

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19665 of 2013

Nidhi Benipuri W/O Kartikey Benipuri Resident Of Mohalla - Rasulpur Zilani, P.S. - Kazi Mohmadpur, District - Muzaffarpur

.... Petitioner/s

Versus

1. The Vice Chancellor B.R.A. Bihar University , Muzaffarpur
2. The Registrar, B.R.A. Bihar University, Muzaffarpur
3. The Examination Controller, B.R.A. Bihar University, Muzaffarpur

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. SHASHI BHUSHAN SINGH
For the Respondent/s : Mr. Dhruva Mukherjee, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 27-08-2015

27.08.2015

Heard learned counsel for the parties.

Writ application of the petitioner was filed when the respondent-B. R. A. Bihar University, Muzaffarpur not only refused to maintain her candidature for Pre-Ph.D registration, but have also cancelled her result including registration by virtue of Annexure-4, dated 29.08.2013. The petitioner, therefore, wants quashing of Annexure-4 as well as a direction upon the respondent-university to register her as a Pre-Ph.D research candidate and allow her to continue her

research in the university.

The respondent-authority communicated to the petitioner as far back as on 18.10.2011 by virtue of Annexure-2 that her application has not been entertained because she had less than 55 per cent marks in post-graduate and university still sticks by the stand that the minimum eligibility for registration as well as participation in the pre-eligibility test is 55 per cent marks in post graduate subject.

Counsel for the petitioner tries to juggle around with a plethora of notifications here and there issued from time to time extending over many a decades. Counsel harps upon the fact that there is no provision for laying down the minimum of 55 per cent marks in post-graduate level for pre-eligibility test for Ph.D and whatever the university is talking about primarily relates to such candidates, who have to be appointed as Lecturers.

The university in the counter affidavit has annexed the communiqué dated 29.11.2007, wherein the eligibility as well as the requirements needed for registration of Pre-Ph.D eligibility test was made known to one and all. The petitioner responded to the said communication and applied knowing fully well that she





did not have minimum 55 per cent marks in the post-graduate examination. Somehow the authorities of the university have been callous and allowed the petitioner to sit for the examination thinking that a non-eligible person would not have applied in the very first place. This is the background under which she managed to sit for the examination and even qualify, however, when her candidature was closely scrutinized the fact came to light and that is how Annexure-2 came to be communicated to the petitioner and later on the executive committee of the university sat and decided to cancel her registration as well, in terms of Annexure-4.

Learned senior counsel for the university also relies on the guidelines issues by the University Grants Commission, which is meant for holding of test for junior research fellowship as well as eligibility for lecturer-ship. These guidelines are part of the counter affidavit and are directed towards the candidates who want to participate in such examination. Attention of the Court has been drawn to paragraph 22 of such guidelines, which is reproduced hereinbelow:

“22. If a candidate does not possess 55 % (50 % for SC/ST/PH/VH) marks at Master Level without grace awarded by University, he / she is not eligible to appear in the examination.”



Two things therefore, emerges when the communiqué was issued by the university calling for such candidates to register the eligibility was made known to one and all. If despite that the petitioner applied and managed to get herself registered by participation that does not create a right because the benchmark which has been laid down for such registration cannot be lowered or the petitioner cannot derive advantage by the fact that she was allowed to participate or sit for the examination. A candidate, who lacks eligibility, will continue to do so at all time and she or he cannot derive advantage of oversight by the university authorities.

A reading of the directions for conduct of the examination issued by the UGC does not make a distinction between lecturer-ship or test for junior research fellowship. The eligibility of 55 per cent has been laid down and has been laid down with an object and purpose to maintain standards in higher education.

In the above circumstances, if the petitioner did not have 55 per cent eligibility in the post-graduate examination, the petitioner only took a chance by applying and thereafter litigating before the Court to hang on to an advantage which she derived without

having the eligibility in the very first place.

Writ application, therefore, is dismissed.

(Ajay Kumar Tripathi, J.)

