

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12156 of 2015

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Sarowar Kumar, son of late Ram Kishun Paswan, resident of village
Kamruddinpur, P.S. Begusarai, District Begusarai

.... Petitioner

Versus

1. The Rajendra Agriculture University (Bihar), Pusa Samastipur through its Vice Chancellor
2. The Vice Chancellor, Rajendra Agriculture University, Pusa Samastipur
3. The Registrar, Rajendra Agriculture University, Pusa Samastipur
4. The Director Administration, Rajendra Agriculture University, Pusa, Samastipur
5. The Director Extension Education, Rajendra Agriculture University, Pusa Samastipur
6. The Programme Coordinator, Krishi Vigyan Kendra, Bhagwanpur Hatt, Siwan
7. The Bihar Agricultural University, Sabour, Bhagalpur through its Vice Chancellor

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arjun Kumar, Adv.
For the Respondent/s : Mr. Arvind Ujjwal, Adv.
For BAU : Mr. Chandra Mohan Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 10-08-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:

“(i) To issue a writ of certiorari for quashing the letter vide Memo No. 1185 dated 4.10.2014 (signed by the Vice Chancellor on 30.9.2014 and further signed and issued by Director, Administration, RAU dated 4.10.2014) through which the service of the petitioner on the post of “Subject Matter Specialist” (Agronomy) Krishi Vigyan Kendra, Bhagwanpur Hatt, Siwan has been terminated from the date 7.10.2014 on he ground that the petitioner could not submit experience certificate/ National Eligibility Test (NET)

certificate.

(ii) To issue an appropriate writ/s directing the respondents to again join the petitioner on the post holding that the experiences of the petitioner as technical Supervisor at Operational Research Project, Barahia, Begusarai, Training Assistant at Krishi Vigyan Kendra, Saharsa and the Technical Assistant at Agricultural Research Institute at Patna are more than the required in the advertisement.

(iii) To issue an appropriate writ/s directing the respondents to continue the petitioner on the post holding that the termination of the service of the petitioner from the post of "Subject Matter Specialist" (SMS hereinafter for the sake of brevity) in Krishi Vigyan Kendra, Bhagwanpur Hatt, Siwan, after more than five years of unblemished and continued service on the post of the same is wholly illegal on the date of termination of the service of the petitioner as he continued to hold the post for more than five years whereas the required experience is of only two years.

(iv) To issue of writ of mandamus directing the respondents to allow the petitioner to continue on the post of Subject matter specialist (Agronomy) (SMS hereinafter for the sake of brevity) in Krishi Vigyan Kendra of the respondent Rajendra Agriculture University (the University for the sake of brevity)."

3. Learned counsel for the petitioner has submitted that the impugned order of termination of the service of the petitioner is basically bad because of violation of the terms and conditions of the advertisement. He submits that in the advertisement it was



clearly mentioned that the qualification of passing of National Eligibility Test (NET) was relaxable in case of person having two years experience and therefore, when the petitioner had such experience his services could not have been terminated on the ground that he had not passed the NET examination.

4. In the considered opinion of this Court such submission of the learned counsel for the petitioner has to be only noted for its being rejected, inasmuch as it was the part of the condition in the appointment letter of the petitioner dated 29.9.2009, as contained in Annexure 3, which in Clause 16 had provided the mandatory requirement of passing NET examination. Clause 16 of the appointment letter of the petitioner reads as follows:

“16. The candidate having Masters Degree in the relevant subject, who has not qualified the National Eligibility Test (NET) conducted by the UGC/ ASRB/ CSIR will have to pass the NET examination in the available opportunity after appointment before completion of three years, failing which his/her services shall be terminated without any notice. This condition will not be applicable to the candidate having Ph.D. degree in the relevant subject.”

5. Once this part of condition of his appointment letter was not fulfilled by the petitioner, the order of termination cannot be faulted either on fact or in law.

6. The only additional submission of the learned counsel

for the petitioner that some others in the university having also not passed NET examination are still being retained in the services of the University will give no right to the petitioner for being reinstated in service inasmuch as this Court cannot perpetuate illegality as has been held by the Apex Court time and again including in the case of State of Bihar Vs. Upendra Narayan Singh reported in 2009(5) SCC 65 wherein it was held as follows:-

"By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong orders- Chandigarh Admn. v. Jagjit Singh, reported in (1995) 1 SCC 745, Jaipur Development Authority v. Daulat Mal Jain, reported in (1997) 1 SCC 35, Union of India v. J.V. Subhaiah reported in (1996) 2 SCC 258, Gursharan Singh v. NDMC reported in (1996) 2 SCC 459, State of Haryana v. Ram Kumar Mann reported in (1997) 3 SCC 321, Faridabad CT Scan Centre v. D.G. Health Services, reported in (1997) 7 SCC 752, Style (Dress Land) v. UT, Chandigarh reported in (1999) 7 SCC 89, State of Bihar v. Kameshwar Prasad Singh, reported in (2000) 9 SCC 94, Union of India v. International Trading Co. reported in (2003) 5 SCC 437 and Directorate of Film Festivals v. Gaurav Ashwin Jain, reported in (2007) 4 SCC 737.

(underlining for emphasis)

7. It has to be also kept in mind such relevant persons have been not made party to the writ application and thus in our absence all that this court can observe that competent authority of the University must examine that if any is has been still retained re

in the services of the University, who too had been subjected to the condition alike in the case of the petitioner, and they are still retained despite not passing NET examination, they would be also liable to be dealt in the same manner as has been done in case of the petitioner.

8. That being so, this application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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