

(2007) 07 PAT CK 0125
In the Patna High Court
Case No : LPA No. 554 of 1998

Dr. (Mrs.) Renuka Sharma

APPELLANT

Vs

The Bihar Public Service Commission and Others

RESPONDENT

Date of Decision : 10-07-2007

Acts Referred:

Bihar State Universities Act, 1976 — Section 2(c), 2(f), 2(i)

Citation : (2007) 4 PLJR 762

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, Ritesh Kumar No. 1, Ravi Kumar and Nishant Choudhary, for the Appellant; Shashi Bhushan Kr. for the State, Mr. Nadim Seraj for the B.P.S.C. Mr. Rajendra Pd. Singh for the Respondent No. 6, M/s Tarakant Jha and Yugal Kishore for the Respondent No. 7, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh & Navaniti Prasad Singh, JJ.—Section 2 of the Bihar State Universities Act, 1976 furnishes definition of certain terms, whereas sub-section (c) thereof defines "affiliated college"; sub-section (f) defines "college" and sub-section (i) defines "constituent college". These three definitions were read by a learned Single Judge, who dealt with the writ petition one after the other and concluded that in terms of the said definitions there are three types of colleges, namely, Affiliated Colleges, Constituent Colleges and Government Colleges. We would read the definition, as given in Section 2(i) of the Act first. The same is as follows:-

"Constituent College" means a teaching institution maintained or controlled by the University;

2. We would thereupon read Section 2(c) of the Act, which is as follows:-

"Affiliated College" means educational institution having received privileges of the University according to the provisions of this Act and University statutes

thereto;

Therefore, while a constituent college is a part and parcel of the University, an affiliated College is an educational institution, which has received privileges of the University.

3. With this understanding we would read Section 2(f) of the Act, which is as follows:-

"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 up to or below the post graduate 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;)

4. We would, therefore, conclude that the College as defined is a part of educational institutions. There are some institutions, which in terms of Section 2(c), requires affiliation, if not a part of the University and accordingly, the logical conclusion would be that the statute contemplates two types of institutions, namely institutions, which are part of the University and those which are affiliated and as such there is no concept of a separate institution as that of a Government College. In the event, the Government College remains a Government College and does not form part of the University and accordingly, does not become a Constituent College, such a College in order to obtain privileges of the University is required to apply for and have affiliation of the University.

5. The said Act prescribes that in order to be appointed Teacher in a College affiliated to or constituent of the University, the person concerned must pass a standard examination prescribed by the Act. The only difference is that while the Teacher to be appointed in an Affiliated College, the authority conducting such examination is different, than the authority to take such examination when the person concerned is to be appointed in a Constituent College.

6. In the instant case, an advertisement was published by the Bihar Public Service Commission inviting applications from candidates for being appointed as Teachers in two of the Colleges controlled and managed by the Government. In the advertisement, it was indicated that while the selector will be the Bihar Public Service Commission, the appointment will be given by the Government for being appointed in the said Government Colleges. The advertisement indicated the qualifications to be had by the persons eligible to apply. In that, it had not been indicated that such candidates would be required to have passed those

examinations as are required to be passed for being appointed as Teachers in Affiliated Colleges or Constituent Colleges.

7. The appellant, who worked in part time capacity in one of the posts so advertised to be filled up, responded to the said advertisement. She not only had the advertised qualifications, but also passed the standard examination conducted by the authority prescribed by the Act competent to hold standard examinations for appointing Teachers in affiliated College. She was, however, not selected instead others were selected. The selection so made was questioned by filing a writ petition wherein it was contended that the persons selected do not have the minimum required qualifications, as they have not passed any of the examinations referred to above. It was contended that U.G.C, regulations, which came into effect in 1991, applied in the case and accordingly, without passing those examinations, as mentioned in the said Act, a person does not acquire the minimum qualification to become eligible for being appointed as Teacher in such Colleges.

8. The Writ Court felt that the statute contemplates three types of Colleges, namely, Affiliated Colleges, Government Colleges and Constituent Colleges and inasmuch as the statute does not require Teachers of Government Colleges to pass any of such examinations, the selectees were qualified.

9. We do not agree with the findings so rendered by the learned Single Judge. We feel that the principal object of bringing into operation the Regulations of 1991 by U.G.C, was to apply a uniform standard applicable throughout the Country for adjudging the basic merit of a person to be appointed as Teacher competent to teach at University level i.e. at graduation level and post graduation level.

10. A look at the said Regulation would show that the examination to be conducted in terms thereof are to be conducted by U.G.C, itself or by its nominated institutions. Before such guidelines came into effect, in this State two authorities, on being constituted by the Act, had been empowered to conduct examinations for the purpose of achieving the same goal. It has not been brought on record that U.G.C, has not nominated or authorised the said authorities to conduct the examinations mentioned in the 1991 Regulations. We have, therefore, proceeded on the basis that those authorities are nominees or they have been authorised by U.G.C, to conduct standard examinations for the purpose of achieving the purpose of the said Regulations, i.e., to bring a uniformity in the standards of Teachers all throughout of the Country.

11. A person, who has not acquired such qualification upon passing either of those examinations successfully, is not competent to be appointed as a Teacher in any University either in its Affiliated Colleges or in its Constituent Colleges. A Government College has no exception. A Government College without affiliation does not get the privileges of the University and accordingly, should be an Affiliated College to enjoy all the privileges of the University.

12. In those circumstances, we are of the view that the persons, who had been selected were not eligible to be selected. However, we would not interfere with the selection at this belated stage. The advertisement was published on 4th September, 1996 and the selection was completed much prior to 2nd August, 1997. The selectees joined their post and thereupon they passed those examinations conducted by the said authorities and accordingly, it would be inappropriate on our part to interfere with such appointment which remained untouched for almost past ten years.

13. Furthermore, while the advertisement did not mention that it is a requirement for the candidates to pass such examinations, the writ petitioner-appellant did not challenge the advertisement and on the other hand participated in the selection process pursuant to such advertisement. She was thereupon not entitled to contend that the advertisement did not give full particulars of the required qualification of the candidates entitled to respond to the same, as was put forward as the basic contention in the writ petition. Therefore, for the reasons indicated above although we set aside the judgment and order under appeal, but at the same time, dismiss the writ petition. The appeal is disposed of thus.