

(2018) 10 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.12276 of 2017

Dr. Kumar Nandan @APPELLANT@Hash T. M. Bhagalpur University

Date of Decision : 26-10-2018

Acts Referred:

Bihar State Universities Act, 1976 — Section 39(2)(ii)

Citation : (2018) 10 PAT CK 0043

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Purushottam Kumar Jha, Ashutosh Ranjan Pandey, Sanjay Pandey

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. The petitioner is seeking quashing of the order passed by the Vice-Chancellor, Tilka Manjhi Bhagalpur, University, Bhagalpur, issued through Memo No. Legal 17/16/27-29 dated 06.02.2017 (Annexure-26), whereby, the petitioner's claim for grant of a provisional certificate of having acquired Ph.D. degree from the said University in accordance with University Grants Commission (Minimum Standards and Procedure for Awards of M.Phil/Ph.D. Degree) Regulation, 2009 (hereinafter referred to as "2009 Regulation"), has been rejected.
3. It is the specific case of the petitioner that Ph.D. course, which he has completed in Chemistry in the University is strictly in accordance with the said Regulation and, therefore, it was incumbent upon the Vice-chancellor to have issued the desired certificate to the effect that the petitioner has acquired the said degree in accordance with 2009 Regulation.
4. It is noteworthy that qualification of Ph.D. in accordance with 2009 Regulation makes a candidate eligible for appointment against the post of

Assistant Professor. The petitioner is an applicant for the post of Assistant Professor in the Department of University against an advertisement issued by the Bihar Public Service Commission. It seems that he has not been found eligible for the said post on the basis of his Ph.D. degree considering it to be not in accordance with 2009 Regulation in the absence of certificate issued by the University in this regard. It is in that background, the petitioner has sought a direction to the Bihar Public Service Commission to hold special interview of the petitioner for the said post since he is eligible, having Ph.D. degree in accordance with 2009 Regulation. The petitioner also has sought for a direction for payment of compensation to the tune of â??at least a sum of Rs. One croreâ?? for causing unnecessary mental harassment to the petitioner and serious prejudice to his career, apart from payment of cost of litigation.

5. Before I take into account other aspects of the matter, let me notice such facts, which are admitted and are relevant for the present adjudication, and the extant provisions under 2009 Regulation.

6. The process of the petitionerâ??s registration as Ph.D. scholar, according to him, started with the issuance of a letter dated 29.05.2013 issued by the Head of Department, University Department of Chemistry of the University, addressed to Controller of Examination of the University forwarding therewith the necessary papers for registration of the petitioner as Research Scholar under the guidance of Dr. Md. Belal Ahmad, Associate Professor, Department of Chemistry, Tilka Manjhi Bhagalpur University, Bhagalpur, of the University, on the basis of a seminar held on 22.11.2012.

According to the said letter, the petitioner had successfully defended his seminar. Relevant portion of the letter dated 29.05.2013, reads thus: -

â??To

Controller of Examinations

T.M. Bhagalpur University, Bhagalpur.

Sub: Regarding submission of papers related to the registration of KUMAR NANDAN, a research scholar under the guidance of Dr. Md. BELAL

AHMAD, associate professor, dept. of chemistry, T.N.B. college, T.M. Bhagalpur University, Bhagalpur on the basis of pre-registration seminar on

22-11-2012 leading to the award of Ph.D. degree.

Sir,

I am forwarding herewith the necessary relevant papers of KUMAR NANDAN for registration for the award of the Ph.D degree on the basis of his

pre-registration seminar held in department of chemistry on 22-11-2012. The candidate successfully defended his seminar.

This is for your needful

Yours faithfully

Sd/-

29.5.13

Dr. Shailendra Kumar Singh

HOD

University Department of Chemistry

T.M. Bhagalpur University, Bhagalpur.â??

7. After issuance of the said letter dated 29.05.2013, the Controller of Examination, issued a letter dated 11.04.2014, addressed to the petitioner

informing him that he has been registered for Ph.D. course in Chemistry Department with effect from 22.11.2012 with his registration No.6448/12. It

also indicated that the petitioner shall be eligible to complete his research work and submit his thesis on any date after two years and within five years

from the said date of registration dated 22.11.2012. There is statement made in paragraph 14 of the writ application that the petitioner started pursuing

his research work under the guidance of Dr. Md. Belal Ahmad and upon completion of research, he submitted his thesis. No date of submission of

thesis has, however, been mentioned. It is mentioned in the subsequent paragraph that after his thesis having been processed, on prima facie

satisfaction of the research work doe by the petitioner, external and internal experts were appointed for viva-voce examination and his interview was

held in May 2015 leading to declaration of result by the University on 01.07.2015. The process of the petitioner;s registration, thus, began on

29.05.2013 and ended with publication of result on 01.07.2015, according to the petitioner himself.

8. There is requirement of sending soft copy of the Ph.D. thesis to the University Grants Commission for posting the same in the INFLIBNET under

Regulation 19 within 30 days of the declaration of Ph.D. results, which, too, was

not done. The petitioner is seeking a direction to the University to make available soft copy of his thesis to the University Grants Commission for the said purpose, as one of the reliefs in the present application.

9. The petitioner had earlier moved before this Court seeking direction to the University to issue the certificate of the nature which he is seeking in the present application. In compliance of the orders issued by this Court to decide the petitioner's claim whether his Ph.D. qualification could be said to be in accordance with 2009 Regulation, the impugned order has been passed.

10. I may now come to the procedure laid down by the University Grants Commission in Regulation 2009. Regulation 9 of the said Regulation prescribes the procedure for admission, which reads thus :-
â??Procedure for admission.

9. (i) All Universities, Institutions, Deemed to be Universities and Colleges/Institutions of National Importance shall admit M.Phil doctoral students through an Entrance Test conducted at the level of individual University, Institution, Deemed to be University, Colleges/Institutions of National Importance. The University may decide separate terms and conditions for those students who qualify UGC/CSIR (JRF) Examination/SLET/GATE/teacher fellowship holder or have passed M.Phil Programme for Ph.D. Entrance Test. Similar approach may be adopted in respect of Entrance Test for M.Phil Programme.

(ii) It shall be followed by an interview to be organized by the School/Departments/Institutions/University as the case may be.

(iii) At the time of interview, doctoral candidates are expected to discuss their research interest/area.

(iv) Only the predetermined number of students may be admitted to M.Phil/Ph.D. programme.â??

11. As is evident from Regulation 9, the Universities/Institutions are required to hold entrance test in order to admit M.Phil/Doctoral students. In respect of UGC/CSIR (JRF) Examination and other fellowship holder and those, who have passed M.Phil Programme, the Universities/Institutions have been given jurisdiction to decide separate terms and conditions. It further requires that the same shall be followed by interview. Apparently, no written test was ever held for admission to Ph.D. course by the University nor in interview was organized for all eligible candidates for admission to

Ph.D. course before the Head of the University Department of Chemistry wrote to the Controller of Examination on 29.05.2013 to register the

petitioner as Ph.D. scholar. According to the said letter dated 29.05.2013, a pre-registration seminar was held in the Department of Chemistry on

22.11.2012, in which the petitioner had successfully defended. Curiously, the date, when the said seminar was said to have been held, has been treated

to be the date of the petitioner's registration in Ph.D. course.

12. Mr. Purushottam Kumar Jha, learned counsel appearing on behalf of the petitioner, has attempted to persuade this Court that since the petitioner

had M.Phil qualification, there was no requirement for him to participate in pre-registration test. He has also argued that since the petitioner had

completed course work of six months, while pursuing his M.Phil course, he was not required to undergo either the course work as prescribed in

Regulation 10 of the Regulation.

13. There is an aspect of the matter in the entire facts and circumstances of the case, which is glaring. The 2009 Regulation became effective in the

State of Bihar from 06.11.2012 with the coming into force of the Ordinance and Regulations governing the award of Ph.D., which have been prepared

in the light of the 2009 Regulation. The said ordinance/Regulation for the purpose of maintaining transparency in the process of admission has laid

down a definite procedure for admission. Article 3 of which reads thus:-

â??3. Eligibility for Ph.D. Registration :

(I) Candidates having master's Degree in the subject concerned or in an allied subject from a recognized university and who have secured at least

55 percent marks are eligible for admission.

(ii) Candidates who have passed PRT conducted by the university shall be eligible for admission to the Ph.D. course. The pass marks for PRT shall

be 50 percent for General candidates and 45 percent for reserved category candidates as per reservation policy of the State Government and wards

of teaching and non-teaching employees of the university.

(iii) Candidates who have qualified in the NET conducted by UGC/CSIR/CSSIR/ICHR and GATE are eligible for registration for Ph. D Degree

without appearing in PRT.

(iv) Candidates who have already done M Phil from a University recognized by

the UGC are also eligible for registration for Ph.D. Degree without appearing in PRT.

(v) Teachers of the University and its Colleges and Institutes appointed on substantive posts are Eligible for registration for Ph.D. Degree without passing the PRT. They must have obtained a minimum of 55 percent marks in their Master;s Degree.

(vi) Teachers of other recognized Universities of India and the rest of the world having three years of teaching experience and holding substantive appointment are eligible for Ph.D. registration without appearing in the PRT.

(vii) Non-teaching employees of the University, who are holding substantive appointment for more than five years and having at least 55% marks in Masterâ??s Degree in the subject concerned and with at least two research papers published in any reputed journal are eligible for Ph.D. registration without appearing in PRT.

(viii) Persons in regular job in Government or reputed organization with five years of continuous service and with at least 55% marks in Masterâ??s

Degree in the examination in the subject concerned with at least two research articles published in any reputed referred journal are eligible for Ph.D.

for registration for Ph.D. degree without appearing in PRT.â??

14. The said Ordinance and Regulation have been adopted by the Universities for the purpose of award of Ph.D. degree. Surprisingly, the effective

date of petitionerâ??s registration in Ph.D. course is 16 days after the letter dated 06.11.2012 was issued by the Chancellorâ??s office, whereby

assent to the Ordinance and Regulations 2012-13 was given. The Ordinance and Regulations have statutory force, which have been given assent to in

exercise of power under Section 39(2) (ii) of the Bihar State Universities Act, 1976. It can be easily culled out from Article 3, as noted above, that

admission for Ph.D. programme is to be advertised in leading newspapers and uploaded on Universityâ??s website. It also requires holding of pre-

registration test to be conducted by the University at least once every year. Sub-Article

(v) contemplates an interview to be conducted by the Department of Council of the Department concerned to explain his/her research interest. It also

states that the candidates, who have passed Pre-registration Test (PRT) conducted by the University shall be eligible for Ph.D. course after

successfully completing the requirement of course work. Sub-article (iii) and (iv) of Article 3 exempts certain categories of candidates and make them

eligible for registration for Ph.D. degree without appearing in PRT. A candidate, who has done M.Phil from a University is also eligible for registration

in Ph.D. degree without appearing in PRT. The petitioner claims that he has completed his M.Phil course from Awadhesh Prasad Singh University,

Rewa (M.P.) and, therefore, he was also exempted from pre-registration test for his admission to Ph.D. course.

15. This stand of the petitioner has apparent fallacy. The procedure for admission requires exemption from PRT for category of candidates specified

therein. The question of exemption from test will arise only if such test is held.

16. In any view of the matter, there was mandatory requirement in Article 3 of the Ordinance and Regulation of advertisement inviting application

from eligible candidates. Admittedly, there was no such advertisement.

17. In Court's view, the petitioner was allowed registration with effect from a retrospective date, meaning thereby that he had started his research

from the date the so-called seminar was held. In the Court's view, it was nothing, but a fraud on the system. The Court is shocked to find that

such things are happening at the level of a Head of University Department of a University. The supervisor was allotted on 29.05.2013 and his

registration is being done with effect from 22.11.2012. The registration number is of 2012. It is not conceivable to the Court that the registration has

been done as is evident from Annexure-7 on 11.04.2014, whereas, his registration number, which has been given, is of the year 2012. This is

unimaginable how registration number of 2012 can be issued in 2014. The Court deprecates in strong terms the conduct of the functionaries of the

University connected with the petitioner's registration, which is not only in gross violation of 2009 Regulation, but also the Ordinance and

Regulation framed by the Chancellor, Universities of Bihar, as noticed above.

18. In the aforesaid background, I do not find any reason to interfere with the order passed by the Vice-chancellor. He has, in Court's view,

rightly rejected the petitioner's claim that the Ph.D. degree awarded in his favour is in accordance with 2009 regulation.

19. At the cost of repetition, I record here that 2009 Regulation came in force within the Universities governed by the Bihar State Universities Act,

1976 with the issuance of the Ordinance and Regulations by the Office of the Chancellor, Universities of Bihar. In the absence of any selection

process adopted for admission, the petitioner's registration cannot be said to be in accordance with 2009 Regulation.

20. This application is devoid of merit and is accordingly dismissed.