

(2021) 02 PAT CK 0222

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8089 Of 2020

Simpi Kumari

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 02 PAT CK 0222

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Dronacharya, Madhaw Prasad Yadav, Rajesh Kumar Sinha, Ashhar Mustafa

Final Decision : Dismissed

Judgement

1. Heard Mr. Dronacharya, learned counsel for the petitioner; Mr. Madhaw Prasad Yadav, learned Government Pleader 23 along with Mr Rajesh

Kumar Sinha, learned Assistant Counsel to GP 23 for the State, and; Mr. Ashhar Mustafa, learned counsel for the Tilka Manjhi Bhagalpur University

(hereinafter referred to as the "University").

2. The petitioner has moved the Court for the following reliefs:

â??â?|. for issuance of an appropriate Writ(s)/Order(s) or direction and thereby to issue a writ in the nature of Mandamus commanding the

Respondent University, particularly the Coordinator (Respondent No.5) to allow the petitioner to appear in Interview in PAT/19/NET/JRF, to

appear before Interview board of the University for taking admission in Research methodology class along with PAT-19 qualified

candidates for this purpose, since she (petitioner) has already successfully passed Pre-Ph.D. Test held in Sept. 2017, Result of which has

been declared in January, 2018.

(I) The petitioner being eligible candidate be allowed to appear before the Interview board for admission in Ph.D. course along with PAT-

19 (Pre-Admission Test for Ph.D.) qualified candidates.

(ii) The petitioner being entitled for taking admission in Research Methodology class as per Regulation of T.M.B. University be allowed to

face interview and to take admission in Ph.D. course.

(iii) After being successful in interview she be also permitted to participate in online classes for Research Methodology class (Course).

(iv) The petitioner be paid the cost of legal proceeding throughout.

(v) The petitioner be also granted any other relief/s permissible under the facts and circumstances of the case.â??

3. The moot question for consideration in the present application is whether the concerned regulation of the University Grants Commission, as adopted

by the University on 27.01.2018, would be applicable with regard to the examination viz. Pre-Admission Test for PhD 2017 (hereinafter referred to as

â??PAT 2017â??) insofar as the period of validity of the result of the said examination is concerned for admission into the PhD Course.

4. The following facts are not in dispute â?" The process for conducting the PAT 2017 examination began with publication of notice on 23.05.2017;

pursuant to the same, the petitioner also applied for taking the examination, which was held on 14.09.2017, and; the result was declared on 09.01.2018.

5. Learned counsel for the petitioner submitted that the examination result of the petitioner is required to be considered valid for three years in view of

the subsequent regulation adopted by the University on 27.01.2018, which stipulated such period of validity of the result of the concerned examination,

and clearly specified that the same would come into effect from the 2017-18 Session. Learned counsel submitted that as the examination was held and

result declared after Session 2017-18 had begun, it would but naturally cover the case of the petitioner and she has to be given such benefit and,

accordingly, allowed to take admission in the PhD programme without having to again clear such examination under the new regulation.

6. Per contra, learned counsel for the University submitted that the process for the PAT 2017, which the petitioner appeared for and cleared, having

started in May, 2017, and governed at the relevant time by the ordinance which

was issued prior to the later ordinance, clearly stipulating that the period for which the result of the examination would be valid for only one year, no benefit can be granted to the petitioner. Learned counsel clarified that based on that result, people were counselled and had taken admission in the PhD programme within one year, but the petitioner did not take any initiative within time for taking admission in PhD programme for the next two years and suddenly, she has woken up. Learned counsel submitted that the petitioner was now attempting to take advantage of the new regulation. It was submitted that the petitioner's contention(s) is/are not fit to be entertained for the reason that when the process for the PAT 2017 commenced, the new regulation, having not been adopted/promulgated by the University, was not even in existence and in any view of the matter, the adoption/promulgation of the regulation as far as the University is concerned, was only on and with effect from 27.01.2018 i.e., after the declaration of the result of the PAT 2017.

7. Learned counsel for the State adopted in toto the arguments of learned counsel for the University.

8. Having considered the facts and circumstances of the case and submissions advanced by learned counsel for the parties, the Court does not find merit in the present application, so as to necessitate its intervention under Article 226 of the Constitution.

9. On a plain reading of the regulation, which was finally promulgated by the University on 27.01.2018, especially Clause 1.2 thereof, clearly reads

“those candidates, who have been registered for PhD before the promulgation of this ordinance would be governed by the earlier ordinance issued

from time to time under which he/she had been admitted”. Further, just the closing line of the Preamble at Clause 1.1 states that it “shall come

into force from the session 2017-18”. The Court would pause here. Even though the mention/reference is to Session 2017-18, but it is no longer res

integra that for a process which has begun on any particular date, the law applicable or in operation on the said date would apply and no subsequent

change would affect the process. Admittedly, in the present case, the process was set into motion via publication of notice on 23.05.2017. Further, the

timelines for Session 2017-18 also give support to the view being taken by this Court, inasmuch as, the relevant academic session in the University

runs from 1st July of the year to 30th June of the succeeding year. Thus, on both the aforesaid counts, benefit of the new/later ordinance cannot be

granted to or claimed by the petitioner.

10. The mere publishing or circulation of model regulations by the University Grants Commission would not ipso facto lead to a situation where all

regulations issued by the University Grants Commission could be said to be binding on the universities concerned, except when duly

adopted/promulgated, when such university happens to be a State University. Hence, the new/later regulation would become effective only when

adopted/promulgated by the university concerned, when such university happens to be a State University. In the present case, the University has been

operating under the Bihar State Universities Act, 1976. Support for this reasoning can be drawn from the Honâ??ble Supreme Courtâ??s decision

in Kalyani Mathivanan v K V Jeyaraj, (2015) 6 SCC 363, the relevant paragraphs being:

â??20. We have heard the learned counsel for the parties and the issues that arise for our con-sideration are:

(i) whether the UGC Regulations, 2010 are mandatory in nature; and

(ii) whether in the event of conflict between the University Act, the regulations framed there-under and the UGC Regulations, 2010, the pro-

visions of the UGC Regulations, 2010 would prevail or not; and

(iii) whether the post of Vice-Chancellor of a university is to be considered as part of the teaching staff.

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31. The Annexure to the UGC Regulations, 2010 prescribes the minimum qualifications for appointment and other service conditions of uni-

versity and college teachers, librarians, Direc-tors of Physical Education and Sports.

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56. We have noticed and held that the UGC Regulations, 2010 are not applicable to the uni-versities, colleges and other higher educational

institutions coming under the purview of the State Legislature unless the State Government wish to adopt and implement the Scheme subject

to the terms and conditions therein. In this con-nection, one may refer to Para 8(p)(v) of Appen-dix I dated 31-12-2008 and Regulation

7.4.0 of the UGC Regulations, 2010.

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62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges

thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.

62.4. The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of

the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations,

2010 are partly mandatory and is partly directory.â??

(emphasis supplied)

11. There is yet another lens from which the matter can be examined. The petitioner, when (i) she filled up the examination form; (ii) she gave the

examination, and; (iii) the results were declared â?" at all these points of time is deemed to have been aware of the fact that the results of the PAT

2017 were valid only for a period of one year. Thus, it is not a case where the petitioner is being put at a disadvantageous position, than she was in

when the aforementioned sequence of events transpired.

12. In the present case, the examination was conducted, and the result declared prior to the date of promulgation of the later ordinance by the

University on 27.01.2018. In the opinion of this Court, the University cannot be faulted in asserting that the benefit of the later/new regulation cannot

be given to the petitioner. The Court can sympathise with the petitioner, at best, but cannot grant the relief prayed for. To quote from Gaurav Jain v

Union of India, 2020 SCC OnLine Del 652, â??Charity beyond law is an injustice to others.â??

13. Hence, in the aforesaid background, the writ application stands dismissed. However, in the facts and circumstances herein, there shall be no order

as to cost.