of degrees and power to deny enrolment to law degree holders unless the University is recognized by the Bar Council of India. The students passing from that University cannot be enrolled to practice law. The Apex Court has also observed that notwithstanding the procedure to be followed under the University Act and Statute, it is necessary for the recommending authority and the State Government when concerned with the appointment of a Principal of a Law College, also to adhere to the requirements of the Advocates Act and Rules of the

Bar Council of India, this would ensure a harmonious working of the universities and the Bar Council of India in respect of legal education and for avoidance of any problems for the students coming out of the institution wanted to pursue the legal profession. However, Mr. Mahto has submitted that only finding recorded relating to issue decided is an authority, and required to be followed. Since issue decided in this decision was not relating to mandatory nature of Bar Council of India in a matter of legal education as such it has no binding force.

10. What I find that the observations made in a decision are guidelines for future and its importance cannot be undermined. The Apex Court has observed that for harmonious working of the Universities in respect of legal education and for avoidance of any problems for the students, it is necessary for the Universities and the Government to follow and to adhere to the requirements of the Advocate and the Rules of Bar Council of India. This guidelines and observations of the Apex Court has not been followed under the revised statute.

11. This application is being disposed of with a direction to the Chancellor of the Universities as well as the Vice-Chancellor of Patna University to reconsider and re-cast the statute within two weeks from the date of production/communication of this order. The Chancellor will take steps in this regard. In the meantime appointment process on the basis of the impugned advertisement dated 6.1.2009 shall remain stayed.

12. Mr. Uma Shankar Prasad was appointed amicus curiae to assist this Court. Mr. Prasad has assisted this Court very ably and presented journals in order to highlight the rule of Advocates Act and Bar Council of India Rules so far the law education is concerned. The Patna High Court Legal Services Authority is directed to pay Rs. 5,000/- (Five thousand) as fee to Mr. Prasad.