

(2011) 09 PAT CK 0037

In the Patna High Court

Case No : CWJC No"s. 2103 and 12195 of 2009

Navin Kumar Yadav

APPELLANT

Vs

The State of Bihar and Others
 Dr. Amarendra Narayan
Singh and Others Vs The State of Bihar and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Bihar State Universities Act, 1976 — Section 10(12), 14, 15(2), 16, 4(14)
Constitution of India, 1950 — Article 14, 16

Citation : (2011) 4 PLJR 170

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Two writ applications have been filed for interconnected reliefs as such these are heard analogous and being disposed of by a common order.

2. C.W.J.C. No. 2103 of 2009 has been filed by Navin Kumar, a Senior Lecturer in the Post-Graduate Department of Geography in the Veer Kunwar Singh University, Ara, who had applied for the post of Principal pursuant to Advertisement No. 02/07, published by Tilka Manjhi Bhagalpur University, Bhagalpur, but could not be selected, as alleged by him due to illegality observed in selection process. Petitioner has challenged the appointment of 16 persons as Principals of constituent colleges under Tilka Manjhi Bhagalpur University, made in exercise of powers u/s 57(8) of Bihar State Universities Act, 1976, read with Section 10(12) of the Bihar State Universities Act, 1976, on recommendation of the University Selection Committee constituted under the provisions of statute dated 30.6.2008. Appointments have been made vide Notification No. 04-19/08/CCDC dated 29.9.2008 issued under the signature of CCDC, Tilka Manjhi Bhagalpur University. The prayer of the petitioner is for quashing of notification of appointment Annexure-5 to the writ application, on the ground that--selection

has been made pursuant to perfunctory and sham selection procedure and in violation of the provisions of Bihar State Universities Act, 1976, statute dated 30.6.2008 issued by the Chancellor of the Universities of Bihar under 1976 Act--reservation policy of State applicable in such appointment, and illegal exercise of emergency powers of Vice-Chancellor as provided u/s 10(12) of the Act, despite the fact that meeting of syndicate was held on that very day by which notification for appointment had been issued, but it was not included in the agenda. Matter of appointment was completely suppressed from the syndicate, the highest executive body of the University, and syndicate was bypassed and till date its" approval has not been taken, though mandatory, in case notification had been issued in exercise of emergency powers of Vice-Chancellor u/s 10(12) of the Act.

3. C.W.J.C. No. 12195 of 2009 has been filed by Principals, appointed vide Notification No. 04-19/08/CCDC dated 29.9.2008, for quashing of letter No. 1621 dated 7.9.2009 issued by the Human Resources Development Department informing the Registrar of the Tilka Manjhi Bhagalpur University that the Government has decided to conduct an enquiry into the matters of appointment of Principals and till the date opinion of the Department in this regard is not issued, payment of salary to such appointed Principals shall remain stayed. Petitioners have also prayed for quashing of letter No. 1627 dated 7.9.2009 issued by the Human Resources Development Department informing the Registrar of the University that all appointments made during the tenure of the then Vice-Chancellor would remain stayed.

4. Advertisement No. 02/07 and 03/ 07 were published under the signature of Registrar of Tilka Manjhi Bhagalpur University in the month of September, 2007, inviting applications for appointment on the post of Principal in different constituent colleges under the University in the scales of Reader as well as University Professor. Eligible candidates including writ petitioners in both the writ applications applied for consideration of their candidature for appointment against the post of Principal. Petitioner Navin Kumar's case is that despite submission of applications by the candidates within the stipulated time, no further steps were taken for appointment, even Selection Committee had not been constituted. In the meantime, Chancellor's letter No. BSU-23/07-2187 GS(1) dated 30.6.2008 was issued, whereby amendment was brought in Section 57(1) of Bihar State Universities Act, 1976 and Amended 2007 Act.

5. Power of appointment to the post of Teacher and other officials of Universities under Bihar State Universities Act, 1976 was initially vested in Bihar Public Service Commission, prior to its" amendment and substitution by 1990 Act, whereby Bihar State Universities (Constituent Colleges) Service Commission was empowered to initiate selection process and make recommendation of selected candidates for appointment. Amendment was again introduced u/s 57(1) of the Act. Through Universities (Amendment) Act, 2007, whereby powers of Bihar State Universities (Constituent Colleges) Service Commission was vested in the Selection Committee to be constituted by the University. The composition of the

Selection Committee as provided under the Amended Act was as follows:--

- (a) Vice-Chancellor of the University concerned.
- (b) One member to be nominated by the Vice-Chancellor.
- (c) One member to be nominated by the Government.
- (d) Three experts not connected with the University to be nominated by the Vice-Chancellor from a panel of not less than 7 names approved by the Academic Council of each post out of which at least one member should belong to Scheduled Caste/Scheduled Tribe and two shall be from outside the State.
- (e) The Head of the Department of the Discipline concerned.

6. Through the Amended Act, 2007, Section 57(B) had also been inserted which provided for framing of statute regarding the proceeding of selection. In terms of the provisions contained in Section 57(B) of the Act, notification dated 30.6.2008 was issued by the Governor's Secretariat. By the statute dated 30.6.2008, also the Selection Committee, as constituted by the Bihar State (Amendment) Act, 2007, was empowered to perform functions of Bihar State Universities (Constituent Colleges) Service Commission in respect of selection of Principals, Teachers and Officers of the Universities of Bihar. Moreover, the revised statute amended the composition of Selection Committee and prescribed manner in which three experts members of the Selection Committee are to be nominated.

(a) All the 3 experts shall be in the rank of University Professor and out of that at least one shall be the Vice-Chancellor/Formal Vice-Chancellor/Director/Principal of Constituent College. The 3 experts in the Selection Committee shall be nominated by the Vice-Chancellor from a panel of not less than 10 experts approved by the Academic Council subject to the following conditions:--

- (I) All the three experts shall be from outside the University.
- (II) At least one expert should belong to SC/ST community.
- (III) At least two experts shall be from outside the State.

(b) Senior most Head of the Department/Senior most Principal of constituent college of the concerned University in the rank of University Professor.

7. Under Clause 13 of the revised statute criteria for division of marks has been provided and the Selection Committee, as far as possible, has to divide marks on career and interview in the ratio of 80% and 20%.

8. Counsel for the petitioner in order to substantiate his allegation regarding perfunctory and sham selection process adopted in selection of Principals, has submitted that Advertisement No. 02/07 and 03/07 had been published by the University, under the signature of Registrar of the University in the month of September, 2007. Except inviting applications and submission of applications by eligible candidates, no further steps had been taken for appointment. In the

meantime, revised statute came into force on 30.6.2008, whereby all powers in the matters of appointment was vested in the Selection Committee. It was incumbent upon the University to proceed in the matters of appointment in accordance with the revised statute. Notified and identified vacancies to the post of Principal should have been re-advertised by the Selection Committee and entire process of selection should have been completed by the Selection Committee. It was not done, but on the same advertisement issued under the signature of Registrar, selection process continued and finally notification was issued. Thus, initiation of selection process and the final notification for appointments, are illegal, being contrary to Article 3 of the revised statute. There is nothing either in the counter affidavit of the University or the private respondents to show that following the procedure provided under the revised statute, selection process was re-initiated. The selection process and the notification for appointment being contrary to the procedure provided under the revised statute, selection and appointment of Principals cannot be held legal. Petitioner in support of his contention has placed reliance on a decision reported in *Dr. Bimal Prasad Singh and Others Vs. The State of Bihar and Others*, where in the similar circumstance, it has been held as follows:--

Newly created Selection Committee is to perform statutory functions in respect of appointments to be made in University on the lines of the Commission. This function of Selection Committee is independent and not under control of University, or any other authority under law. The moment vacancies of the post of teachers and officers of University are identified and notified, same has to be treated by Selection Committee as requisition and then it is required to initiate the process for filling up of those vacancies, by getting advertisement published on all India basis inviting applications from all eligible candidates for their consideration, in conformity with spirit of Articles 14 and 16 of Constitution. The moment an advertisement is published, and till final merit list is prepared, and final recommendation is made by Selection Committee to University, University officials, particularly the Vice-Chancellor has no individual role to play in the process.

9. Counsel for the petitioner has also challenged the procedure adopted for constitution of Selection Committee, stating that u/s 57(1) of the Bihar State Universities Act, appointments on the post of Principals, Teachers and Officers of the University could be made, on the recommendation of the duly constituted Selection Committee, as provided under the Statute. The revised statute dated 30.6.2008 prescribes the guidelines regarding eligibilities, qualifications, constitution of Selection Committee, division of marks allocated to the career achievements and viva-voce etc. Under Article 7 of the revised statute provides for composition of Selection Committee. Representation of Women/Extremely Backward Class in Selection Committee is mandatory, but it was ignored. Composition of the Selection Committee was not in terms of revised statute. Advertisement had been published in September, 2007 and at that time even the selection panel had not been prepared. A meeting of Academic Council was held

on 26.5.2008, in which it was decided to ask for five experts names from each Head of the Department, which shall also include names of SC/ST candidates. It is apparent from this fact that the Selection Committee was not in existence till 26.5.2008. The list of 10 names was never produced before the Academic Council and panel of 10 experts was never approved by the Academic Council. The constitution of Selection Committee was, therefore, in utter violation of the statutory provision as the Academic Council was only competent to approve the panel of experts with at least 10 names, out of which at least 2 members should belong to SC/ST and Women category. The Academic Council did never select/nominate 3 experts, as per the revised statutes. In fact the names of 3 experts were selected by the Vice-Chancellor, which is admitted in the counter affidavit filed on behalf of the University stating that Academic Council delegated its power to the Vice-Chancellor.

10. Counsel for the petitioner submits that under the revised statute, power to approve panel of 10 names of experts is vested in the Academic Council. This power could have been exercised by the Academic Council only and in no case there should have been delegation of this power to the Vice-Chancellor of the University. This view has also been propounded in a decision reported in Dr. Bimal Prasad Singh and Others Vs. The State of Bihar and Others , that if statute vests any power/jurisdiction in a particular person/ authority, it must be exercised by the authorized person only, as there cannot be re-delegation of delegated power.

11. In the present case, admittedly the Academic Council did not exercise its" power and delegated it to the Vice-Chancellor. Three experts were selected by the Vice-Chancellor as a result of which constitution of the Selection Committee was in violation of the statutory provisions. Any selection made by such illegally constituted, unauthorized Selection Committee cannot be held to be legal.

12. Counsel for the petitioner has further submitted that the Selection Committee did not prepare merit-list in consonance with the Acts, Rules and the statutory provisions. The merit list was prepared in utter violation of Act, statute and the reservation law of the State, applicable in the matters of appointments in the University. Article 3 of the revised statute as well as amended Section 57(1) of the Act provides that the Selection Committee on the basis of the career and interview shall recommend the panel of names, in order of merit, for appointment against substantive vacancies notified by the University and such panel shall remain valid for a period of one year from the date of the recommendation. Merit list shall consist names twice the member of vacancies, but against one vacancy, only one name, in order of merit, shall be recommended by the Selection Committee at the time of appointment.

13. It has been submitted by the petitioner's counsel that the procedure adopted by the Selection Committee for appointment against the vacancies to the post of Principal was against the mandate of law. The normal procedure adopted in any selection is that candidates are called for interview in amalgamated batches. In

the selection process one merit-list is prepared of all the candidates appearing in interview either reserved or for general category. In the present case, instead of one common merit-list, two merit-lists were prepared, one for the reserved category and another for the general candidates. They were also interviewed separately. The reservation law provides that meritorious students of reserved category will be considered against the vacancies in general category, if they have higher percentage of marks. In the present case, the OBC candidates having more marks than the general category were not considered against the vacancies in general category. For examples, petitioner has cited cases of, Sri Gajendra Prasad, Pramod Bhartiya, Amrendra Narain Singh, appointed on OBC seats. They had more marks than Manbendu Pathak, Bhagwati Sharan Singh and Kumkum Sinha appointed as general candidates. Even writ-petitioner had more marks than the second candidate Arun Kumar Mishra appointed in the general category, but his case was not considered, simply for the reason that he could not produce his original appointment letter at the time of interview, but in the similar circumstance, other candidates, who had not produced their Intermediate, Matriculation and Ph.D. certificates, were considered for appointment and got appointed in the general as well as reserved category.

14. Two counter affidavits have been filed on behalf of Tilka Manjhi Bhagalpur University. In the first counter affidavit maintainability of the writ application has been questioned by the University, but when the petitioner filed his supplementary affidavit, annexing different documents, obtained by him under Right to Information Act, supplementary counter affidavit has been filed on behalf of the University. In the supplementary counter affidavit, stand of the University is completely changed rather it supports the case of the writ-petitioner. In the supplementary counter affidavit it has been stated that the eligibility for the post of Principal in Professor's grade is:--

a. Master's degree with at least 55% of the marks or its equivalent grade B in the 7 point scale with letters grades O, A, B, C, D, E & F.

b. Ph.D. or equivalent qualification/publications.

c. Not less than 15 years of teaching experience/research in universities/ colleges and others institution of higher education.

15. Eligibility for the Principals in Reader's grade is same except that the experience and research in universities/ colleges and others institution of higher education is 10 years instead of 15 years.

16. In the present case, Dr. Bhagwati Sharan Singh had less than 55% of marks at the Master's degree level. Dr. Om Prakash Gupta did not have the Ph.D. degree on the date he had applied for appointment against the post of Principal. Dr. Kumkum Singh has been marked in category of RII/NR in Annexure-IIIA of the report of Justice Agrawal Commission accepted by the Hon'ble Supreme Court. Her name for appointment, on the post of Lecturer had been recommended by the University to the State Govt. beyond the cut-off date i.e.

30.4.1986, as such, placed in NR category. Subsequently, she was absorbed u/s 4(14) of the Act, but the State Govt. had taken serious objections to absorption of such teachers, whose names find place in the list of RII/NR category by Justice Agrawal Commission. Dr. Amrendra Narain Singh did not produce his certificate of Matriculation and Intermediate, at the time of interview, but the interview committee awarded him 50-60% marks against "O" level and "A" level. Dr. Shankar Paswan did not possess Ph.D. degree at the time of applying for the post as well as at the interview. He was not eligible for being considered for appointment, despite the fact he was appointed.

17. Another irregularity/illegality committed by the Selection Committee and objected by the petitioner, has also been admitted in paras 7 and 8 of the supplementary counter affidavit. 18 posts of Principals were advertised. According to the roster of reservation, six posts were allocated for general category, three posts for EBC, four posts for OBC including one Women and five posts were allocated for SC. Considering the marks allocated to the candidates, by Selection Committee, Dr. Gajendra Prasad, Dr. Pramod Bhartiya and Dr. Amrendra Narain Singh (at serial nos. 7, 8 and 9 of the notification) should have been first considered in general quota, leaving room for appointment of three OBC category candidates, in order of merit. Since, wrong reservation pattern was followed as such three OBC candidates remained deprived from being appointed and three general category candidates, namely, Dr. Kumkum Singh, Dr. Bhagwati Sharan Singh and Dr. Ashok Kumar Thakur were illegally selected, though not entitled for being appointed. The admitted position is that there has been violation of reservation roster in making appointment. Two candidates, namely, Dr. Sadanand Singh, securing 70 points in academic career, and Dr. Sharat Chandra Mandal, securing 63 points in academic career, both belonging to OBC category, were intentionally not awarded any marks in their interview, without assigning any reason. The only presumption can be that in order to deprive them from being appointed and to select favourable candidates in their place, this illegality was committed by the Selection Committee.

18. The petitioner in para 21 of his writ application has stated that marks was not allocated to the candidates by the Selection Committee in accordance with Article 13 of the revised statute. The petitioner has given comparison chart of the academic career records of himself as well as Dr. Arun Kumar Mishra, which reveals that petitioner secured 75 marks and Dr. Arun Kumar Mishra secured 67 marks. In this view of the matter, the petitioner having higher marks in the academic career should have been considered for a general category post, but he was simply deprived for the reason that original appointment letter was not produced by him, at the time of interview.

19. Another illegality which has been indicated by the petitioner, challenging the appointment, is that syndicate the highest executive body u/s 16 of the Act has been bypassed. Approval of the syndicate for appointment of Principals was necessary under the law. The syndicate was bypassed deliberately with ulterior

motive. A meeting of the syndicate was scheduled to be held on 29.9.2008 and a notice for this had been issued on 22.9.2008. The final process of the appointment was being rushed through, but the agenda relating to large scale appointment, already in the process, was not included in the schedule of the meeting. The process of appointment of Principals, being finalized, should have been brought on agenda or in supplementary agenda, but the Vice-Chancellor and the Selection Committee, adopted clandestine procedure, in violation of statutory provision.

20. Counsel for the petitioner submits that 16 Principals, through impugned notification were appointed on a probation for one year subject to approval of the syndicate, but it has not been placed before the syndicate till now. The impugned notification also indicates that bypassing the syndicate, in exercise of emergency provisions as provided u/s 10(12) of the Act the notification for appointment of 16 Principals had been issued. Since, the meeting of the syndicate was scheduled on the same day i.e. 29.9.2008 there was no reason for exercising emergency power u/s 10(12) of the Act by the Vice-Chancellor. The impugned notification appointing Respondent Nos. 5 to 19 on probation for one year had been issued subject to approval of the syndicate, as such approval of the syndicate was mandatory and should have been obtained within one year. Neither the approval of the syndicate was obtained nor approval from the Chancellor was obtained. In this view of the matter also the impugned notification is fit to be quashed.

21. Counsel for the petitioner has also annexed a copy of special audit report; conducted on receiving various allegations regarding financial irregularities by the then Vice-Chancellor. The audit report has considered the appointment of 16 Principals as an illegal act. The report also indicates that the candidates, who did not fulfill the qualification provided under the statute, were appointed. Persons, who were not eligible for appointment as mentioned in the audit report are Dr. Bhagwati Sharan Singh, Dr. Om Prakash Gupta and Dr. Amrendra Narain Singh. As per this report also the constitution of Selection Committee was not as per the revised statute, the marks obtained by the candidates were not shown and appointment was not approved by the syndicate.

22. One more illegality pointed out in the audit report as well as taken as a ground for challenging appointment by the petitioner, is issuance of appointment letter by CCDC in place of Registrar, who is competent to issue such letters. Petitioner has taken strong objection to the issuance of appointment letter by the CCDC. It has been submitted by the petitioner that u/s 15(2)(b) of 1976 Act the Registrar of the University is supposed to conduct the official correspondence of the University. The notification for appointment of the officers or the teachers of the University including the Principals of the constituent Colleges should have been issued by the Registrar and in his absence by Incharge Registrar, authorized to exercise his power in case of his temporary absence. So far functions of the Co-ordinator College Development Council (CCDC) as defined u/s 14(b) of the Act, is considered, he cannot function as Registrar.

23. In the counter affidavit of private respondents, it has been stated that the CCDC of the University had put down his signature on the notification, for the reason that the Registrar of the University had been debarred from discharging official duties of the University. The CCDC of the University had been authorized to discharge certain official functions of the Registrar of the University by notification dated 29.9.2008. Issuance of notification being merely a formal communication of the recommendation of Selection Committee, cannot affect the legality of selection and the notification.

24. Considering several irregularities, illegalities pointed out by the petitioner, specially with regard to the constitution of the Selection Committee, observance of perfunctory selection process, in violation of the provisions under the revised statute, violation of reservation policy of the State Govt. applicable in the matters of the appointment, allocation of marks completely in violation of Article 13 of the revised statute as well as appointing persons not eligible for appointment as per the University statute, I find that appointment of 16 Principals, through notification dated 29.9.2008 (Annexure-5) is completely illegal and fit to be quashed.

25. Prayer of the petitioners in C.W.J.C. 12195 of 2009 is for quashing of letter Nos. 1621 and 1627 dated 7.9.2009 issued by the Human Resources Development Department, informing that the appointment of 16 Principals has been kept in abeyance, till conclusion of enquiry, and they will not be paid their salary in Principal's scale till submission of enquiry report/further orders. Receiving several complains regarding serious illegalities committed by then Vice-Chancellor, which also includes appointment of 16 Principals, a decision for conducting enquiry was taken by the Human Resources Development Department.

26. Considering the conclusion arrived by this Court in C.W.J.C. No. 2103 of 2009, petitioners' appointment itself not being legal, they cannot claim any benefit on account of holding this post. I do not find any reason to interfere in this matter, specially for the reason that appointments were made contrary to the direction of Chancellor's letter No. BSU-23/ 07-2187 GS (1) dated 30.6.2008. The enquiry report submitted by the Senior Auditor has also collected several materials which indicate that the appointment of petitioners to the post of Principal was illegal. Illegalities committed in the matters of appointment of Principals were prima facie proved by the preliminary enquiry. So far the plea taken by the petitioners regarding enquiry being conducted in their absence is concerned, University will take proper steps in this regard before removing the writ-petitioners from the post of Principals. Since, appointment of petitioners itself has been held to be illegal by the order passed in other writ application, I do not find any reason for issuing direction to respondent-authority for making payment of salary or consequential benefits to the petitioners, for holding post of Principal.

27. In the facts and the circumstance of the case, C.W.J.C. No. 2103 of 2009 is

allowed. Impugned notification dated 29.9.2008 (Annexure-5) is quashed. The Vice-Chancellor and Registrar of Tilka Manjhi Bhagalpur University are directed to re-initiate the selection process, as provided under the revised statute and the amended Section 57(1) of the Act.

28. C.W.J.C. No. 12195 of 2009 is dismissed.