

(2023) 09 PAT CK 0029

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19357 Of 2021

Randhir Kumar

APPELLANT

Vs

Hon'ble Chancellor Of Universities Bihar

RESPONDENT

Date of Decision : 13-09-2023

Acts Referred:

Bihar Engineering Education Service Rules, 2014 — Rule 14

Citation : (2023) 09 PAT CK 0029

Hon'ble Judges : K. Vinod Chandran, CJ; Partha Sarthy, J

Bench : Division Bench

Advocate : S.D. Sanjay, Rajeev Kumar Singh, P.K. Shahi, Ajay Bihari Sinha, Awadhesh Kr. Singh, Priyank Deepak, Apurva Kumar, Apurva Kumar, Sanjiv Kumar

Final Decision : Dismissed

Judgement

1. In the nature of the orders to be passed in the above writ petition, we need to briefly refer to what transpired on the last date. On 25.08.2023, when the matter was called Sri P.K. Shahi, learned Senior Counsel appearing for the 7th respondent specifically pointed out that the Chancellor of the University had conducted an enquiry into the specific allegations raised herein, against the 7th respondent and found his appointment and continuance to be proper. A copy of the communication issued from the office of the Chancellor specifically recording the satisfaction of the Chancellor, based on the report of enquiry, was also produced in the writ petition. Learned Senior Counsel also pointed out that the 7th respondent has been constantly harassed by one complaint or the other and the present writ petition in the nature of a Public Interest Litigation is another attempt at witch-hunting. Earlier, based on a complaint filed by a person, who had also approached this Court with similar contentions, but later sought for withdrawal of the writ petition to agitate his cause before the Chancellor, an enquiry was conducted; which culminated in the satisfaction of the Chancellor about the credentials of the 7th respondent to continue in the post of Controller of Examinations. Learned Senior Counsel also prayed for exemplary costs, in

which circumstances we directed the learned counsel appearing for the petitioner to seek instructions from his client as to whether he would want to pursue the matter, especially since the writ petition seeks a writ of quo warranto against the continuance of the 7th respondent in the post of Controller of Examinations with the respondent University; which was found to be proper by the Chancellor himself. Sri Rajeev Kumar Singh, learned counsel appearing for the petitioner sought time to seek instructions from the petitioner as to whether he would like to pursue the matter.

2. Today, when the matter was called for hearing, Sri S.D. Sanjay, learned Senior Counsel instructed by Sri Rajeev Kumar Singh appeared on behalf of the petitioner. We specifically queried him as to whether he was aware of what transpired on the last occasion and the demand for exemplary costs made by the 7th respondent. Learned Senior Counsel not only wanted to pursue the matter but also raised a preliminary objection regarding the appearance of Sri P.K. Shahi for the private respondent, who is also the Advocate General of the State. On such preliminary objection raised, we queried Sri S.D. Sanjay as to whether he wants to press the issue, especially when there is no conflict with the interest of the State and it involves the right of a litigant to have a lawyer of his choice to defend him in a Court of law. Wiser counsel prevailed and Sri S.D. Sanjay withdrew the preliminary objection raised, but still insisted on arguing the matter.

3. The learned Senior Counsel appearing for the petitioner would contend that there are two specific issues raised to challenge the appointment and continuance of the 7th respondent, as the Controller of Examinations. Learned Senior Counsel specifically took us to Section 8(b) of Chapter I of the Statutes of Aryabhatta Knowledge University, which according to him, mandates that the appointment of Controller of Examination should be for a tenure of three years. When we pointed out that the specific provision speaks of an appointment for a term of three years or as decided by the Executive Council, the learned Senior Counsel urged that there is neither a decision taken by the Executive Council to appoint the person for a period exceeding three years nor is the 7th respondent reappointed, after the initial term of three years.

4. The next ground taken by the petitioner is insofar as the educational qualification required for the post, as advertised being different from that prescribed by the University Grants Commission (for brevity 'U.G.C.'). It was the specific contention that the essential qualification prescribed for appointment as coming out from the advertisement, was not in consonance with the minimum eligibility criteria for the post of Controller of Examinations prescribed by the U.G.C. It is also pointed out that the degree obtained by the petitioner was not a post graduate degree, but a mere diploma, as found by this Court, which disqualifies the petitioner from appointment to the post of Controller of Examinations and his continuance. The petitioner also would place on record the decisions of this Court which travelled up to the Hon'ble Supreme Court wherein the qualification of M.Sc. (Engineering), as claimed by the petitioner, from

Babasaheb Bhimrao Ambedkar Bihar University was found to be not one entitled to be treated as a post graduate qualification. The decisions were filed along with the reply to the counter affidavit, which was not available on record. A copy was made available across the Bar and we looked into it, since the reliance placed was on the judgments passed by this Court and the Hon'ble Supreme Court. It is also pointed out that the Accountant General of Bihar by Annexure-4 had questioned the continuance of the 7th respondent beyond the three-year period.

5. Sri P.K. Shahi, learned Senior Counsel appearing for the 7th respondent points out from the counter affidavit that the audit objection was replied to, by the University vide Communication No. 3536 dated 19.08.2017, pointing out that the Advertisement dated 19.08.2011 was with the purpose and indent to regularize the academic session and to conduct fair examinations for the purpose of which a full time and regular appointment was decided to be made to the post of Controller of Examinations. It is also specifically averred that the Executive Council gave its approval in its 13th meeting (Agenda No. 3) for full appointment to the post of Controller of Examinations. The 7th respondent, who was a Programme Officer (Academic & Examination) in the National Institute of Technology, Patna had applied for the post and was appointed regularly; not confined to a term, which was the intention emanating from the advertisement produced at Annexure-A along with the counter affidavit. It is also pointed out that the respondent University by Communication No. 3774 dated 04.09.2017 addressed the Registrar NIT, Patna requesting for the service book of Respondent No. 7 which is produced as Annexure- J and J/1. The 7th respondent has thus been validly appointed to the post and continued therein. Annexure-A produced along with the supplementary counter affidavit of the 7th respondent, which speaks of the satisfaction of the Chancellor, regarding the suitability and eligibility of the 7th respondent to hold the post, is also specifically referred to.

6. The first contention raised by the petitioner is with regard to the appointment of Controller of Examinations being confined and restricted to a tenure of three years as per the Statutes of the University and the 7th respondent not having the qualification to be appointed to the said post.

7. Section 8(b) of Chapter-I of the Statutes is extracted in the writ petition and the same is as below:-

"The Controller of Examinations shall be appointed either on deputation or by direct appointment for a term of three years or as decided by the Executive Council and shall be eligible for re-appointment."

8. A reading of the above provision would clearly indicate that the appointment of Controller of Examinations could be either for a term of three years or as decided by the Executive Council and even if it is a tenure appointment, a re-appointment could be made, by the Executive Council. Admittedly, there is nothing in the advertisement; a reflection of the Executive Council decision, which indicates that the University had intended the selection to be made to the

post of Controller of Examinations for a fixed tenure. The Executive Council took a decision to have a regular appointment, in the interest of the institution; which is permissible statutorily. The 7th respondent applied for the post, when he was regularly employed in another institution and he has also specifically averred that it is based on the decision of the Executive Council that there was a regular appointment made to the post of Controller of Examinations. In the context of the specific averments which stands un-controverted, coupled with the advertisement having not restricted the appointment to a specified term, we cannot, but hold that there is no restriction in the nature of a specific tenure for the appointment made as per the advertisement to the post of Controller of Examinations under which the 7th respondent applied. This is also in consonance with the statutory provision relied on by the petitioner.

9. Insofar as the qualification concerned, we have to emphasize that the University has prescribed the minimum qualification, which document has been relied on by the petitioner produced as Annexure-1. The minimum qualification is a Masters Degree with at least 55% of marks or its equivalent Grade of 'B' in the UGC seven-point scale. We need not refer to the experience since no contention was raised on that count. The petitioner has an M.Sc. (Engineering) from the respondent University with Grade 'A' which he had declared in his application produced along with the counter affidavit of the Respondent Nos. 4, 5 and 6, the officials of the University. The post graduate qualification with Grade 'A' satisfies the minimum educational requirement.

10. A contention was raised as to the qualification prescribed being not in consonance with the minimum requirement of educational qualification, as prescribed by the U.G.C. On a specific query made by us, the learned Senior Counsel was not able to point out the prescription of the U.G.C., based on which the contention was raised. The said contention was not pressed and reference was made to the judgments of this Court as approved by the Hon'ble Supreme Court which allegedly held the specific qualification to be a mere diploma and not a degree.

11. Admittedly, the 7th respondent was not a party in the batch of cases disposed of together, by a common judgment dated 12.05.2016 in CWJC NO. 18222 of 2015 and analogous cases. The writ applications were filed when the Bihar Public Service Commission (for brevity 'BPSC') declared the petitioners ineligible to be considered for selection as teachers in the Engineering Colleges; on the ground that the degree of M.Sc. (Engineering) granted by the B.R.A. Bihar University at Muzaffarpur is not a recognized degree recognized by the All India Council for Technical Education (for brevity 'AICTE'). The petitioners were applicants to the post of Assistant Professors under different streams for which the advertisement dated 22.08.2014 was issued, against which applications were made and the ineligibility was found by the Commission. The petitioners specifically sought for a declaration that the Degree of M.Sc. in Engineering is a valid degree and equivalent to M.E. or M.Tech. The declaration made in the

aforesaid judgment was based on the rule, codifying the requirement with regard to eligibility, qualification and experience for different subjects, which was in consonance with the requirement laid down by the AICTE. It was found that the facilitation of some research work by itself will not be adequate for the Court to declare the award of said diploma or degree to be equivalent to Master of Engineering and Master of Technology. In fact, it is to be noticed that reference to diploma and degree was only in recording the contention of the BPSC and there is no specific finding by the Court that what is awarded is a diploma. The learned Single Judge found the petitioners to be ineligible for consideration for appointment as Assistant Professors in the engineering colleges for reason of M.Sc. (Engineering) being not equivalent to M.E. or M.Tech as coming under the AICTE. The judgment of the learned Single Judge was overturned in L.P.A. No. 1206 of 2016 and analogous cases by a Division Bench of this Court, but later on, in Civil Review No. 127 of 2017 and analogous cases, the judgment in the L.P.A. was recalled and the matters restored for consideration. Again, the matter was considered, and by judgment dated 20.06.2018 a Division Bench of this Court approved the judgment of the learned Single Judge.

12. The Special Leave Petition filed before the Hon'ble Supreme Court was withdrawn with a prayer to seek relaxation in terms of Rule 14 of the Bihar Engineering Education Service Rules, 2014. The declaration as coming out from the judgment is only to the effect that the M.Sc. (Engineering) degree awarded by the respondent University is not a professional degree of engineering which could make eligible, a person conferred with such degree, for appointment as Assistant Professor when the requirement is, of a post graduate qualification as recognised by the AICTE. It has to be specifically noticed that this is not the qualification that is required for the appointment of a Controller of Examinations, which is a post graduate degree and not a professional qualification in Engineering. The petitioner has a post graduate degree and has obtained Grade 'A', which satisfies the requirement of educational qualification as required by the University, which is also evident from the advertisement issued for selection to the post.

13. On an earlier complaint raised by another person, the Chancellor had conducted an enquiry and based on the enquiry report, the Chancellors satisfaction with respect to the appointment of the petitioner has been recorded and the office of the Chancellor has communicated the same to the complainant therein which was also produced before this Court; despite which, the petitioner urged the contentions even in the teeth of the demand made of exemplary costs by the 7th respondent.

14. We have already held that the contentions raised by the petitioner against appointment and continuance of the 7th respondent are not sustainable. We are also of the opinion that such Public Interest Litigations relating to appointments made in Universities and Government should not be entertained and the Hon'ble Supreme Court has also declared that in service matters, Public Interest

Litigations should not be entertained, unless there is a prayer for issuance of a writ of quo warranto (*Hari Bansh Lal v. Sahodar Prakash Mahto*; (2010) 9 SCC 655). Merely because there is a writ sought, of quo warranto, a PIL cannot be entertained if wild and reckless allegations are made without examining the sustainability of the contentions; thus leading to besmirching the character of others. We extract Paragraph 10 from *Gurpal Singh v. State of Punjab*, (2005) 5 SCC 136 :

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well as to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

15. Considering the totality of the circumstances coming out from the above case, we are of the opinion that the writ petition is to be dismissed with exemplary costs. We gave the petitioner enough elbow room at the outset itself, especially in the context of the Chancellor himself having examined the complaints against the 7th respondent and found no fault with his appointment. The Senior Counsel for the petitioner, however, raised a contention that the enquiry report was not produced; which the petitioner ought to have taken efforts to obtain, if necessary, by an application under the right to information. The litigant invoking the extraordinary jurisdiction on perceived public interest cannot reduce the exercise to a mere fishing expedition to collect data and documents to strengthen the allegations raised. Adequate research should be carried out and a meticulous examination of the contentions, their tenability and sustainability, before this special jurisdiction is invoked, as held in *Gurpal Singh* (supra). We quantify the costs at Rs.50,000/- which the petitioner would pay to the 7th respondent within a period of one month from today either by a Demand Draft or through the respondent University. If the amount is not paid within the specified time, then the Bihar State Legal Services Authority shall recover the amount from the petitioner as 'Amounts Due on Land Revenue' in which

circumstance there shall be an additional amount of Rs. 15,000/-recovered, which shall be appropriated by the Bihar State Legal Services Authority for the benefit of legal services carried out by the Authority within the State and to defray the expenses in ensuring recovery of the costs. Rs. 50,000/- shall be paid over to the 7th respondent.

16. The writ petition stands dismissed with exemplary costs, as directed above.