

(2012) 12 PAT CK 0011
In the Patna High Court
Case No : CWJC No. 15310 of 2009

Saadullah Quadri and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Citation : (2012) 12 PAT CK 0011

Judgement

Ravi Ranjan, J.—Supplementary counter affidavit filed on behalf of the respondent Nos. 1 to 3 on 27.11.2012 is not on record. Let the office locate the same and put up in the file.

2. However, since a copy thereof has been submitted on behalf of the petitioners and the respondent State as well as the University agree that this is the true copy of the counter affidavit which has been filed on behalf of the State on 27.11.2012, I would proceed with the case on the basis of the Xerox Copy of the concerned supplementary counter affidavit which is to be kept in record.

3. Receipt has been filed on behalf of the University showing payment of cost as ordered by this Court.

4. Let the same be also kept on record.

5. I have heard learned counsel for the petitioners, State and the Magadh University and perused the records of the case.

6. Through this writ application, the petitioners seek direction to the respondents to make payment of arrears of salary as well as current salary because they have been duly appointed as Lecturer in a minority college in Oriental College, Patna City against the posts which stood verified by the Government of Bihar and found sanctioned prior to 19.10.1982. However, subsequently, it has been informed that the petitioners are now getting the current salary and the dispute now is only con-fined to the arrears of salary itself which is to be paid according to the petitioners since the date of their joining.

7. Counter affidavit has been filed on behalf of the Magadh University as well as the State taking a stand that all the petitioners were appointed by the Governing Body of the concerned minority institution and the University Selection Committee has accorded concurrence of their appointment as per the provision u/s 57(A) of the Bihar State Universities Act, 1976 and, thereafter, the State Government has started to release grant for payment of their salary from the date of the grant of concurrence by the University and Selection Committee, i.e., 1.3.2010. However, the State Government did not release any grant for payment of the unpaid salary of the petitioners which was to be calculated from the date of their joining. It is also stated in the counter affidavit of the University that arrears of the salary were to be paid immediately after release of fund by the State Government. State has filed counter affidavit and then supplementary counter affidavit taking a stand specially in the supplementary counter affidavit that in view of the fact that the appointments were made without approval of the State Government, the salary for the earlier period cannot be paid by the State. A decision of the University Selection Committee has also brought on record by way of Annexure-E which shows that recommendation and concurrence has been accorded to the services of altogether ten persons including the nine petitioners from the date which stands described in the last column of the letter itself. The State authorities are not disputing that the petitioners' appointment was not on the sanctioned post. It is also not stated that the petitioners have not worked during the relevant period but a peculiar stand has been taken that since no approval for appointment was taken, the State Government will not pay the salary from the date of their permanent appointment as has been reflected in the Annexure-E. However, learned counsel has not been able to point out any provision of law which requires that Governing Body, before making appointment on sanctioned post should seek approval of appointment from State Government. However, without going into that question, in view of the fact that the University Selection Committee which has now entered into the shoes of Bihar College Service Commission since having already recommended and accorded concurrence to the appointment of the petitioners on permanent basis from the date which is reflected in Annexure-E which has not been disputed by any of the authorities, in my opinion, it would now not be open for the State authorities to search ways for not releasing fund for payment of salary for the said period on technical grounds.

8. Accordingly, the State Authorities are directed to take expeditious steps for release of fund for payment of salary to the petitioners to be calculated from the date of recommendation of their permanent appointment by the Selection Committee as contained in Annexure-E, preferably within eight weeks from the date of receipt/production/communication of this order. The University at its end would be required to immediately release the amount after necessary calculation in favour of the concerned college so that payment is made immediately to the petitioners. The whole exercise should be completed within three months failing which the petitioners would also be entitled for simple interest @ 12% per

annum to be calculated from the date the amount became due till its final payment. Accordingly, this writ application stands allowed.