

(2007) 07 PAT CK 0068
In the Patna High Court
Case No : CWJC No. 5023 of 2000

Promod Kumar Sinha

APPELLANT

Vs

Magadh University and Others

RESPONDENT

Date of Decision : 02-07-2007

Acts Referred:

Bihar College Service Commission Act, 1976 — Section 2(10), 2(9)

Citation : (2007) 4 PLJR 342

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Advocate : Ram Padarath Singh, for the Appellant; Raju Giri and Suraj Pd. Singh, for the Respondent

Judgement

Shailesh Kumar Sinha, J.—Heard the learned counsel for the petitioner and the respondents 1 & 2. On being noticed by order dated 31.3.2006 the respondents 5 & 6 entered their appearance through the Vakalatnama on 12.1.2007, however nobody appears when the case was taken up nor any affidavit in reply have been filed on their behalf.

2. The petitioner challenges the appointment of the respondent No. 6 as the Principal of the D.N. College, Masaurhi. Patna on the ground that the respondent No. 5, the Governing Body of the said College was obliged in law to appoint the petitioner on the post of the Principal of the said College in tune with the recommendation of the Bihar College Service Commission, respondent No. 3 as per the recommendation contained in letter No. 1304 dated 8th of December, 1999. The said recommendation was sent to the respondent No. 5 in favour of the petitioner and the respondent No. 6, but in order of preference, the petitioner was placed at serial No. 1 of the said recommendation.

3. It is further submitted that the respondent No. 5 without appreciating the statutory recommendation of the Bihar College Service Commission, Patna for appointment of the Principal, appointed the respondent No. 6 who was at serial No. 2 on the post of Principal of the aforesaid College as per the decision of the

Governing Body taken in its meeting dated 12.12.1999, as contained in Annexure-3 to the writ application.

4. The petitioner seeks quashing of the aforesaid decision whereby the respondent No. 6 has been appointed as Principal ignoring the recommendation of the Commission for appointment of the petitioner as Principal.

5. The petitioner submits that the Governing Body is obliged to go with the recommendation of the Commission in terms of the provisions of sub-section (9) and (10) of Section 2 of the Bihar College Service Commission Act, 1976. The recommendation of the Commission was made in order of preference considered by the Commission to the best qualified, therefore, after considering the eligibility and suitability of the candidates for the appointment in question.

6. The petitioner has drawn the attention of the Court to the certificate (Annexure-5) granted by the respondent No. 5 the Governing Body of the College, whereby it has been certified to the effect that the petitioner while working in the said College was performing well and to the satisfaction of the authorities. There fore, there could not be any valid reason in not appointing the petitioner on the post of Principal in light of the statutory recommendation of the Commission.

7. The petitioner has further drawn the attention on the decision of this Court in C.W.J.C. No. 2590 of 2003 (Dr. Jitendra Prasad vs. State of Bihar & Ors.) disposed of on 17th of January, 2007 having somewhat similar facts. This Court while disposing of the above case held to the effect that the Governing Body of the concerned College was obliged to make appointment in tune within the recommendation of the Commission. The appeal filed against the said order was dismissed as per the order dated 18.4.2007 passed in L.P.A. No. 182 of 2007.

8. The petitioner has also placed reliance on a decision of this court passed in C.W.J.C. Nos. 4053, 3875 of 2000 disposed of on 15.11.2006 in the case of Dhairya Nath Choudhary & Anr. for the same proposition that the Governing Body of the College was obliged in law to make appointment in light of the statutory recommendation of the Commission.

9. It is further submitted that in case the Governing Body finds anything wrong with the recommendation, at best the Governing Body could have referred back the recommendation to the Commission for reconsideration, however, in the instant case nothing has been done. Therefore, it was not justified on the part of the respondent No. 5 to appoint the respondent No. 6 on the post of Principal contrary to the recommendation of the Commission.

10. Having considered the submissions as advanced above, the decision of the respondent No. 5 for appointment of the respondent No. 6 on the post of Principal of the said College as per the minutes of the proceedings of the meeting of Governing Body held on 12th December 1999 (Annexure-3) for being contrary to the recommendation of the Commission is, hereby, quashed. The Governing

Body (respondent No. 5) is directed to take a fresh decision for appointment of the Principal in the D.N. College, Masaurhi in light of the recommendation of the Bihar College Service Commission vide recommendation contained in its letter No. 1304 dated 8.12.1999 expeditiously preferably within a period of three months on receipt/production of the certified copy of this order.

11. It goes without saying 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 the petitioner has been recommended for appointment as a first preference. The writ application is disposed of with the above observations and directions.