
(2005) 07 PAT CK 0085
In the Patna High Court
Case No : CWJC No. 10860 of 1999

Bhogendra Jha

APPELLANT

Vs

Kameshwar Singh Darbhanga Sanskrit University and Others

RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:

Citation : (2005) 3 PLJR 659

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioner, learned Counsel appearing on behalf of the respondent University and the learned Counsel appearing on behalf of the Bihar College Service Commission. The petitioner contends that he was initially appointed in the Vidyanand Mithila Sanskrit Mahavidyalaya, Sankat Mochan Dham, Darbhanga as a Lecturer in Sociology by the Governing Body on 1.1.1983. This appointment was approved by the University. The petitioner was being paid salary for the post of Lecturer in Sanskrit MA. The petitioner obtained the requisite qualifications for appointment as Lecturer in Sanskrit by appearing in the MA Examination in Sanskrit conducted by the Patna University in 1987. The Governing Body then absorbed the petitioner against the post of Lecturer in Sanskrit MA with effect from 26.3.1990. This was followed by the temporary concurrence to the appointment of the petitioner as Lecturer in Sanskrit by the Commission on 19.12.1991 with effect from 26.3.1990. The University consequently directed for making payment of salary to the petitioner on the post of Lecturer in Sanskrit. The concurrence granted to the appointment of the petitioner was subsequently extended by the Commission. The respondent Commission then came out with an advertisement inter alia Advertisement No. 851/94 for appointment on the post of Lecturer in Sanskrit, Vidyanand Mithila Sanskrit Mahavidyalaya, Sankat Mochan Dham, Darbhanga. In pursuance of an interview conducted on 12.10.1998 the

Commission recommended the name of the petitioner for appointment as a Lecturer in Sanskrit in the aforesaid college on 4.12.1998. Name of the petitioner was at serial No. 1 while the vacancy was also to be only one. Thereafter no action appears to have been taken in pursuance of the recommendation for appointment of the petitioner, thus compelling him to approach this Court in the present writ application on 2.11.1999.

2. This court considers it necessary to take note at this stage of the fact that the recommendation of the Commission in which the name of the petitioner figured at serial No. 1 was to remain valid till 3.12.1999. The petitioner thus clearly sought relief in the present proceeding during the validity of the life of the panel.

3. Learned Counsel for the petitioner would submit that the College in question was affiliated to the Kameshwar Singh Darbhanga Sanskrit University. By an order dated 24.6.2000 the affiliation in respect of the present College and certain others was sought to be cancelled by the State Government, which came to be challenged in a proceeding before this Court. The aforesaid order of cancellation of affiliation was then set aside in a judgment reported in *Saraswati Vilas Sanskrit Mahavidyalaya and Others and Kirti Narayan Kamakhya Sanskrit Mahavidyalaya and Others Vs. Kameshwar Singh Darbhanga Sanskrit University and Others*. Though the Letters Patent Appeal Nos. 318/2001 and 321/2001 may have been preferred against the judgment, there would be no interim orders. In compliance of the order of this Court, as aforesaid, the Colleges in question including the present College were being paid salary by the Government of Bihar and the issue of affiliation is no more relevant at this stage.

4. Learned Counsel for the petitioner placed reliance on a judgment of the Supreme Court reported in *State of U.P. Vs. Ram Sawrup Saroj*, to submit that the petitioner having approached this Court during validity of the panel, could not be non-suited for the reason that the life of the panel may have expired during pendency of the proceeding. The next submission would be that the College in question represented by the respondents 5 and 6 despite issuance of notice and valid service of the same, have chosen to not come forward and contest the proceeding. The recommendation, as it stands, would not justify the non-appointment of the petitioner. The denial of appointment in such circumstances would clearly be arbitrary and the petitioner would be entitled to a mandamus to the respondents 5 and 6 to act in accordance with the recommendation of the Commission. The petitioner would claim to be in continuous employment as a Lecturer in Sanskrit in the College in question ever since his initial appointment on 1.1.1983 as noticed above. Learned Counsel for the petitioner further places reliance upon an order of this Court in CWJC No. 11524 of 1998 disposed on 28.2.2000 wherein in similar circumstances this Court issued direction for making appointment in terms of the recommendation of the Commission.

5. Having considered the submissions made on behalf of the petitioner, the University and the Commission as also noticing that the College in question has chosen not to enter appearance despite valid service of notice, this Court finds

justification in the submission of the petitioner based on the judgment of the Supreme Court as aforesaid that the petitioner having approached this Court during validity of the panel, he could not be non-suited on the ground of alleged expiry of the panel during pendency of the writ application. This Court would be satisfied in the facts and circumstances of the case that the action of respondents 5 and 6 appear to be arbitrary, more so in the background of the fact that the petitioner has been working in the College since 1.1.1983 and that his name duly stands recommended by the Commission, his position being at serial No. 1 in the panel.

6. This writ application has therefore to be allowed. Let mandamus issue to the respondents 5 and 6 to consider and issue necessary orders in pursuance of the recommendation of the Commission dated 4.12.1998. Let it be so done within a period of three weeks from the date of receipt/ production of a copy of this order. The writ application accordingly stands allowed. No order as to costs.