

(2003) 02 PAT CK 0094
In the Patna High Court
Case No : C.W.J.C. No. 9720 of 2000

Sushil Kumar Dwivedi

APPELLANT

Vs

Kameshwar Singh Darbhanga Sanskrit University and Others

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Citation : (2003) 02 PAT CK 0094

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The dispute in this case relates to appointment on the post of Principal, Seth Ram Niranjana Das Murarka Sanskrit College, Patna City (in short, "the College"). On 4.6.2000 the Governing Body of the College appointed the Petitioner on the post on recommendation of the Bihar College Service Commission (in short, the Commission") in anticipation of the approval of the University i.e. Kameshwar Singh Darbhanga Sanskrit University. The Petitioner filed the present writ petition seeking direction to implement the recommendation of the Commission. On 22.9.2001 the University communicated its disapproval. After this development took place the Petitioner filed amended petition seeking quashing the said decision of the University dated 22.9.2001 enclosing the same as Annexure 17 to the petition. The facts of the case, briefly stated, are as follows.

2. An advertisement, being Advt. No. 195/98, was published by the Commission inviting applications for the post of Principal of the College, from the eligible candidates. As per the laid down qualifications candidates possessing First or High Second class Master's Degree or equivalent Degree of a Foreign University with consistent good academic record and not less than twelve years teaching experience at least as lecturer in the Degree College/University Department were eligible to apply. The requirement of first class to high second class Master's Degree was relaxable in the case of a teacher who apart from obtaining his own Ph.D. degree had successfully guided research work leading to the award of Doctorate degree or had published considerable research work in the standard

journal. The relaxation however was available to only pre-1977 appointees. The Petitioner, amongst others, applied for the post. By letter No. 1684 dated 13.3.2000 the Commission recommended him as the first nominee for the post. The second nominee was one Dr. Ravi Shankar Jha. On 4.6.2000 the Governing Body of the college resolved to appoint the Petitioner. There appears to be a dispute about the constitution of the Governing Body but it is unnecessary to go into that aspect because the resolution of the Governing Body was disapproved by the University as stated above.

3. The only ground on which the University declined to approve the appointment of the Petitioner is that he lacks in the prescribed qualifications. The lack of qualification is said to be two-fold. It is said that the Petitioner did not have high second class Master's degree because as he had less than 55% marks (to be precise 54.3%) and, further, he did not have 12 years teaching experience. I shall consider the question relating to teaching experience.

4. The case of the Petitioner is that on 6.1.80 he was appointed as lecturer on the basis of his MA (Sanskrit) qualification. He later also acquired degree of Acharya in Sahitya the result for which was published on 28.2.84. On the basis of the said qualification on 6.3.84 he was again appointed as Sahityacharya. It may be stated here that the above dates of publication of result (28.2.84) or appointment (6.3.84) have not been mentioned in the main writ petition. However, they have been mentioned in the rejoinder affidavit (Page 95 of the record) and amendment petition (Pages 117, 118, 119) and Reply (Page 150) of the record, respectively. The further case of the Petitioner is that on 19.2.87 the Commission gave temporary concurrence in the said appointment for a period of one year. On 7.11.88 the concurrence was extended till regular appointment. In the light of the said order on 5.10.91 the University released salary with effect from 1.10.90 till the date of recommendation of the Commission. Meanwhile, in 1987 the post of lecturer in the college was advertised vide Advt. No. 223/87. The Petitioner applied and on the recommendation of the Commission dated 1.6.98 he was appointed by the Governing Body on 22.6.98. On 29.8.98 the University approved the appointment with effect from 3.7.98. The case of the Petitioner is that the last date for submission of the application for the post of Principal pursuant to the impugned advertisement being 22.12.98, which should be treated as the cut off date for the purpose of computing the eligibility, counting from 6.3.84 he had more than 12 years teaching experience and he was thus eligible for appointment.

5. At the stage of hearing Shri Ganesh Prasad Singh, learned Counsel for the Petitioner, fairly stated that the Petitioner's appointment dated 6.1.80 on the basis of his so called M.A. (Sanskrit) qualification is of no avail to him because on the date of appointment he was not a post graduate. The result of the MA (Sanskrit) examination was published only in June 1982. (As a matter of fact, as on 6.1.80 the Petitioner had not even appeared at the MA (Sanskrit) examination), Shri Singh, stated that the claim of the Petitioner rests on his

Acharya in Sahitya qualification on the basis of which he was appointed on 6.3.84. Counting from that date the Petitioner had more than 12 years experience as on 22.12.98 which, as mentioned above, was the last date for submission of the application, and therefore, should be treated as the cut off date.

6. On behalf of the University Shri Kamal Nayan Choubey submitted that the Petitioner has suppressed material facts and the petition is fit to be dismissed on this ground alone. He stated that the Petitioner was purportedly appointed twice—firstly on 6.1.80 on the basis of so-called M.A. (Sanskrit) qualification and then on 26.12.82 on the basis of Sahitya Acharya qualification as Lecturer in Sahitya, but the fact is that neither on 6.1.80 nor on 26.12.80 he possessed the qualifications of M.A. (Sanskrit) or Sahityacharya, respectively and therefore, could not have been appointed. These appointments were made by the Governing Body of which the Secretary was none else than the Petitioner's father. On his representation, these appointments were approved by the University on 23.2.82 vide letter No. 5154/82, and 29.8.98 vide letter No. 4637/98. When real facts came to light in course of enquiry in the light of order of this Court in CWJC No. 1070/96, the approval was withdrawn on 13.6.2001 vide Annexure C, and the Petitioner's appointment on the recommendation of the Commission with effect from 3.7.98 only was approved. The Petitioner never challenged that decision. He thus can not claim benefit of experience prior to 3.7.98.

7. It is relevant to mention here, as pointed out by Shri Chaubey, that neither in the writ petition nor in the amendment petition, supplementary affidavit etc., the Petitioner has referred to any appointment of 26.12.82 though, curiously, in the Synopsis of the case there is reference to Petitioner's joining the "post of lecturer in Sahitya on 6.1.83". While considering office order (memo No. 4637/98) dated 29.9.98, enclosed as Annexure 4 to the writ petition, by which Petitioner's temporary appointment dated 6.1.83 was approved—which was withdrawn on 13.6.2001 by Annexure C, this Court wanted to know the relevance of the date 6.1.83 mentioned as the date of the Petitioner's temporary appointment. It was stated on behalf of the Petitioner that relevance of date "6.1.83" is that salary was released from that date pursuant to the appointment dated 6.1.80 on the basis of his M.A. (Sanskrit) qualification, but as the Petitioner does not press his claim on the basis of said qualification, or appointment, withdrawal of approval of that appointment is of no relevance or consequence. The submission is factually incorrect and, if I may say so, an attempt to mislead the Court.

8. From Annexures I/6 and I/7 to the supplementary affidavit filed on behalf of the Governing Body it appears that appointment letter was in fact issued to the Petitioner, on the post of Sahityacharya. on 26.12.82, pursuant to which he submitted his joining on 6.1.83. It may be stated here that when attention of the Court was drawn to the said documents by the counsel for the University, an

objection was raised on behalf of the Petitioner that the Court has not allowed intervention petition of the Governing Body and if the Court wants to rely on any document produced by it, opportunity should be given to the Petitioner to file reply. I must admire the audacity of the Petitioner to raise this objection. Having suppressed the relevant facts it does not lie in his mouth to raise any such objection. Besides, the order of appointment dated 26.12.82 finds mention in the office order dated 13.6.2001, Annexure C, about which too there is no averment in the writ petition etc. As seen above, though the date of appointment as lecturer/Acharya in Sahitya was not disclosed in the main writ petition vide para 5, and in the subsequent affidavits, the date of such appointment was mentioned as 6.3.84 (about which I shall make my comments soon hereinafter), in the synopsis there is reference to joining the post on 6.1.83 which suggests the existence of some order of appointment prior to that date. The Petitioner should have stated full facts in the writ petition and if he failed to state them in the main petition or the amendment petition, rejoinder affidavits etc., at least, in course of hearing in response to the Court's observation. Secondly, the Petitioner can not deny the genuineness of Annexure I/6. By Annexure i/7 he submitted his joining in his own hand on 6.1.83. It refers to appointment letter No. Nil dated 26.12.83 apparently Annexure I/6 to the Intervener's supplementary affidavit. That is the relevance of the date "6.1.83" referred to in Annexure 4. The Petitioner cannot say that it was not his joining or that the appointment letter dated 26.12.82 did not relate to him. It is thus established that the Petitioner was appointed as Acharya in Sahitya (Sahityacharya) on 26.12.82- a fact which he conveniently suppressed. The reason of suppression is too obvious. The Petitioner undisputedly acquired the qualification of Acharya h Sahitya on 28.2.84 vide page 95 of the record and therefore, there was no question of his appointment as Sahityacharya prior to that date, to be precise on 26.12.82.

9. On behalf of the University reliance was placed on the order of this Court in CWJC No. 1070/96. That writ petition was filed by one Kameshwar Dubey (impleaded as Respondent No. 5 in this case) challenging the decision of the Governing Body of the College to appoint the Petitioner, who figured as Respondent No. 7, on the post of Principal. this Court found that as on 6.1.80 Respondent No. 7 i.e. the Petitioner herein was merely a graduate. He passed the MA examination, held in August 1981 in Third class. The Court also found that the University had granted approval to the said appointment, on the post of lecturer, for a period of six months only but at the time of hearing, the University or the Commission made an attempt to justify their action granting approval to the Petitioner's appointment. The Commission was allowed to make recommendation for the post of Principal by 31.3.97. Pursuant to the said order the Commission finally sent its recommendation giving rise to the present dispute.

10. On behalf of the Petitioner it was submitted that reference to the said order of this Court in CWJC No. 1070/96 has no bearing inasmuch as the only ground on which the Court negated the claim of the Petitioner was that his

appointment as lecturer on 6.1.80 was not valid as he did not possess the qualification and he was merely a graduate on that date. this Court did not consider the validity of the other appointment dated 6.3.84. The reply of the counsel for the University in response to the Petitioner's argument was that in CWJC No. 1070/96 all three aspects of the Petitioner's claim-relating to 1980 appointment, 1984 appointment (relied upon on behalf of the Petitioner) and appointment of Principal were in issue. He referred to the averments in the writ petition in that case. In any view, it was submitted that no document has been produced nor there is any averment that after the publication of the Acharya result on 28.2.84, the Petitioner was appointed as Acharya in Sahitya on 6.3.84 or thereafter. The Petitioner managed to get the approval vide letter No. 5154/82 dated 23.2.82 with respect to his initial appointment dated 6.1.80, and vide letter No. 4637/98 dated 29.8.98 with aspect to the so called second appointment dated 6.3.84 on truncated and suppressed materials verging on fraud. So far as appointment dated 26.12.82 is concerned, as he did not have the requisite qualification and the result itself was published on 28.2.84. the Petitioner cannot count the so called experience on the basis of his appointment dated 26.12.82 as part of the teaching experience. Considering these aspects of the case, the University withdrew the approval vide office order dated 13.6.2001, Annexure, which the Petitioner never challenged. If his appointment as lecturer was approved on 3.7.98, clearly, he did not have requisite teaching experience and was therefore not eligible for appointment on the post of Principal. The submissions of the counsel for the University, in my opinion, are well founded.

11. On behalf of the Petitioner it was submitted that the qualification etc. are required to be screened by the Commission and the University cannot sit in appeal over its decision, and if the Court has any doubt about the Petitioner's eligibility, the dispute may be referred to the Commission for consideration.

12. Or behalf of the University it was submitted that as per Section 59 of the Bihar State Universities Act, 1976, the relationship between the affiliated college and the University are governed by the Statutes providing, inter alia, the minimum educational qualification for different classes of teachers, approval of the action taken by the Governing Body of such colleges, in regard to creation of posts of teachers, their appointments etc. As per Clause 4(1) of the relevant Statutes of the University, appointments of teachers in admitted i.e. affiliated colleges are to be made by the Governing Body of the College concerned subject to provisions of the Act and approval of the Syndicate. The clause further lays down that no such appointment shall be approved unless, inter alia, the person appointed possesses minimum qualification as prescribed for the post". Clause 5 of the Statute, further, empowers the Syndicate to communicate its "approval or disapproval" of any or all such appointments, "after due consideration and enquiry" to the Secretary of the Governing Body concerned. "No teacher shall be allowed to join his substantive post unless his appointment is approved by the Syndicate." Relying on these provisions, it was submitted that the Syndicate is not supposed to act as a post office to accept the recommendation of the

Commission without being satisfied about the eligibility of the candidate concerned. On the point of "binding" nature of the recommendation of the Commission, it was submitted that even Section 2(7) of the Bihar College Service Commission Act, 1976, under which the Commission has been constituted, says that appointment made by the Governing Body on the recommendation of the Commission is subject to the approval of the University. In view of the above said provisions, I am satisfied that it was open to the University to satisfy itself about the validity of the recommendation of the Commission.

13. From the record of the Commission, produced by its counsel, it appears that after the Commission recommended the name of the Petitioner for the post of Principal, objection was received from certain quarter about the validity of the recommendation upon which the Secretary (of the Commission) put up a note that what is required for appointment on the post of Principal is that the candidate should have 12 years teaching experience as lecturer and not there should be valid appointment on the post of lecturer. The Chairman of the Commission concurred in the said note and overruled the objection.

14. On behalf of the Petitioner it was finally submitted that the question as to the validity of appointment as lecturer notwithstanding, if it is a fact that the Petitioner had done teaching work, he should not be denied the benefit of teaching experience and in this regard reliance was placed on Dr. Asim Kumar Bose Vs. Union of India (UOI) and Others, The reliance, in my opinion, is totally misplaced. That was a case of a specialist doctor of Grade II of the Central Health Service posted in a teaching Hospital as Specialist-cum-Associate Professor and doing teaching work. The Supreme Court held that merely because he did not hold a regular appointment on a teaching post, should not be a ground to deny him the benefit of teaching experience. In coming to the conclusion their lordships took into consideration the relevant Recruitment Rules. There was no dispute as to the validity of appointment of the Appellant in that case. The teaching experience necessarily depends on whether the person holds the post. The Petitioner's appointment dated 6.1.80 and 26.12.82 having been found to be incompetent as the Petitioner did not possess the requisite qualification, there being no fresh appointment as alleged on 6.3.84 or even afterwards until 3.7.98, and the approval granted to the Petitioner having been withdrawn, which was not challenged by him, it would be difficult to hold that he had the requisite teaching experience on the cut off date to qualify him for appointment on the post of Principal. Besides, as indicated above, the Petitioner has suppressed material facts and tried to mislead the Court. On the principle of suppressio veri suggestio falsi any person approaching the Court, particularly in writ jurisdiction which is equitable in nature, with unclean hands, can be denied the relief.

15. In the result I do not find any merit in this writ petition which is accordingly dismissed but without any order as to costs.