

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1052 of 2014

1. Prof. (Dr.) Arun Kumar S/O Shri Ramchandra Prasad Sinha Resident Of North Of Income Tax Colony, Bhutnath Road, P.O.- Lihyanagar, P.S.- Agamkuan, Patna- 800024

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Chief Secretary, Govt. Of Bihar, Patna
2. Principal Secretary, Department Of Science And Technology, Government Of Bihar, Patna
3. Director, Department Of Science And Technology, Government Of Bihar, Patna
4. Bihar Public Service Commission, Jawaharlal Nehru Marg, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. VIKRAM SINGH
For the Respondent/s : Mr. Amresh Kumar Sinha, AC to GA-9
For the B.P.S.C.: Mr. Vikash Kumar

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 27-02-2015

27.02.2015

The writ application was filed on behalf of the petitioner for a direction upon the respondents to issue a letter of appointment in favour of the petitioner as Principal of a Government Engineering College, consequent upon the recommendation of the Bihar Public Service Commission (hereinafter referred to as "B.P.S.C." for short), as contained in letter no. 219, dated 09.03.2011.

During the pendency of the writ application, a decision on the plea of the petitioner came to be taken by the Principal Secretary, Science and Technology,

Government of Bihar, vide order, dated 14.02.2014. The said order is also under challenge and annexed as Annexure-16 with I. A. No. 2999 of 2014. Some additional prayers have also been made therein. Therefore, the said Interlocutory Application is also allowed.

As per the assertion in the writ application, petitioner is supposed to be a technocrat and an academician of repute, having qualification of Bachelor in Engineering (Civil), M.Sc. in Civil Engineering and also a Ph.D. in Civil Engineering.

He had worked as a Lecturer on the basis of appointment made on 17.08.1990 at S.R.E.S. College of Engineering, Kopargaon in the District of Ahmed Nager, Maharashtra, which is said to be a permanently affiliated Engineering College under Pune University.

On 09.07.1992, petitioner came to be appointed as an Assistant Professor in the same said college, because he claims he had the requisite qualification. He served in that capacity till 30th of September, 2000.

On the basis of a public advertisement, dated 05.06.2000, inviting applications for appointment on the post of Professor in Civil Engineering, petitioner became



an applicant. He came to be recommended by the Selection Committee and the college authorities appointed him as a Professor in Civil Engineering on 01.10.2000. After his appointment on the post of Professor, petitioner augmented his academic career by submitting his doctoral paper or thesis and awarded Ph.D. in Civil Engineering from Binoba Bhave University, Hazaribagh.

On the basis of an advertisement, issued on 19.09.2005 by the State of Jharkhand, inviting applications from eligible persons to hold post of Director, Department of Science and Technology to which petitioner responded, the Jharkhand Public Service Commission recommended for his appointment as a Director and finally the petitioner came to be appointed and joined the post on 05.09.2006.

When yet another advertisement, which was Advertisement No. 4 of 2009, was issued by Bihar Public Service Commission, inviting applications for appointment on two posts of Principal in Government Engineering Colleges under the State of Bihar, petitioner decided to apply for the same said post. The advertisement of B.P.S.C. is annexed as Annexure-6. Petitioner underwent the process of selection by

B.P.S.C. B.P.S.C. recommended names of three persons under the general category for appointment on the post of Principal. Name of the petitioner figured at Srl. No. 3. The recommendation, dated 09.03.2011 of B.P.S.C. is Annexure-8.

Despite the recommendation of B.P.S.C., the State of Bihar sat over the same for a period of more than a year. This led to filing of a writ application by one of the recommendees, namely Dr. Achintya. The writ application of Dr. Achintya was registered as C.W.J.C. No. 3805 of 2012. The writ application was disposed off on 17.04.2012 (a copy of which is Annexure-9), giving a direction to the State Government to either act upon the recommendation or give reasons or objections against such recommendation. The objections of the State authorities was sent back to B.P.S.C. on 27.04.2012. The same has been brought on record as Annexure-10 to the writ application.

It is the assertion of the petitioner that the B.P.S.C. responded to Annexure-10 and sought explanation from the State on the contradictions vide Annexure-11, dated 29.11.2012. Since the State authorities did not respond for more than a fortnight the Full Commission held a meeting on 24.01.2013 and

again recommended for appointment of the selected candidates. The matter was reiterated by way of Annexure-14 as well as 15, but when nothing came to be done this writ application has been filed.

The respondent State authorities have filed a counter affidavit. They take a stand that in the present case, the recommendation of B.P.S.C. is not binding on the State, because the petitioner does not fulfill the requirements and conditions including qualification and experience as laid down by the All India Council for Technical Education (AICTE). As per the AICTE notification, dated 15.03.2000, the qualification and experience for the post of Assistant Professor, Professor and Principal has been crystallized by way of a chart in paragraph 9, which is reproduced hereinbelow:

Post	Qualification	Experience
Assistant Professor	Ph. D. degree with the first class degree at Bachelor's or Master's level in the appropriate branch of Engineering / Technology	3 years experience in Teaching / Industry / Research at the level of Lecturer or equivalent.
Professor	Ph. D. degree with the first class degree at Bachelor's or Master's level in the appropriate branch of Engineering / Technology	10 years experience in Teaching / Industry / Research out of which 5 years must be at the level of Assistant Professor and / or equivalent.
Director	/ Ph. D. degree (with the	15 years experience in

Principal / first class degree at Teaching / Industry /
Head of Bachelor's or Master's Research out of which
Institute level) In addition the 5 years must be at the
candidate should be an level of Professor or
eminent person in the above in Engineering /
field Technology.

The post of Principal of Engineering Colleges was advertised on the basis of above-mentioned qualification. When recommendation in favour of the petitioner was received by the department, the same was verified by the Departmental Screening Committee, which found the following facts:

"I. The petitioner joined on the post of Lecturer on 17.08.1990 in a Private Engineering Colleges of Maharashtra.

II. The petitioner was appointed on the post of Assistant Professor on 08.07.1992 in the same college.

III. The petitioner was appointed on the post of Professor on 01.10.2000 by the management of the same Private Engineering College.

IV. The Ph.D. degree was awarded to the petitioner in December, 2002."

From the above facts, the objection of the department is as follows

"(a) The minimum three years experience at the level of Lecturer and Ph.D. degree is essential for appointment on the post of Assistant Professor, as per AICTE norms. However, the petitioner was appointed on the post of Assistant Professor in a Private Engineering College without Ph.D. degree having experience of less than two years.

(b) As per paragraph no. 7 of the AICTE notification, dated 15.03.2000, a teacher without Ph.D. degree can go upto level of Lecturer (Selection Grade). A minimum length of service for eligibility to move into the grade of Lecturer (Selection Grade) was 10 years under Career Advancement Scheme. As such the petitioner was neither eligible for promotion on the post of Assistant Professor nor he was eligible for the appointment on the said post.

(c) The petitioner was appointed on the post of Professor on 01.10.2000 in the same Private institution without having a Ph.D. degree. As per AICTE norms, a teacher without Ph.D. degree cannot be appointed on the post of Professor in any Engineering College. As such, appointment on the post of Professor was also illegal and experience on account of such illegal appointment cannot be considered for the appointment on the post of Principal in a Government-owned Engineering College.”

Despite all these facts having been pointed out to B.P.S.C. by the State Government, still they insisted on standing by their recommendation and ignoring the fact that the petitioner did not have the requisite qualification and experience strictly in terms of the guidelines issued by AICTE.

It is also stated by the respondent State authorities that the hype created about the petitioner, having been selected and appointed as a Director in Department of Science and Technology, Government of Jharkhand has another side of story. He was,



subsequently, discharged from the post for lacking requisite qualification. Meaning thereby that a candidate who does not have requisite qualification cannot be appointed as a matter of right under the State. These facts have been deliberately suppressed by the petitioner before this High Court and it is the stand of the State counsel that the petitioner has not approached the Court with clean hands.

Since the petitioner does not have valid requisite experience at the level of the Professor and whatever he may have achieved or the post he may have held under a Private Engineering College, is not the concern of the State Government. The State Government is not willing to violate the standard and yardstick laid down by AICTE and appoint the petitioner under the circumstances that the petitioner did not have valid requisite experience at the level of the Professor.

The so called Ph.D. degree has also been obtained from Vinoba Bhave University, Hazaribagh when all along the petitioner was supposed to be working in the State of Maharashtra. This degree too has been obtained subsequently after being made a Professor, by the Management Committee of a Private Engineering College. That in no way makes the

petitioner any more eligible than what he was at the time of application in terms of the advertisement issued by the State.

All these facts have been meticulously taken note of and a speaking order has been passed by the Principal Secretary, Science and Technology, Government of Bihar. The order is dated 14.02.2014 and annexed as Annexure-H to counter affidavit is also Annexure-16, whose quashing petitioner wants.

The Court has heard the matter in quite a detail and after having examined the requirement laid down by AICTE, details of which have been taken note of in earlier part of the Order, obviously, the promotion or the post, which the petitioner held in the Private Engineering College cannot bind the State. If the Private Engineering College did not wish to abide by the guidelines issued by AICTE, the State of Bihar cannot be compelled to digress and ignore, which has its won peril. The privilege which a Private Engineering College or a management has, is not available to the State of Bihar. The reason provided by the Principal Secretary, Science and Technology, Government of Bihar in relation to the petitioner are absolutely valid and cogent reasons and it cannot be a case that the State authorities are bound by



the recommendation of B.P.S.C., which chose not to scrutinize these facts while making recommendation in favour of the petitioner. For after all it will be the State of Bihar which has to answer, if an objection is raised by AICTE and not B.P.S.C.

The Court, further, has no hesitation in recording that whatever has been done with regard to Dr. Achintya may not hold true for the present petitioner, because even that recommendation seems to be vulnerable. If the authorities out of fear of contempt have made an offer to Dr. Achintya, the same position does not stand for the petitioner.

The writ application, therefore, is devoid of merit. It is dismissed, accordingly.

(Ajay Kumar Tripathi, J.)

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