
(2019) 07 PAT CK 0300

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 331 Of 2018

Z.A. Islamia College

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Bihar State Universities Act, 1976 — Section 57(A), 57(B), 57(1)(iii), 59, 60

Citation : (2019) 07 PAT CK 0300

Hon'ble Judges : Anil Kumar Upadhyay, J

Bench : Single Bench

Advocate : Abhinav Srivastava, Madhaw Prasad Yadav, Rajesh Kumar Sinha, Anjani Kumar, Shivendra Kishore, Manoj Priyadarshi, Rajendra Giri

Final Decision : Disposed Of

Judgement

1. The present writ petition involves many competing interest. The Governing Body of Z. A. Islamia College, Siwan through its Secretary has filed this writ petition. They are concerned with their autonomy and right to administer education in terms of the constitutional protection available to religious institutions. The petitioner-institution is minority institution and as such it enjoys certain privilege in the matter of administration of the college established by the religious minority. The interest of the University on the other hand, is to regulate the affairs of the minority affiliated college irrespective of the fact that the college is minority institution. The interest of the teachers, who have been granted promotion under the Career Advancement Scheme or the Time Bound Promotion Scheme are also involved as the outcome of this case has bearing on their status and future prospect. There is yet another interest of the State involved as the entire expenditure for payment of salary to the teaching and non-teaching staff in the college in question is borne from the State Exchequer. Considering the involvement of public exchequer, the Court requested the Advocate General to assist the Court vide order dated 08.05.2018. On 14.05.2018 on the request of the Director, Higher Education the Court granted

time to file counter affidavit duly vetted by the Principal Secretary of the Department. After change in the roster the matter was listed before the brother Judge, Hon'ble Mohit Kumar Shah. On 05.09.2018, his Lordship has noted the difficulty of learned Advocate General in appearing in the matter as he was not free on that day. The Court in order to accommodate the Advocate General adjourned the case for 12.09.2018. Finally the case was taken up and hearing was concluded on 23.07.2019 by this Court without the advantage of assistance from the Advocate General.

2. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioner has made submissions on behalf of the petitioner-Z. A. Islamia College, Siwan. Mr. Shivendra Kishore, learned senior counsel appearing on behalf of the intervenor, who have been granted promotion, under the Advance Career Progression /Time Bound Promotion Scheme under the 1986 Time Bound Promotion Scheme Statute made exhaustive argument, Mr. Anjani Kumar, learned senior counsel along with Mr. Nagendra Prasad Singh appeared and assisted the Court on behalf of the University, Mr. Rajendra Giri, learned counsel has appeared on behalf of the Chancellor, Mr. Madhaw Prasad Yadav, GP-23 has appeared for the State to assist the Court and Mr. Manoj Priyadarshi has made submissions on behalf of the intervenors, who has supported the stand of the petitioner.

3. At the very outset the Court would like to decide the issue of intervenors whose case was represented by Mr. Manoj Priyadarshi. After the amendment of the Patna High Court Rules, the interventions are only allowed in opposition to the writ petition but from the intervention petition it appears that the intervenors represented by Mr. Manoj Priyadarshi have, in fact, supported the case of the petitioner and as such the Court does not find any merit in the intervention on behalf of such teachers who are in support of the case of the writ petitioner. The intervention at the instance of the teachers, who are not in opposition to the writ petition does not merit any consideration and is accordingly, rejected.

4. Adverting to the issue raised in the present writ petition, Mr. Abhinav Srivastava, appearing on behalf of the petitioner would submit that the petitioner is not oppose to consider and grant promotion to any of the teachers who are otherwise eligible for grant of promotion but in the garb of granting promotion the Institute run by religious minority will not tolerate and accept interference of University with the day to day affairs of the minority institution. His contention in the present writ petition is that the power exercised by the University is unauthorized and encroachment upon the right to administer education guaranteed to the minorities to establish and administer educational institution of their choice. Mr. Srivastava has drawn the attention of the Court to the letter dated 24.8.2016, Annexure-1 addressed by the Registrar, J.P. University to the Principal/Secretary of the petitioner-institution-Z. A. Islamia College, Siwan. The letter indicates that in the meeting of the Academic Council dated 9.8.2016, the names of experts were selected by the Vice-Chancellor and out of the 5 names

selected by the Vice-Chancellor, the Governing Body was asked to select three. The letter further indicates that apart from three experts, the Governing Body of the College is required to nominate two subject experts from the list which was made available. In other words, the letter indicates that out of the experts and subject experts the Governing Body was at liberty to select three experts and two subject experts and send the names to the University for approval of the Selection Committee. The College was asked to furnish information if any applicant belonging to SC, ST, EBC, minority, female and physically challenged person are under consideration to the University. Mr. Srivastava referring to Annexure-1 submits that when the process of approval of the Selection Committee was on and after approved list submitted by the University, the Principal of the College sent list of the teachers for consideration of their case for promotion under the Career Advancement Scheme as would be evident from Annexure-2 dated 15.04.2017, no action was taken. On 16.7.2017 the college sent list of experts in terms of Annexure-1 to the University for approval. Annexure-3 is the list of three experts out of 5 names approved by the Academic Council of the University. The idea was that the University may approve the Selection Committee so that the Governing Body of the College may proceed for grant of promotion to eligible candidates in terms of the Career Advancement Scheme or the Time Bound Promotion Scheme. Instead of approving the list submitted by the Governing Body for constitution of the Selection Committee, the University issued notification dated 7.10.2017. The aforesaid notification was in relation to grant of promotion of Lecturer to Lecturer senior scale purportedly in exercise of powers under the Statutes for Career Advancement Scheme dated 29.6.2005 amended from time to time. The Governing Body objected to the action of the University as the action of the University granting promotion was direct attempt to encroach upon the power of the Governing Body in the matter of establishing and administering minority institution. The objection dated 18.10.2017 addressed to the University was in relation to the grant of promotion from Lecturer to Lecturer Senior Scale under the Career Advancement Scheme. On the same date i.e. 18.10.2017, the University issued another notification granting promotion under Time Bound Promotion Scheme of 1986. The power was exercised under the Statute dated 24.12.1986. The other notifications are also placed on record to contend that the University made encroachment in the affairs of the minority institution.

5. Mr. Abhinav Shrivastava, learned counsel for the petitioner submits that minority institution has right under the Constitution of India to administer education of their choice and their right to establish minority institution is absolute right as has been held out by the Apex Court in *Re : Kerala Education Bill, 1957*, A. I. R. 1958 S. C. 956. The Supreme Court has occasion to discuss the right to administer education again by larger Bench in the case of *Ahmadabad St. Xavier's College Society Vs. State of Gujarat* (1974) 1 SCC 717 which is still holding the field. The other judgments of the Constitution Bench and larger Bench are on the same line of the right of minority institution to establish

educational institution and administer affairs of the educational institution. Apart from the constitutional mandates as to administration of affairs of the minority institution, Mr. Shrivastava highlighted the statutory scheme contained in the Bihar State Universities Act and Statutes framed thereunder to contend that the entire exercise by the University is totally without jurisdiction. The Career Advancement Scheme was introduced with effect from 23.9.1995. Vide Statute dated 20.7.2000 another Statute superseding the previous was introduced with effect from 27.7.1998. Mr. Srivastava submitted that the University has issued notification granting promotion under Career Advancement Scheme of 29.6.2005 with effect from 27.7.1998. Clause 2.1.0 of the Statute dated 29.6.2005 is candid on the point of application of the Career Advancement Scheme. It is only confined to the University, Department or College managed and maintained by the University. It has absolutely no application to the affiliated College muchless the minority institution.

6. So far as the Time Bound Promotion scheme is concerned, Mr. Srivastava submitted that the University has exercised power purportedly under the Statute dated 24.12.1986. Again this Statute is only applicable to the University, Department or Degree College managed and maintained by the State Government and it has no application to affiliated college or minority institution. Mr. Shrivastava has submitted that so far as the affiliated college or minority institutions are concerned, Time Bound Promotion Scheme of 1992 is applicable i.e. the Statute dated 14.9.1992. Clause I of the Statute dated 14.9.1992 in clear terms indicates that Lecturer serving in affiliated college, which include the college established and managed by the Governing Body shall, on the recommendation of the Bihar College Service Commission, promote on the basis of time bound scheme subject to the following considerations.

7. It is admitted at the bar that College Service Commission ceased to exist after 2007. The Repeal Act is relevant for the purpose of this case. The Bihar College Service Commission Repeal Act, 2007 was published in the Official Gazette on 19.4.2007. Clause 5 thereof is about assets and liability. For ready reference Clause 5 of the 2007 Repeal Act is quoted below.

5. Assets and liabilities. - All the assets and properties of Bihar College Service Commission whether movable or immovable including lands, building, stores, vehicle, books, cash balance, reserve fund, investments, furniture and others shall stand transferred and vested on and be deemed to have come into the possession of the State Government and all the liabilities and obligations of the Commission under any agreement or contract entered into bona fide before the commencement of this Act, shall devolve and shall be deemed to have been devolved on the State Government.

8. Referring to the substantive provisions of the Act, Mr. Srivastava would submit that for appointment in the affiliated colleges statutory provisions are made in Section 57(A) and 57(B) of the Bihar State Universities Act, 1976. Section 57(A) deals with the appointment of teacher in affiliated college which is not governed

by the State Government or not funded by the University. The constitution of Selection Committee for appointment is prescribed under Section 57(B). Section 57 (A) and (B) are quoted below:-

"57 A-Procedure of selection to be prescribed by the statute-

(1) Subject to the provisions of this Act and Statutes made thereunder, for appointment of teachers in such affiliated Colleges, which are not governed by the State Government or not funded by the Universities, the applications from the candidate fulfilling the qualifications prescribed under clause (iii) of sub-section (1) of section 57 of this Act shall be invited by the Governing Body of the College concerned. The selection shall be processed by the Selection Committee constituted by the University under the provisions contained in section 57B of this Act.

(2) In making recommendations on the basis of interview of the candidates holding the above mentioned qualifications the rules or reservation shall be adhered by the Selection Committee.

(3) The recommendation made by the Selection Committee shall remain valid for one year from the date of the recommendation. Within six months from the date of recommendation of the Selection Committee; the College administration shall process the appointment/promotion in order of preference laid down by the Selection Committee.

(4) With regard to the appointment, promotion, dismissal, discharge, removal from service and termination of service or demotion of teachers in affiliated Colleges, the action shall be taken in the manner prescribed after making consultation with the above mentioned Selection Committee.

(5) The appointments, promotions, dismissal, removal and termination of service of teachers in the minority colleges affiliated on the basis of religion and language may be made and disciplinary action against them shall be taken by the governing body of those colleges with the approval of the Selection Committee constituted by the University; Provided that, where the order concerned is limited to only ensure, withholding increment, against a teacher or his/her suspension till the investigation of charges, in such cases the consultation with the Selection Committee shall not be necessary.

(6) The Selection Committee, subject to this Act, will complete the scrutiny of the cases of the teachers of affiliated degree colleges appointed prior to 19.4.2007, without the recommendation of the Bihar College Service Commission on the basis of qualifications in force at the time of appointment of such teachers upto 31.3.2017, otherwise such appointments will not be treated valid. Thereafter the Governing Body of the college will accept the names recommended by the Selection Committee, which shall be finally approved by the concerned University.

Distribution of the amount of grant sanctioned by the State Government will be

made amongst the teachers in the concerned affiliated degree colleges by its Governing Body upto 31.3.2017."

"57 B. Constitution of Selection Committee.

(1) The Selection Committee for appointment to the posts of Assistant Professor, Principal in affiliated colleges shall be constituted by the University as follows:-

(i) The Chairman of the governing body of the college or the person nominated by the governing body, who being one of its members, shall be the Chairman of the Selection Committee.

(ii) Principal of the College.

(iii) Head of the department of the faculty concerned in the College.

(iv) Three experts, not below the rank of professor and two out of them should be experts of the subject, shall be nominated by the Vice-chancellor of the concerned University. In case of such colleges, which have been notified/declared as minority educational institution, three persons nominated on behalf of the Chairman of the College who shall be from the list of five persons preferably from the minority community and who have been recommended by the Vice - Chancellor of the University concerned from the panel of experts proposed by the Academic Council of the University concerned and three persons out of them should be subject experts.

(v) The Governing body of the College may nominate two such subject experts who are not connected with that college and those persons have been recommended by the Vice-Chancellor out of the panel of Subject Experts approved by the Academic Council of the University Concerned.

(vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee do not belong to that category.

(vii) presence of five members of the Selection Committee, which shall include three subject experts, shall form the quorum for the meeting of the Selection Committee."

9. Sections 59 and 60 of the Act is also relevant because it deals with the scheme in relation to the administration of the colleges by the University and the Governing Body. For ready reference, Sections 59 and 60 is quoted below :-

59. Relation of affiliated College with the University.- The relations of the affiliated Colleges with the University shall be governed by the Statutes to be made in that behalf, and such Statutes shall provide in particular for the exercise by the University of the following powers in respect of the Colleges affiliated to the University:-

(1) to lay down minimum educational qualifications for the different classes of

teachers and tutorial staff employed by such Colleges;

(2) to approve the action taken by the governing bodies of such colleges in regard to creation of posts of teachers, their appointments, dismissal, discharge, removal from service, termination of service and determination of term of post and to approve the deputation of teachers to the Intermediate College delinked from the affiliated College;

(3) to co-ordinate and regulate the facilities provided and expenditure incurred by such Colleges, in regard to libraries, laboratories and other equipments for teaching and research;

(4) to require such Colleges, when necessary, to confine the enrollment of students to certain specific subjects;

(5) to regulate conditions of service of teachers of such colleges including the grant of leave with or without allowances and the constitution of pension, insurance and provident funds for the benefit of such teachers; and

(6) to require satisfactory arrangements for tutorial and similar other work in such Colleges and to inspect such arrangements from time to time:

Provided that such colleges shall supplement such teaching by tutorial or other instruction of training in a manner to be prescribed by the Regulation to be made by the Academic Council.

60. The Governing body.- (1) There shall be a governing body for the management and administration of each affiliated College other than a College owned and maintained by the State Government or a College established and administered by a minority community on the grounds of religion or language or an affiliated technical or medical college.

It shall consist of following members-

(i) Principal of the College - Ex-Officio,

(ii) a member elected by and from amongst the teachers of the College,

(iii) a representative of the University nominated by the Vice Chancellor

(iv) an officer of the State Government posted in the district, being not below the rank of a sub-divisional magistrate, nominated by the Vice Chancellor.

(v) a member elected by such donors from amongst themselves as have donated at least twenty five thousand rupees to the College,

(vi) One member to be nominated by the Vice Chancellor, who is a member of the Parliament or the State Legislature and mainly resides in the district of the area in which the College is situated; and

(vii) One member co-opted by the Governing body from amongst such educationists or persons residing in the district where the College is situated as

are reputed for their academic interest.

(2) The term of office of the members of the Governing body, their powers and functions shall be such as are prescribed by the Statutes.

(3) Any act or proceedings of the Governing body of affiliated Colleges shall not be invalid merely because of any vacancy or vacancies in its membership.

(4) The Vice Chancellor shall constitute an adhoc committee for the management of the College so long as Governing body is not constituted in accordance with the provisions contained in sub-section (1).

(5) The Governing body/Managing Committee for the management and administration of a College owned and maintained by the Government, or established and administered by a minority community, on the ground of religion or language and declared, from time to time, as such by the State Government according to yardstick laid down by it, or of any affiliated technical or medical college, shall be constituted in accordance with the provisions prescribed in the Statutes."

10. The relevant Statute in relation to the Governing Body and its powers, functions etc. is Statute No. 32. The very first paragraph of the Statute No. 32 reads that the Governing Body constituted for management and administration affiliated colleges other than the Colleges owned and maintained by the State Government or College administered by the minority or affiliated as technical or medical college. The modalities are indicated in the Statute for constitution of the Governing Body and the power of the Governing Body.

11. Mr. Abhinav Shrivastava has referred to the statutory scheme under the Bihar State Universities Act and Committee constituted for the purpose of constitution of Governing Body, power of the Governing Body, claim for grant of promotion under the Career Advancement Scheme/Time Bound Promotion and submitted that apart from the constitutional guarantee to the minority institution in the matter of management, control and administration, the Bihar State Universities Act also does not authorizes the University to take decision granting promotion either under the Career Advancement Scheme or under the Time Bound Promotion Scheme. Their power is confined to approval of Selection Committee and thereafter approval of appointment/promotion. The Governing Body has power in relation to service condition. Mr. Shrivastava would submit that service condition includes grant of promotion and for grant of promotion the University can only be required to examine the minimum qualification prescribed by the Statute at the time of approval of appointment and promotion. The University has the role to approve the name of experts for constitution of Selection Committee and after the decision of the Governing Body, the University is required to take appropriate decision for approval of such grant of promotion or appointment.

12. Mr. Anjani Kumar, learned senior counsel appearing on behalf of the

University would submit that the University has committed no mistake in granting promotion to the teachers as those teachers who have been granted promotion either under the Time Bound Promotion Scheme or under Career Advancement Scheme, were eligible for grant of promotion and as such the University has granted them such promotion. However, he has no answer to the issue whether the Career Advancement Scheme permit the University to grant promotion in relation to the affiliated Colleges. He has further no answer to the scheme of grant of promotion under 1986 Time Bound Promotion Scheme. Where there is specific Statute for grant of promotion under the Time Bound Promotion Scheme in affiliated colleges including the minority institution dated 14.9.1992 then how the University can exercise power under 1986 Statute.

13. Mr. Shivendra Kishore, learned senior counsel appearing on behalf of the intervenors, who have been granted promotion and their promotion has been questioned by the Governing Body in the present case, would submit that vacancies relates to 2006-2007 and right from 2006 onwards the petitioner-Governing Body and the Secretary recommended the case for grant of promotion. The issue of promotion was considered by the University Senate and Syndicate and was duly approved in 2017. Mr. Kishore submits that the Secretary of the Governing Body was party being member of Senate and as such the principle of promissory estoppel operates against the petitioner and the writ petition at the instance of the Governing Body and its Secretary is not maintainable. He submits that 2013 amendment is prospective in nature and is not applicable in relation to vacancy of 2006 or 2007.

14. Adverting to the issue of estoppel the Court find it difficult to accept this contention as the law is well settled that there would be no estoppel against Statute. Reference in this connection may be made to the judgment of the Apex Court in the cases of Bengal Iron Company V. Commercial Tax Officer: AIR 1993 SC 2414, Sethi Auto Service Station Vs. DDA (2009) 1 SCC 180.

15. So far as the issue as to prospective application of amended provision is concerned, the Bihar College Service Commission Repeal Act came in 2007 and after the Repeal Act the assets and liabilities were taken over by the State Government as stated hereinabove. In the instant case the University has taken step in furtherance of the Scheme in 2013 amended provisions, Annexure-1 onwards are indicative of the fact that the University was conscious of the statutory scheme under Section 57(A) and 57(B) of the Act and that is why the University took steps for approval of the list of experts and subject experts. Once the University took decision to approve the list of subject experts, the University was expected to honour its own decision and allow the Governing Body to proceed with the selection for the purpose of grant of promotion under Career Advancement Scheme or under the Time Bound Promotion Scheme.

16. So far as the issue of grant of promotion under the 1986 Statute is concerned that was alien to the affiliated college and minority institution. Specific Statute was framed on 14.9.1992 in relation to grant of promotion under the

Time Bound Promotion Scheme. It is settled proposition of law of construction that *generalia specialibus non derogant* i.e. the general provision cannot affect the special provision. When special scheme was framed for the purpose of grant of Time Bound Promotion in minorities institution then the general scheme of Time Bound Promotion would not apply.

17. Notwithstanding the discussions made in the present case that the entire exercise was without jurisdiction by the University in granting promotion, the Court cannot shut its eyes to the ground realities that teachers are entitled to consideration for grant of promotion either under Career Advancement Scheme or under the Time Bound Promotion Scheme, 1992, whether the University may consider or the Governing Body may consider, if they have right to consideration, their right cannot be defeated on account of clash of interest of the Governing Body and the University.

18. During the course of hearing Mr. Abhinav Shrivastava admitted that the Governing Body is not averse to the interest of the teachers. They are concerned with the interference in the administration of the college which is established and maintained by religious minority. His emphasis is on the procedure prescribed to be followed for the purpose of appointment and other service condition including the promotion. He fairly submitted that Governing Body will consider the case of all eligible teachers for grant of promotion in terms of the existing Time Bound Promotion Scheme and Career Advancement Scheme from due dates if the teachers answer the eligibility and other conditions for grant of such promotion.

19. While holding the action of the respondents granting promotion as without jurisdiction, the Court would like to direct the Governing Body to take appropriate decision with regard to all eligible for grant of promotion after approval of the Selection Committee by the University. The Court grants one month's time to the Governing Body to send the list of experts including subject experts to the University and the University is required to approve the Selection Committee within a period of one month from the date of receipt of the list by the Governing Body of the College and within a period of 30 days thereafter the Governing Body may complete the process of scrutiny and other formalities for grant of promotion and within one month take appropriate decision with regard to grant of promotion from due date under Career Advancement Scheme or Time Bound Promotion Scheme.

20. As indicated hereinabove, the institution is minority institution and entire expenditure towards payment of salary of the teachers in the college is borne by the State exchequer. The Court hereby directs that after the grant of promotion by the Governing Body on the basis of the scrutiny and interview etc. by the Selection Committee, the University in its turn may take appropriate decision with regard to approval of grant of promotion within a further period of 15 days from the date of receipt of such recommendation by the Selection Committee and thereafter the State Government is required to ensure payment of salary to the beneficiary of the promotion either under the Career Advancement Scheme

or under the Time Bound Promotion Scheme, as the case may be within a further period of 60 days.

21. Before I part with this judgment, I would like to remind all concerned to the settled proposition of law. The Chancery Court in the case of Taylor Vs. Taylor: (1875) 1 Ch D 426 has held out that when the law requires a thing to be done in the manner prescribed then it has to be done in the manner prescribed. Any other mode of performance is forbidden by necessary implication. It is also settled that if statutory authority professes its action to be judged as per the professed norm, then any departure from the professed norms is only at the pain of invalidation as held out by Justice Frankfurter in *Viteralli v. Seton* which has been followed by series of judgment of the Supreme Court of India and other Courts.

22. With the aforesaid, the writ petition stands disposed of.