

(2012) 11 PAT CK 0081

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.15469 of 2009

Dudh Nath Singh

APPELLANT

Vs

Magadh University, Bodh Gaya, Through Registrar

RESPONDENT

Date of Decision : 23-11-2012

Acts Referred:

Citation : (2013) 2 BBCJ 267

Hon'ble Judges : Dr. Ravi Ranjan, J.

Bench : Single Bench

Advocate : M/s D.K. Sinha, Sr. Advocate and Mr. Suraj Prasad Singh, Advocates, for the Petitioner; Mr. Hansraj, Advocate, for the Respondent Nos. 1 & 2; Mr. Baban Roy, Advocate, for the Respondent No. 5; Mr. Ram Padarath Singh, Advocate, for the Respondent No. 6

Final Decision : Disposed Off

Judgement

Dr. Ravi Ranjan, J. (Cav) - I have heard learned counsel for the petitioner, the respondent nos. 1 & 2, 5 and 6 and have perused the records of this case.

2. Learned counsel for the petitioner has not pressed I.A. No. 683 of 2011. Accordingly, the same stands dismissed as not pressed.

3. Through this writ application the petitioner seeks quashing of the order dated 24.7.2009, issued under the signature of the respondent no. 2, the Vice Chancellor of Magadh University holding that in view of subsequent resolution of the General Body of the college recalling the earlier order appointing the petitioner on the post of Principal of D.N.College, Masaurhi, Patna and appointing the respondent no. 6 as Principal in terms of order dated 2.7.2007 passed by this Court in C.W.J.C. No. 5030 of 2000 and that resolution having been sent to the University for approval, the earlier recommendation of Governing Body seeking approval for appointment of the petitioner as Principal has become infructuous and, thus, no further decision is required to be taken. A further direction is sought to consider the case of the petitioner for appointment on the post of

Principal of the concerned college.

4. Facts of the case are summarized as under:

5. The petitioner appeared before the Selection Committee of the Bihar College Service Commission (hereinafter referred to as "the Commission") pursuant to advertisement published in the year 1999 for the appointment on the post of Principal in several affiliated colleges of Bihar. The petitioner as well as the respondent no. 6 had applied for the post of Principal of D.N.College, Masaurhi. The Commission vide Annexure 2 dated 8.12.1999 had sent its recommendation to the Secretary of the Governing Body of the concerned college for appointment at the post of Principal showing respondent no. 6, Pramod Kumar Sinha as first preference and, thereafter, the petitioner as second preference. The recommendation was also communicated to the petitioner vide Annexure 2/A dated 8.12.1999. However, the Governing Body vide its resolution as contained in Annexure 4 recommended the name of the petitioner who was second in preference for appointment. It was also resolved vide Annexure 4/A dated 12.12.1999 to send the recommendation through the Vice Chancellor to the Chancellor for approval under Section 57 A (2) (d) of the Bihar Universities Act, 1976.

6. It appears that the Chancellor Secretariat vide its letter dated 29.10.2001 had sent the recommendation of the College/governing body to the Magadh University for taking appropriate decision in terms of Sub Section 7 of Section 2 of the college Service Commission Act, 1976. However, the matter remained pending. The respondent no. 6 Pramod Kumar Sinha, in the meantime, had approached this Court by filing C.W.J.C. No. 5023 of 2000 which was disposed of giving a direction to the governing body (respondent no. 5) to take a fresh decision for appointment of Principal in light of recommendation of the Commission within a period of three months on receipt / production of the certified copy of the order, also clarifying that in view of the statutory recommendation the Governing Body should act strictly in accordance with the recommendation under sub-section (9) & (10) of Section 2 of the Bihar college Service Commission Act, 1976 whereby aforesaid Pramod Kumaar Sinha had been recommended for appointment as a first preference. Thereafter, it appears that Governing Body vide its resolution dated 30.1.2007 had appointed the respondent no. 6 as Principal after cancelling the appointment of the petitioner. However, the petitioner filed Civil Review No. 130 of 2007 seeking review of the earlier order dated 2.7.2007 passed in C.W.J.C. No. 5023 of 2000 raising a point that the action on the part of the University as per the direction of the Chancellor contained in letter dated 29.10.2001 for taking appropriate decision in terms of Sub section 7 of Section 2 of the College Service Commission Act, 1976, was pending and, thus, the University was obliged to pass appropriate order. The civil review was disposed of vide order dated 10.12.2007 as contained in Annexure 7 as it appears that a stand was taken by the University that necessary order either on the basis of Annexure 11, i.e., the direction of the Chancellor or

communication received from the Governing Body would be passed without delay. Thus, the civil review was disposed of in the following terms:

"After hearing submission of the parties, which is jointly submitted that no order for review of the order dated 2.07.2007 be passed. However, the Competent Authority of the University must pass reasoned order in terms of Sub Section 7 of section 2 of Bihar college service Commission Act expeditiously, preferably within a period of four months on receipt/production of certified copy of the present order.

It is made clear that the court has not expressed any opinion on the merits of the matter.

The Review Application is disposed of with the above observation/directions."

7. It appears that though no decision could be taken by the University within the given period of four months but finally a decision was taken after a lapse of about more than 17 years holding that, in view of the subsequent resolution of the Governing Body, taking a fresh decision in terms of the order dated 2.7.2007 passed by this Court in C.W.J.C. No. 5023/2000 by cancelling the appointment of the petitioner and appointing respondent no. 6 Pramod Kumar Sinha and sending the concerned resolution for approval of the University, now no order is required to be passed as the matter of approval of the University on the earlier recommendation of Governing Body for appointment of Dudh Nath Singh as Principal has become infructuous.

8. It is submitted on behalf of the petitioner that in view of the direction given by this Court for passing necessary order as the matter of approval was sent back by the Chancellor to the University for consideration under Sub Section (7) of Section 2 of the College Service Commission Act, 1976, the University was duty bound to pass an order on merit. Learned counsel has also tried to impress upon this Court that the petitioner is more qualified than respondent no. 6 and, thus, he should have been appointed specially in view of the regulations of the University Grant Commission which has been appended as Annexure 6. It has been contended that according to the aforesaid regulation of the University Grant Commission the petitioner was qualified to be appointed as the Principal as he was having Ph.D. at the relevant point of time and the respondent no. 6 was not having that qualification. Though the petitioner has placed reliance upon the regulation of the U.G.C. of the year 2000, however, if the same is applied then the petitioner has also not contradicted the allegation made by respondent no. 6 that he had not obtained Master degree by securing 55 % or more marks which was required for appointment.

9. Counter affidavits have been filed on behalf of the respondent nos. 1 and 2 and as well as respondent no. 6. The relevant criteria fixed by the University for being appointed as Principal of College has already been quoted in the counter affidavit which shows the required qualification to be a first class or high second class Master's degree with consistently good academic record and not less than

twelve years of experience as Lecturer in the Degree College/University Department. However, the requirement of first class or high second class Master's degree for appointment on the post of Principal can be relaxed to second class Master's degree in the case of a teacher who, apart from obtaining his own Ph.D degree, has successfully guided research work leading to the award of Doctorate degree or has published considerable research work in the standard Journal beyond what he did for the Doctorate degree. It has also been provided that the aforesaid relaxation would be available to pre- 1977 appointees only. Respondent no. 6 has also appended a comparative table showing qualification of both, himself as well as the petitioner. It discloses that he has passed M.Sc. (Zoology) in 1977 in Second Class with 57 % marks which can be considered as high second class marks whereas the petitioner has passed M.Sc. (Math) in second class obtaining 46 % marks only which cannot be considered as high second class. The date of appointment of both the persons being of the year 1980, the relaxation for obtaining a Ph.D. degree was not available at the time of appointment as the same would have been available to pre - 1977 appointees only. It is further submitted that U.G.C. Regulation 2000 obviously came after the recommendation of the Commission in the year 1999, thus, the same cannot be applied in retrospective to oust the respondent no. 6. It is also urged that even if it is assumed for the time being that the same can be applied in retrospective then again the petitioner, having been passed the Master degree much below 55 % marks, cannot claim an appointment at the post of Principal.

10. From the order passed in Civil Review No. 130 of 2007 it appears that the earlier order directing the Governing Body to take a decision in view of the statutory recommendation and acting strictly in accordance with the recommendation under sub Sections (9) and (10) of Section 2 of the Bihar College Service Commission Act, 1976 has not been reviewed in view of joint submission made on behalf of the parties. However, competent authority of University was directed to pass a reasoned order in terms of Sub Section 7 of Section 2 of the Bihar College Service Commission Act, 1976 within four months.

11. In above view of the matter, since the recommendation of the College Service Commission of the year 1999 showing first preference to respondent no. 6 and second preference to the petitioner has not been set aside, or altered or modified in any subsequent proceeding and since a direction was given under the aforesaid order to the Governing Body to take a decision strictly in terms of the statutory provisions, as discussed above, the issue of appointment of the petitioner even after having been recommended as second candidate, is no longer open and, thus, no such direction can be issued. It is also made clear that the U.G.C. regulation notified in the year 2000 could not be applied in retrospect for questioning the recommendation of the Commission made in the year 1999. However, it is to be seen that the order dated 10.12.2007 passed in Civil Review No. 130 of 2007 has been complied in its letter and spirit by the University or not. From the impugned order it appears that the same has only been passed holding that the issue of earlier approval of the recommendation of the resolution

of Governing Body is not open to be decided as the Governing Body has subsequently cancelled the appointment of petitioner in view of direction of this Court and has appointed respondent no. 6. However, even then since it is stated in the impugned order itself that the resolution of the Governing Body appointing the respondent no. 6 has already been sent for approval to the University which is apparent from Annexure 8, the competent authority of the University was duty bound to take a final decision under Sub Section (7) of Section 2 regarding approval of appointment of Principal by according or not according approval to the appointment made at the post of Principal. In my considered opinion the University was required to take such decision even upon the subsequent resolution of the Governing Body in terms of the aforesaid provision of Bihar College Service Commission Act, 1976, which has not been done as it is not stated by any of the parties that such decision regarding approval has already been taken by the University with respect to the appointment made even in favour of the respondent no. 6.

12. In above view of the matter the competent authority of University is directed to pass a reasoned order on its own merit and in terms of Sub Section (7) of Section 2 of the Bihar College Service Commission Act, 1976 regarding the approval of the appointment of Principal of the concerned college even in view of the subsequent recommendation of the Governing Body. However, in case such order has already been passed then no further step would be required to be taken by the University.

13. Accordingly this writ application stands disposed of.