

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9918 of 2013

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1. Dr. Sharngdhar Singh S/O Late Permanand Singh R/O Villge-
Mokhtarpur, P.S.- Mahnar, District- Vaishali

.... Petitioner/s

Versus

1. The Chancellor, B.R.A. Bihar University Raj Bhawan, Patna
2. The Principal Secretary Raj Bhawan Secretariat, Raj Bhawan, Patna
3. The B.R.A. Bihar University, Muzaffarpur, Through Its Registrar
4. The Vice Chancellor, Bihar University, Muzaffarpur
5. The Principal, R.P.S. College, Chekayaj, Mahnar, Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL ORDER

07. 09.01.2015

Heard learned counsel for the parties.

Petitioner's name was recommended by the committee constituted by the Syndicate to consider his regularization in service as a Lecturer in Hindi in RPS College, Chekayaj, Mahnar, Vaishali. Besides such recommendation instead of university, taking a decision, the Registrar of B. R. A. Bihar University, Muzaffarpur decided to seek guidelines or response of the Hon'ble Chancellor, vide communication, contained in Annexure-18, dated 18.10.2011. When nothing came to be done for a long period of time, the petitioner approached the High Court by filing the writ application, seeking a direction upon the Hon'ble Chancellor for taking a

decision for issuing appropriate guidelines in this regard, because not only the right but even time is sticking for the petitioner.

After much delay a counter affidavit on behalf of Hon'ble Chancellor has been filed wherein a communication dated 12.08.2013 has been annexed as Annexure-A to the counter affidavit of the Chancellor. A reading of Annexure-A would indicate that the university was required to take a decision in terms of the order of Hon'ble High Court, passed in L.P.A. No. 909 of 2000, which is the case of ***Dr. Shiv Narain Yadav & others Versus The State of Bihar & others.***

Learned counsel, representing the petitioner, thereafter, filed a rejoinder, taking a stand that the communication, contained in Annexure-A, does not indicate correct legal position. He has reasons to say so on the basis of yet another judicial pronouncement made in the case of ***Dr. Sheela Rani Sinha Versus Hon'ble Chancellor of the Universities through the Secretary, reported in 2011 (4) P.L.J.R. 178.*** The stand of the petitioner is that the legal position enunciated in the said decision rendered in the case of Dr. Sheela Rani Sinha (supra) is still the correct position in law and the Learned Single Judge had duly considered the order passed in the LPA in

question and made the distinction on the basis of statutory provision emerging therefrom. Reliance therefore has been placed on paragraph 5 to 10, which is reproduced hereinbelow:

“5. It is also contended that in view of the decision which has already been rendered by the Hon`ble Supreme Court in the case of State of Bihar and others v. Bihar Rajya M.S.E.S.K.K. Mahasangh and others, (2005) 9 Supreme Court Cases 129, there ought not to be any confusion on the issue as to which rules or statute will govern their cases. Attention of the Court has been drawn to para 54, 55 and 56 of the said decision wherein the Hon`ble Supreme Court has given its interpretation to section 35 as well as section 4(1)(14) of the Bihar Universities Act as well as the subsequent amendment brought about under section 57-A.

6. Paragraphs 54, 55 and 56 of the aforesaid decision are reproduced hereinbelow, which according to the counsel settles the law or removes the ambiguity if at all on such issue:-

“54. The two non obstante clauses with slightly different wordings have thus to be harmoniously construed so as to fulfil the object of each one of them. On examination of the scheme of the Act and the relevant provisions, we find that Section 35, requiring prior sanction of the State Government for creation of posts and appointments, applies to all affiliated colleges. Compared with Section 35, Section 4(1)(14) has limited operation at a stage when a university enters into an agreement with the management or Governing



Bodies of private institutions affiliated or non-affiliated for taking over its management, assets, liabilities and staff. The effect of non obstante clause in Section 4(1)(14) is that the matter of absorption of staff of such institution/college proposed to be taken over, would be within the sole power and jurisdiction of the university concerned within whose jurisdiction the affiliated college or institution falls. On the matter of absorption of staff of taken-over institutions, Section 35 requiring prior sanction or approval of the State Government for creation of posts and appointment, would not be a constraint on the power of the university. It is different thing that the university in considering absorption of the staff of institution taken over may give due consideration to the legality/regularity or otherwise of a particular appointment but it would not be inhibited by the absence of prior sanction or approval of the State as contemplated in Section 35 of the Act. This is how the two non obstante clauses have to be harmoniously construed and applied as giving overriding effect to each and restrict their operation within exclusive field assigned to each. In the matter of creation of posts and appointments in affiliated colleges in normal circumstances, requirement of prior sanction or approval of the State Government, as contained in Section 35, is not dispensed with because of the contrary provision contained in Section 4(1)(14) and the latter section is restricted in its operation to absorption of staff or a taken-over institution by the university.

55. Clause (c) to sub-section (2) of section 57-A was introduced by Act 3 of 1990 and has no retrospective application to the cases of



affiliated colleges taken over as constituent colleges prior to the year 1990. The said clause (c) to sub-section (2) of Section 57-A requires further approval of the Bihar State University (Constituent Colleges) Service Commission before absorbing the services of teachers of the affiliated colleges converted into constituent colleges. The aforesaid piece of subsequent legislation amending the same Act can appropriately be taken as an aid to the interpretation of the unamended provisions of the Act. The amended provisions of the Act are an indication that the subject of absorption of staff of taken-over affiliated colleges is treated as a subject distinct from regular recruitment to the posts in affiliated colleges which is to be made with prior sanction or approval of the State Government as provided in Section 35 of the Act. Similarly, sub-section (3) added to Section 35 by Act 17 of 1993 is also prospective in application and has no adverse effect on the absorption of the services of the teaching staff of the affiliated colleges taken over as constituent colleges prior to 1993. Sub-section (3) applies to normal mode of recruitment of staff (teaching or non-teaching) of affiliated colleges and is merely reiteration of the legal position that appointments and promotions made contrary to the provisions of the Act, statutes, rules and regulations would be invalid and liable to be terminated at any time. It also provides that any expenditure incurred by the university against such illegal, irregular, unauthorized appointments / promotions shall be realized from the officers found responsible for committing such illegality as a public demand under the provisions of the Public Demands Recovery Act, 1914. Clause (c) of



Section 57-A(2) introduced in the year 1990 and sub-section (3) of Section 35 introduced in the year 1993 being prospective in operation have no application to the affiliated colleges taken over as constituent colleges with the existing staff prior to the year 1990. Those provisions introduced subsequently in the year 1990 and 1993 are being referred to for a limited purpose to show that the legislature has always treated differently the normal recruitment which has to be made with the approval of the State Government to teaching and non-teaching posts in affiliated colleges and the matter of absorption of existing staff appointed against sanctioned or non-sanctioned posts in the affiliated colleges taken over and converted as constituent colleges.

56. The two non obstante clauses, although slightly differently worded, one in proviso to Section 4(1)(14) and the other in Section 35 of the Act have thus been construed harmoniously. Our conclusion is that they operate in two different fields – former to consideration of absorption of staff of taken-over colleges and the latter to affiliated colleges when they are not under any proposal of being taken over by the university. The two provisions being intended to operate in two different situations and fields, both have an overriding effect on each other. That is why the legislature has employed a non obstante clause in each.”

7. In the background to the interpretation which has been given by the Hon`ble Supreme Court in the year 2005, the stand taken by the learned counsel for the Hon`ble Chancellor to that extent has no meaning because whatever be the observation which may have been given

by the Division Bench of the High Court in the case of Dr. Shiv Narain Yadav (supra), the interpretation now given by the Hon`ble Supreme Court settles the issue.

8. When learned counsel for the Hon`ble Chancellor is confronted with this decision and the observation of the Hon`ble Supreme Court, he submits that now the position is otherwise, in the sense that the ball lies in the court of the University itself and the Chancellor has no role to play.

9. Whatever be the understanding of the situation by the counsel for the Chancellor the law being what it is as laid down by the Apex Court in the case of State of Bihar and others v. Bihar Rajya M.S.E.S.K.K. Mahasangh and others (supra), the University is competent enough to decide the cases of the two petitioners.

10. This Court has no conflict in its mind keeping the facts as well as the ratio laid down by the Hon`ble Supreme Court in the above quoted paragraphs of the decision. In light of the same, these two writ applications are disposed of with a direction upon the Vice Chancellor of Magadh University to consider the claim of the petitioners within a reasonable time frame, pass an appropriate order and communicate the same to the two petitioners."

From what has been reproduced hereinabove, it is evident that there seems to be some communication gap in understanding the position, emerging from the Secretariat of the Hon'ble Chancellor.

In view of the same, the said communication

is required to be ignored and a direction is now issued upon the Vice-Chancellor of the university to take an appropriate decision within a period of three months by following procedure in this regard.

Writ application is allowed in terms of the above.

(Ajay Kumar Tripathi, J.)

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