

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No1221 of 2011

IN

Civil Writ Jurisdiction Case No 8923 of 2002

- =====
1. The State Of Bihar
 2. The Secretary, Higher Education, Government Of Bihar, Patna

.... Appellant/s

Versus

1. Md. Habib S/O Sri Abdul Rashid Lecturer In The Department Of Commerce, Mirza Ghalib College, Gaya, P.S. + Distt.- Gaya
2. The Magadh University, Bodh Gaya, Through Its Registrar

.... Respondent/s

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For the Appellant/s : Mr Pushkar Narain Shahi, AAG X with
Mr Rabindra Kumar, AC to AAG X

For the Respondent/s : Mr Tej Bahadur Singh, Sr Advocate with
M/s Surendra Kr Singh & Tulika Singh, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 02-04-2015

State of Bihar and the Secretary, Higher Education, Government of Bihar are the appellants in this intra-Court appeal. They were respondents 1 and 2 in the writ proceedings. Respondent No 1 in this appeal is Md Habib, who was the writ petitioner and was Lecturer in the Department of Commerce, Mirza Ghalib College, Gaya (hereinafter referred to as the College). Respondent No 2 in this appeal is Magadh University, Bodh Gaya which was respondent No 3 in the writ proceedings.



2 State has preferred this appeal being aggrieved by judgment and order dated 27.08.2010 passed in CWJC No 8923 of 2002, as filed by the writ petitioner (respondent No 1 herein). The writ petition was filed seeking relief in regard to direction to the State to pay the salary and remuneration of the writ petitioner who was duly appointed on the first post of duly sanctioned permanent vacant post of Lecturer in the aforesaid College which College is undisputedly a minority College. The reason and the ground for seeking this relief was that the State Government had in the past, while sanctioning the post of Teachers in the said minority College, clearly stipulated that though the State Government was sanctioning the post, it would not bear any financial burden in respect thereof but thereafter, from time to time in respect of almost all other such teaching posts, Government accepted the liability and started paying for the Teachers but, without any reason, refused to extend the same treatment to the petitioner. The writ petition was contested by the State.

3 The stand of the State was that the College was a Muslim minority institution. While sanctioning the post, as was required under Section 35 of the Bihar State Universities Act, 1976 (hereinafter referred to as the Act), it was made clear that the State would not accept any financial liability in respect of the said post and, as such, no financial liability could be fastened upon the State. As to why



inspite of such a stipulation, in all other posts, that stipulation was given a total go by, there was no explanation. The learned Single Judge has taken pains to go through all the communications in respect of different Departments of the College and noted that while the Government sanctioned the posts of teaching faculty in different subjects with clear stipulations that no financial liability would accrue against the Government yet, after some time, in respect of all the courses, except writ petitioner's course, full financial liability was accepted by the Government and is being continuously honoured without exception. In that view of the finding and in that view of the matter, the learned Single Judge held that such an action of the State Government would be clearly discriminatory whereby all equals are being treated unequally. The writ application was, thus, allowed. State, being fastened with financial liability of the petitioner, has preferred this intra-Court appeal.

4 Shri Pushkar Narain Shahi, learned Senior Counsel & AAG X appearing for the State submits and reiterates the stand of the State that the post having been sanctioned with clear stipulations of no financial aid, State could not be burdened with the liability. Secondly, it was submitted that in any view of the matter, the petitioner having filed a writ petition being *CWJC No 1973 of 1993* before this Court with virtually the same prayer which was withdrawn as would be

evident from order dated 20.10.1995 passed in the said writ petition, the learned Single Judge erred in entertaining the writ petition much less in not restricting the relief only upto and from 1995 onwards.

5 To this last part, Shri Tej Bahadur Singh, learned Senior Counsel for the contesting private respondent, the writ petitioner submits that he had placed this order as Annexure 9 to the writ petition and in the writ petition, he had stated the circumstances under which the writ petition was withdrawn. It was clearly stated that there was an assurance from the Governing Body that the Human Resources Department, Government of Bihar was considering the matter actively and he was asked not to precipitate the matter in the Court. It is because of that he withdrew the writ petition being sure enough. Soon thereafter, from 26.03.1996, as evident from Annexure 10 to the writ petition, Government agreed to pay some other similarly situated Lecturers with retrospective effect that is from 1985. Thereafter, when the turn of the writ petitioner came, the Government again refused to pay as would be evident from Annexure 11 to the writ petition. It is being aggrieved thereafter that the writ petition was filed. Thus, the withdrawal of the earlier writ petition would neither be res judicata or constructive res judicata.

6 Having considered this aspect of the matter, in our view, the objection of the State cannot be sustained in this regard. The

contention on behalf of the writ petitioner, as put forward by Shri Tej Bahadur Singh, learned Senior Counsel is based on uncontroverted facts and is on sound legal principles.

7 Now coming to the main controversy. The writ petitioner has brought on record, which has not been contradicted by the State or the University, that for some peculiar reason even though the College of the writ petitioner was minority institution enjoying the protection under Articles 29 and 30 of the Constitution of India being merely an affiliated College and not a constituent College, State agreed to fund the teaching posts. From the records, it is apparent that in view of Section 35 of the Act, before any institution can create any post including teaching post, it had to take prior sanction from the State Government. Accordingly, there being need of Science Faculty, Urdu Faculty, Arts Faculty, from time to time, the Governing Body of the College approached through the University to the State Government and State Government, from time to time, sanctioned the post of, inter alia, teaching staff as per requirement. Each time such posts were sanctioned, may be the first post, the second post and the third post in any subject. It was always with a clear stipulation that State would not undertake any financial liability or burden in respect of the said post. But consistently, without exception, one by one in respect of all such sanctioned teaching posts in some cases with retrospectivity of

over 10 years being a minority institution, the Government took over the full and complete financial liability but when it came to Commerce Faculty, it refused. Even in these appellate proceedings, no clear cut explanation is forthcoming from the State as to why it has singled out the Commerce Faculty of a minority College for this step motherly treatment though the faculty duly sanctioned is existing since 1985. In absence of any justifiable reason for this discrimination, we can only hold, as has been held rightly by the learned Single Judge, it would amount to a hostile discrimination which, per se, is anti-thesis of Article 14 of the Constitution. One of the facets of Article 14 of the Constitution is that if similarly situated persons are dissimilarly treated, there could not be a better example thereof.

8 Thus, in our view, the learned Single Judge was not in any error in allowing the writ petition. We find no merit in the appeal. It is dismissed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

M.E.H./-AFR

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