

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12442 of 2013

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1. Birendra Kumar Singh, S/o Late Ram Chandra Singh, Resident of Village Harpur Belwa, P.O. Harpur Belwa, P.S. Mahua, Dist. Vaishali (Hajipur).
 2. Chandra Bhushan Singh, S/o Kamal Singh, Vill. Bishanpur Taraura, Post Bhagwatpur Taraura, Dist. Vaishali.
 3. Nand Kishore Chaudhary, S/o Late Prabhu Chaudhary, At + P.O. Pirapur, Jandaha, Dist. Vaishali.
 4. Gopal Krishna Patha, S/o late Surya Narayan Pathak, At + P.O. Dunhi, Dist. Begusarai.
 5. Suresh Kumar Singh, S/o Late Raghubansh Singh, Village + P.O. Dumari, Adda, P.S. Doriganj, Dist. Chapra.
 6. Md. Abullais Siddique, S/o Md. Sami Haider, R/o Shekhopur, P.S. Sahdai Bughra, Dist. Vaishali.
 7. Baleshwar Sah, S/o Ishwar Lal Sah, R/o Narsingpur Bagahi, Vill.+P.O. Neelkanthpur, Mahua, Dist. Vaishali.
 8. Pashupati Nath Singh, S/o Late Bishwanath Singh, R/o Dharmapura, P.S. Daudpur, Dist. Chapra.
 9. Arjun Prasad Singh, S/o Hardeshwar Prasad Singh, R/o Village Asoi Lakshiram (Chakmuan), P.O. Asoi, P.S. Bhagwanpur, Dist. Vaishali.
 10. Nilima Kumari Sinha, D/o Sri Hari Narayan Prasad, R/o Gyan Bhawan, Anandpuri, Boring Canal Road, Patna-1.
 11. Arvind Kumar Singh, S/o Late Shiv Prasad Singh, R/o Old Bahadurpur, Near Shiv Mandir, Rajendra Nagar, Patna-16.
 12. Ram Nath Singh Raman, S/o Rajdeo Singh, R/o Village Pindauta Bujurg, P.O. Tisrouta, Dist. Vaishali.
 13. Sri Prakash Singh, S/o Late Rajendra Prasad Singh, R/o Village+P.O. Tengrari, Via Meenapur, Dist. Muzaffarpur.
 14. Rekha Sinha, D/o Late Chandra Shekhar Singh, At Harpur Belwa, P.O. Harpur Belwa, Dist. Vaishali.
 15. Amrendra Narayan Singh, S/o Late Ram Sajjan Singh, R/o Village Rampur, Singhoda, P.O. Singhara, Dist. Vaishali.
 16. Sanjay Kumar Singh, S/o Late Hariballav Prasad Singh, R/o Village Bahasi, P.O. Kadilpur, Dist. Vaishali.
 17. Mithilesh Kumar, S/o Sri Raghuraj Singh, R/o Village Kanhauli Dhanraj, P.O. Kanhauli, P.S. Mahua, Dist. Vaishali.
 18. Dharmendra Kumar Chaudhri, S/o Harbansh Chaudhary, R/o Village + P.O. Shahpur, Dist. Vaishali.
 19. Dr. Jawaid Ahmad Ansari, S/o Late Abdul Rasid Ansari, R/o Jandaha, P.S. Jandaha, Dist. Vaishali.
 20. Debendra Rai, S/o Ram Pratap Rai, R/o At + P.O. Kinaru, Dist. Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Secretary, Education Department, State of Bihar.
3. Secretary, Higher Education, Government of Bihar.
4. Deputy Secretary, Human Resources Development Department, State of Bihar.
5. Managing Committee of Nirsoo Narain College, Singhara, Vaishali through Secretary.
6. Baba Saheb Bhim Rao Ambedkar Bihar University (B.R.A.B.U.), Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Prasad, Adv.
Mr. Umesh Kumar Singh, Adv.
For the State : Mr. Dhurjati Kr. Prasad
For the University : Mr. Dhruba Mukherjee, Sr. Adv.
Mr. Ganesh Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 22-08-2016

Heard learned counsel for the petitioners and counsel for the State as also counsel for the University.

In this case, the petitioners are claiming the relief that they have been properly appointed by the respondents in compliance of the advertisement published by the respondent which is based on the criteria fixed by the UGC and, contrary to the above, the respondents have declared the college of the petitioners Government Aided (Vit Rahit) and the respondents do not pay the monthly salary and the poor teachers are starving with their family members even after rendering their full time services and in lieu of that the institution gets yearly financial aid which is better than nothing. They possess same qualification and experience and they have faced with the interview in the same way to those teachers who are teaching in the government colleges and are getting the monthly salary and if the respondents want to save the life of the poor teachers and family members then there are many vacancies existing for the teachers in another government colleges where they may be absorbed.



In nutshell, from paragraph no.1, it emerges that the relief has been sought that they should be given pay-scale as the employee of the Government Colleges. In alternative, they may be adjusted and absorbed in a Government College in the vacant posts. The petitioners have been appointed on the recommendation of Bihar College Service Commission, Patna in the college of Nirsoo Narayan College, Singhara, B.R.A.B.U., Muzaffarpur which came in existence in the year 1970, was granted temporary affiliation from time to time, ultimately vide letter dated 22.4.2006, the Government granted permanent affiliation making it clear that the affiliation has been granted without any financial aid as, in the notification itself, it has been stipulated as Vit Rahit Inter Rahit, so this notification makes it clear that the Government is not bound to give any aid to the said college. In the year 1982, the Government, as per the policy decision, used to grant affiliation Vit Rahit but, later on, in the year 2008, the Government changed its policy of granting affiliation with financial aid to the affiliated college. In pursuance thereof, the affiliated colleges have been getting the financial help from the State Government. The petitioners are claiming that there is no dispute that the college, in question, is in administrative control of the private body but, they have entered into the services facing due process of law, applied against advertisement issued by the College Service



Commission constituted for appointment of affiliated college for the constituent colleges, facing the interview, on the basis of recommendation, they were inducted in the college in similar manner the teachers of constituent college of University. But the facts are that the teaching staffs in the constituent colleges being selected by the University Service Commission, which is quite different. The teaching staff of affiliated college and vis-à-vis the entry of the teaching staff of the constituent college enters into service through two different body of selection. The manner and method as the Selection of both types of colleges are quite different, inasmuch as, they are governed by two different provisions provided under the University Act. Section 57 of the Bihar University Act deals with the appointment of teachers and officials of the constituent colleges of the University whereas Section 57A of the Bihar University Act provides the appointment of teachers of affiliated college not maintained by the State Government made by the Governing Body on the recommendation of the College Service Commission. Section 57A of the Bihar University Act makes it clear that they are appointed by the Governing Body on the recommendation of the College Service Commission, their service condition such as dismissal, termination, removal from service or demotion in the rank of teacher of such colleges is under the control of Governing Body in consultation with



the Service Commission in the manner prescribed in the statute whereas the teachers of the constituent college are governed by different sets of rules in the matter of termination, removal and demotion in service by different officer and different manner, they are completely under the control of the University, so the comparison sought to be made by the petitioners with the teachers of constituent college cannot be countenanced, reason has been mentioned that their source of appointment is different, agency is different, they constitute different class. In course of argument, it has been mentioned that even some colleges which are affiliated colleges have been kept in the list of deficit grant whereas the college of the petitioners is in the grant-in-aid, it has further been submitted certain colleges which are at par or below have been made constituent unit, but the same benefit has not been extended to the college of the petitioner, in alternative, the petitioners has prayed that this Court should direct the State to bring the college in the category of deficit grant college or make it a constituent unit of University.

Learned counsel for the respondents has placed reliance on the Division Bench Judgment of this Court in LPA No. 430 of 2014 wherein identical issue was raised. In that case also, the teaching employees were also claiming that the college should be given the benefit of deficit or in alternative the college be made constituent unit



of University. Learned Single Judge passed an order in favour of the employee, the State of Bihar challenged that order in the aforesaid LPA, the Division Bench has ultimately dismissed the writ application, allowed the LPA on the point raised by the State that granting the status of grant-in-aid or deficit grant or to declare the college as constituent college is a matter in between the State and the Managing Committee. The teaching staffs of the affiliated college do not have any locus standi to seek the relief of changing the status of the affiliated college. The Court has held that the teachers having no locus to challenge the decision of the State Government by filing a writ application, if there is any grievance, it is the Management of the college not the employees of the affiliated college and has been dealt with in paragraph no.32, 33 and 34 of the said judgment which reads as follows:-

*"32. Following the aforesaid decisions in **Cyril E. Fernandes** (supra) and **Ajit Kumar Sharma** (supra), we have no hesitation in holding that in the matter of the said policy or State action, touching release or withholding of grant to a private institution, cannot be said to be conferring any enforceable right on the employees of the institution or taking away any right from the employees of the institution, since they cannot be said to be directly concerned with the dispute between the private institution and the Government, particularly, when the institution does not question the decision of the Government to withhold such grant. We are of the clear view that the private respondents, herein, had no locus standi to question the order passed by the Secretary,*

Department of Higher Education, dated 09.11.2001, pursuant to the order of this Court, dated 16.09.2002, as the said dispute was raised by the Governing Body of the College against the decision of the State Government of stopping Recurring Annual Grant to the College and the dispute, as regards grant-in-aid, was between the Governing Body of the private College and the State Government. The Governing Body elected not to question the decision of the said State Government and, thus, accepted it.

33. Further, the right of the private respondents/writ petitioners, if any, is determinable on the basis of contract of employment between them and the management of the private institutions inter se. Question of denial of their right will depend upon the nature of agreement between them and their employer. The writ petitioners-private respondents could not have, in our considered opinion, raised any grievance and/or seek release of grant-in-aid in favour of the College inasmuch as there was no legal right vested in them, which can be said to have been violated.

34. The law is well settled that a mandamus cannot be issued to create a right; but mandamus is to be issued to restore a party, who has been denied right, to enjoyment of such right. A person can be said to be aggrieved only if his legal rights are directly affected. In our opinion, thus, the private respondents/writ petitioners had no locus standi to maintain writ petitions, under Article 226 of the Constitution of India, against the order passed by the Secretary, Department of Higher Education, rejecting the plea of the Governing Body to continue with the release of recurring annual grant-in-aid to the College."

In view of the authoritative pronouncement of the Division Bench where it has been held that the teaching staff does not have jurisdiction to challenge the nature of relationship in between the

college and the University, which is binding upon this Court, cannot be decided dehorse to the stand taken by the Division Bench. Admittedly, the college was granted affiliation as Vit Rahit. Merely because the State has taken different policy decision for granting financial aid, this Court cannot entertain this writ petition in absence of locus of petitioner to press this writ petition. Though learned counsel for the petitioners has stated that it violates the directive principle of the State policy but, could not point out breach of any constitutional provision, also failed to show in what manner that how the affiliated college and its employees can be compared with the employee of the constituent college as the manner of appointment, source of appointment and their service conditions are quite different. Merely because their appointment has been made through College Service Committee, it does not ipso facto lead to any inference that they have got status as that of the employee of the constituent college. In that view of the matter, this Court does not find any merit in the present application.

This application is, accordingly, dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2016
Transmission Date	NA