

(1998) 03 PAT CK 0080
In the Patna High Court
Case No : C.W.J.C. No. 7521 of 1997

Dr. (Mrs.) Renuka Sharma

APPELLANT

Vs

The Bihar Public Service Commission and others

RESPONDENT

Date of Decision : 31-03-1998

Acts Referred:

Constitution of India, 1950 — Article 320

Citation : (1998) 2 PLJR 142

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh, Pushkar Narain Shahi, Dharendra Kumar Munna and Ashutosh Singh, for the Appellant; Krishna Murari (for State), M/s. Tarakant Jha, Ashok Kumar Choudhary (for BPSC), M/s. Rajendra Prasad Singh, Arun Kumar Singh No. 4 (for Resp. 6), M/s. Yugal Kishore and Satyadeo Kumar (for Resp. 7), for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This case relates to appointment to the post of lecturer of Sociology in Government Women's College, Gardanibagh and Guljarbagh both at Patna.

The Bihar Public Service Commission (B.P.S.C. for short) by this notice dated 2.8.1997 recommended the names of respondent (no.6) Manju Kumari and respondent (no.7) Kamla Kumari for appointment to the post of lecturer Sociology, alongwith others for appointment in one or other faculty. The same has been challenged by petitioner, Dr. (Mrs.) Renuka Sharma so far it relates to the aforesaid respondent Nos. 6 & 7.

According to the petitioner, the respondent Nos. 6 and 7 have not cleared the eligibility test for lecturers, commonly known as National Eligibility Test (N.E.T) or equivalent Bihar Eligibility Test (B.E.T.), by the cut-off date of making application and so they are not eligible for recommendation and appointment to the post of lecturers.

On the other hand, according to the respondents, the passing of eligibility test like N.E.T. or B.E.T. is not required for appointment as lecturers in Government Colleges, as they are not guided by the University Grant Commission (U.G.C, for short).

In this case, the sole question to be determined is whether the passing of eligibility test, N.E.T. or B.E.T, is mandatory for being eligible for appointment to the post of lecturers in Government Colleges in question or not.

2. The brief fact of the case shows that B.P.S.C. came out with Advertisement No. 9/93 in the newspaper on 4.4.1993 for appointment to the post of lecturers in Sociology in Government Womens Colleges at Gardanibagh and Guljarbagh, Patna. In the said advertisement, no criteria was laid down that a person must have passed N.E.T. or B.E.T. in accordance with U.G.C. Regulation.

The petitioner, who was functioning as lecturer in Sociology in Government Womens College, Gardanibagh on part-time basis since 5.9.1989, she challenged the advertisement aforesaid No. 9/93 before this Court in C.W.J.C, No. 4191/93 so far as reservation is concerned and prayed for grant of age relaxation and weightage for her experience and for her regularisation. No challenge was made by the petitioner in the said case relating to non-publication of eligibility criteria of passing N.E.T. or B.E.T. The said writ petition was allowed in part by this Court vide judgment dated 30.7.93 and reservation of posts more than 50% made vide advertisement No. 9/93 was quashed. This Court while did not grant any relief for regularisation of service of the petitioner, observed to give due weightage to the experience of petitioner, as per Government instruction while considering her case for appointment.

The B.P.S.C. subsequently re-published Advertisement No. 133/96 in newspaper on 4.9.96 for appointment to the post of lecturers in Sociology. This time also, no criteria was laid down in the advertisement that a person, who has passed eligibility test and has requisite qualification, is only entitled for appointment. The subsequent Advertisement No. 133/96 was not challenged by the petitioner and she applied alongwith others, including respondent Nos. 6 and 7 in pursuance of the said advertisement No. 133/96. The petitioner thereafter appeared in interview before the B.P.S.C. on 12.7.96, who thereafter recommended the names of successful candidates by impugned notice dated 2.8.1997 for appointment against one other posts in Government Womens Colleges.

3. The counsel for the petitioner relied on a Division Bench decision of this Court in Bhagalpur University Research Scholars Association and Others Vs. The State of Bihar and Others , as well as, the decision of Supreme Court in University of Delhi Vs. Raj Singh and others, . According to him, in terms with Regulation framed by U.G.C, a candidate besides fulfilling the other qualification should have cleared eligibility test for appointment to the post of lecturers. The Regulation framed by U.G.C, is binding and non-clearance of such eligibility test renders a

person ineligible for appointment as lecturer.

Reliance was also placed on section 57(2) (a) of amended, the Bihar State Universities Act, 1976(Act 1976 for short), as well as, the definitions as provided u/s 2(c) (f), and sub-section 2(d) and section 21 of the Bihar State Universities Act, 1976. Drawing attention of this Court towards the definition of "College", it was submitted that the Government Colleges also fall within the meaning of "College" and the definition of "affiliated College" includes all such Colleges which receives privilege of the University.

According to the counsel for the petitioner, the Government Colleges being also "affiliated College", the provision of section 57(2)(a) is applicable and for appointment to the post of lecturers in such Government Colleges, a person must qualify in eligibility test.

The counsel for the petitioner also placed much reliance on Supreme Court decision in All Manipur Regular Posts Vacancies Substitute Teacher's Association (1992(1) PLJR 23(S.C.) to substantiate the claim for regularisation of service of the petitioner prior to the advertisement.

4. Mr. Tarakant Jha, Senior counsel who appeared on behalf of B.P.S.C. led the argument on behalf of respondents which was adopted by the counsel for the contesting respondents and the counsel for the State. According to the respondents, section 57 of the Act, 1976 while deals with the procedure for appointment of teachers under the University, section 57A thereto deals with appointment of teachers of affiliated Colleges not maintained by the State Government. The substantive provision of section 57 or section 57A being not applicable for appointment of teachers in Government Colleges, the amended provision of section 57(2)(a) is not applicable in such cases. The teachers of Government Colleges are not guided by the provisions of appointment laid down under the Act, 1976 but they are being guided by separate rule of recruitment framed by the State Government. There is a much difference of conditions of services of the teachers of Government Colleges in one hand and the "University teachers", as well as, teachers of "affiliated colleges" on the other hand.

While the selection of teachers of Government Colleges are made through B.P.S.C. under Article 320 of the Constitution of India, the University teachers are appointed on the recommendation of Bihar State Universities (Constituent Colleges) Service Commission and the teachers of affiliated colleges are appointed on the recommendation of College Service Commission.

Similarly, while the University teachers and teachers of affiliated colleges retire at the age of 60 years, the teachers of Government Colleges retire at a lower age of 58 years.

While for appointment of teachers in the University and affiliated colleges, there is no minimum age prescribed for appointment, there is a specific maximum age prescribed for appointment of teachers of Government College as evident from

Advertisement No. 133/96.

In the Government Colleges, while there is no avenue of promotion to the higher post of reader or professor and time bound promotion is not applicable, there are statutes available for such promotion to higher post of reader and then professor for the University teachers and teachers of affiliated Colleges under the time bound scheme.

5. The aforesaid differences in the conditions of services of teachers of Government Colleges in one hand and University teachers and teachers of affiliated colleges in other hand was shown to justify the fact that the Government Colleges are not "affiliated Colleges" of the University (Magadh University herein) and thus the provision of the Bihar State Universities Act, 1976 is not applicable to such teachers.

6. The respondents have stated that the Government Womens Colleges in question are not "affiliated Colleges" of Magadh University or any other University. They are run and controlled by the Government and there is no order of affiliation granted by any University to it, nor such affiliation is required. This fact has not been denied by the petitioner.

However, according to the counsel for the petitioner, as the Colleges in question get privilege from the Magadh University, which grants degree to the students of the Government Colleges in question, they come within the purview of the Universities Act, 1976.

Further, according to him, the Regulation framed by U.G.C, and the U.G.C. Act being a Central Act, it will prevail over the Acts and Regulations framed by State Government with respect to institutions appertaining higher studies.

7. In this case, to determine the issue in question, apart from the provision of the Bihar State Universities Act, 1976, it is necessary to take into consideration the other provisions like U.G.C. Act, its preamble and Regulations made thereunder.

The preamble and statement of objects of University Grant Commission Act, reads as follows :

"Preamble-An Act to make provision for the co-ordination and determination of standards in Universities and for that purpose, to establish a University Grants Commission.

The Constitution of India vests Parliament with exclusive authority in regard to co-ordination and determination of standards in institutions for higher education or researches and technical institutions. It is obvious that neither co-ordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in Universities both old and new. It is also necessary to ensure that the available resources are utilised to the best possible effect. The problem has become more

acute recently on account of their tendency to multiply Universities. The need for a properly constituted Commission for determining and allocating to Universities funds made available by the Central Govt, has also become more urgent on this account.

It is, therefore, proposed to establishing a University Grants Commission as a corporate body which will inquire into the financial needs of Universities and allocate and disburse grants to Universities for any general or specified purpose. The Commission will also have the power to recommend to any University the measures necessary for the reform and improvement of University education and to advise the University concerned.

Upon the action to be taken for the purpose of implementing such recommendation, the Commission will act as expert body to advise the Central Government on problems connected with the co-ordination of facilities and maintenance of standards in Universities. The Commission will also have the power to cause an inspection or in query to be made for any University established by law in India to advises sought on the establishment of new Universities."

Section 26(1) of the said Act empowers the U.G.C, to frame regulation for such purpose, which has already been framed by U.G.C, known as "University Grants Commission (qualification required of a person to be appointed to the teaching staff of a University and institutions affiliated to it) Regulation, 1991.

The relevant provisions of the Regulation is 3(A) which not only prescribed education qualification for appointment of teachers of a University and institutions affiliated to it, under the said regulation besides fulfilling the other qualification, a person is required to clear eligibility test which is mandatory.

8. The Division Bench of this Court in the case of Bhagalpur University Research Scholars Association and Others Vs. The State of Bihar and Others held that laying down such provision for passing examination, as an eligibility clause is within the competence of U.G C and State Government is not competent to dispense with holding of such examination envisaged by U.G.C, as "eligibility test for appointment of lecturers. It further held that the 1991 Regulations framed by U.G.C, are mandatory and laying down of standard of education is the exclusive function of U.G.C. under the Central Act and no deviation or departure therefrom is permissible at the instance of the State.

The Supreme Court in the case of University of Delhi Vs. Raj Singh and others, while considering the same issue, held that the 1991 U.G.C. Regulations are valid and do not entrench upon University's autonomy and power to select teachers, as the test prescribed under the regulations falls squarely within the Entry 66 of List-I of the Constitution and the U.G.C. Act. It held the aforesaid 1991 Regulations as mandatory.

Thereby it is clear that the 1991 U.G.C. Regulation is mandatory and will prevail

over any Rule, Law or Act framed by the State Government.

9. Now the question remains whether the aforesaid 1991 U.G.C. Regulation or the provision of Amended section 57(2) of the Bihar State Universities Act, 1976, wherein clearance of eligibility test has been laid down as criteria is applicable in the matter of appointment of lecturers of "Government Colleges" in question or not.

10. My considered view in this aspect is negative, that is to say, that the aforesaid provisions are not applicable for appointment of lecturers in Government Colleges in question for the reasons as recorded hereunder.

The relevant provisions laying down definition relating to "College", "affiliated College" and "Constituent Colleges" under the Bihar State Universities Act, 1976, reads as set out hereunder:

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context :

2(c) "affiliated College" means educational institution having received privileges of the University according to the provisions of this Act and University Statutes thereto;

2(f) "College" means an institution maintained or controlled by the University or maintained by the State Government in which instruction is given subject to the provisions contained in clause (16) of section 4 to the students of the University upto or below the postgraduate standard under conditions prescribed in the statutes :

Provided that till separate arrangement is made for Intermediate Education, teaching of this standard also shall continue to be imparted in the same College, under the general direction of the Intermediate Education Council and that college shall be deemed to be an institution imparting education of Intermediate standard also;

2(i) "Constituent College" means a teaching institution maintained or controlled by the University."

From the aforesaid definition, it is clear that while "college" means and includes "constituent College" and Institution maintained by State Government, it does not include "affiliated College" which has a separate meaning. Therefore, I find that there are three types of institutions, which imparts teaching and their students are granted degree by the Universities, namely, (a) "affiliated College", (b) "Constituent College" and (c) "Institutions maintained by State Government" in which instruction is given to the students of the University upto or below the post-graduate standard under the conditions prescribed in the statutes.

Under the Bihar State Universities Act, 1976 while procedure of appointment of teachers of "Constituent Colleges" and "Universities" has been laid down u/s 57 as amended in 1995, such procedure of appointment of teachers of affiliated

colleges not maintained by the State Government has been laid down u/s 57A of the said Act, 1976. There is no provision laid down for appointment of teachers in a college/institution maintained by State Government, wherein the students of University undergo studies up to or below the postgraduate standard.

The provision of Amended section 57(2)(a) is applicable to the teachers of University (includes Constituent College) and the affiliated college but do not include teachers of an institution/college maintained by State Government.

So far as the Regulation 1991 framed by U.G.C, is concerned it is known as "University Grants Commission" (a qualification required of a person to be appointed to the teaching staff of University and Institutions affiliated to it) Regulation, 1991. It does not lay down any such condition with regard to teaching staff of an institution/college maintained by the State Government, which is distinct and different from University, College (Constituent College) and affiliated college.

So far as the question whether an institution/college maintained by the State Government can be construed to be an "affiliated College" or not, I have already pointed out that under the definition section 2 of the Bihar State Universities Act, 1976, the affiliated college is different and distinct from the institution/college maintained by the State Government.

It is a settled principle that for interpretation or construction of a statute, the intention of its makers is required to be taken into consideration apart from the plain meaning and effect irrespective of consequence. "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver."(quote from the finding by Tindal C. J. in Sussex Peerage case).

11. It is also settled principle that the Court cannot aid the legislatures freezing by an Act and cannot add or mend therein.

As the definition u/s 2 of the Universities Act keeps an institution or the college maintained by the State Government separate from that of a college affiliated and the University "constituent college"; "affiliated college" as enshrined under Amended section 57(2) (a) of the Bihar State Universities Act, 1976 and "institution affiliated" to a University as envisaged under 1991 Regulation will not include such institution/college maintained by the State Government.

12. Accordingly, I hold, that while U.G.C. Regulation, 1991 and the provision of Amended section 57(2) (a) of the Bihar State Universities Act, 1976 is mandatory and binding for appointment of teachers in a University (constituent college) and in an "affiliated college", the same having not been made applicable, is not binding for appointment of teachers in an institution/college maintained by the State Government.

So far as regularisation of service of petitioner and giving weightage to her is

concerned, as such relief of regularisation was not earlier granted in C.W.J.C, No. 4191/93 and there is no guideline to give weightage to an ad hoc/part-time lecturer in the matter of appointment, the petitioner cannot be granted such relief in this case. Apart from this, once the petitioner has not challenged the Advertisement No. 133/96 for non-exclusion of candidates, who have not cleared the eligibility test, the petitioner having taken calculated chance in pursuance of the said advertisement and appeared at oral interview, after being unsuccessful, now cannot challenge the appointment on the ground as taken in this case. This is a well settled principle reiterated by different Courts, including the Supreme Court in the case of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, . There being no merit, the application is fit to be rejected. I, accordingly, dismiss the writ petition and vacate the interim order with direction to the respondents to fill up the posts of lecturers from the panel of successful candidate, if the posts have not yet been filled up.