

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.226 of 2009

IN

Civil Writ Jurisdiction Case No. 15917 of 2008

- =====
1. Veer Kunwar Singh University, Arrah through its Registrar
 2. The Vice Chancellor, Veer Kunwar Singh University, Arrah

.... Respondents/ Appellants
Versus

1. Dr. Pramod Kumar Singh, son of late Rajeshwari Prasad Singh, Joint Secretary, V.K.S. University, Teachers Association, Ara and resident of Mohalla-Gourakshani, P.O. & P.S. Sasaram, District Rohtas.

.... Petitioner/ Respondent 1st Set

2. The State of Bihar,
3. The Secretary (Higher Education), Human Resources Development Department, Government of Bihar, Patna.

.... Respondents/ Respondents 2nd Set

With

=====

Letters Patent Appeal No. 321 of 2009

IN

Civil Writ Jurisdiction Case No. 15917 of 2008

=====

Dr. Smt. Savitri Kumari Singh, daughter of late Kapildeo Rai, resident of Goarkshani (Panjar Colony), P.S. Sasaram Town, District Rohtas

.... Appellant

Versus

1. The State of Bihar,
2. Veer Kunwar Singh University, Ara through its Registrar,
3. The Vice Chancellor, Veer Kunwar Singh University, Ara,
4. The Secretary (Higher Education), Human Resources Development Department, Government of Bihar, Patna.

.... Respondents/ Respondents.

5. Dr. Pramod Kumar Singh, son of Late Rajeshwar Prasad Singh, Joint Secretary, V.K.S. University Teachers Association, Ara and resident of Mohalla Gourkshani, P.O. & P.S. Sasaram, District Rohtas.

..... Petitioner/ Respondent.

with

=====

Civil Writ Jurisdiction Case No. 1691 of 2016

=====

Nav Mithila Vikash Samiti, through its Organizing Secretary, Usha Kiran Hazari, D/o Mahendra Hazari, Resident of Jay Niwas, Boring Canal Road, Patna.

.... **Petitioner**

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. The Vice - Chancellor, L.N. Mithila University, Kameshwar Nagar, Darbhanga.
4. The Registrar, L.N.M.U., Kameshwar Nagar, Darbhanga.
5. Dr. Hari Narayan Thakur, Son of Not Known
6. Dr. Puran Chandra Lal Das, Son of Not Known
7. Dr. Phula Paswan, Son of Not Known
8. Dr. Satyanarayan Paswan, Son of Not Known
9. Dr. Vijay Rajak, Son of Not Known
10. Dr. Jai Shankar Prasad, Son of Not Known
11. Dr. Jai Ram Das, Son of Not Known
12. Dr. Vinod Kumar, Son of Not Known
13. Dr. Birendra Kumar Choudhary, Son of Not Known
14. Dr. I.D. Mohd., Ansari, Son of Not Known
15. Dr. Mohd. Rahmatulla, Son of Not Known
16. Dr. Dilip Kumar, Son of Not Known
17. Dr. Awadesh Kumar Singh, Son of Not Known
18. Dr. Anil Kumar Mandal, Son of Not Known
19. Dr. Shyam Chandra Gupta, Son of Not Known
20. Dr. Ram Awadesh Kumar, Son of Not Known
21. Dr. Shambhu Kumar Yadav, Son of Not Known
22. Dr. Meghan Prasad, Son of Not Known
23. Dr. Laxman Kumar Jaiswal, Son of Not Known
24. Dr. Meena Prasad, Son of Not Known

All are Principals under L.N. Mithila University Kameshwar Nagar, Darbhanga.

.... **Respondents**

=====

Appearance :

(In LPA No. 226 of 2009)

For the Appellant/s : Mr. Ajay Behari Sinha, Advocate
Mr. Ashok Kumar Keshari, Advocate
Mr. Rabi Bhushan Prasad, Advocate

For the Respondent/s : Mr. (Gp7)

(In LPA No. 321 of 2009)

For the Appellant/s : Mr. Ashok Kumar Sharma, Advocate
Mr. Rahul Nath, Advocate

For the Respondent/s : Mr. (GP7)

Mr. Vinay Kirti Singh, Advocate
Mr. Ajay Behari Sinha, Advocate

(In CWJC No. 1691 of 2016)

For the Petitioner/s : Mr.Satish Chandra Jha, Advocate
For the Respondent/s : Mr. Ashok Kumar Keshari, AAGII

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 02-08-2016

Heard learned counsel for the appellants and
learned counsel appearing for the respondent.

2. In all these matters, a common question arises
for consideration as to whether principle of reservation would
be applicable to appointment of Principal under the provisions
of the Bihar State Universities Act, 1976.

3. L.P.A. No. 226 of 2009, on behalf of the Veer
Kunwar Singh University, Ara (hereinafter referred to as "VKS
University") and L.P.A. No.321 of 2009, on behalf of Dr. Smt.
Savitri Kumari Singh, are directed against the order, dated
9.2.2009, passed in C.W.J.C. No.15917 of 2008, allowing the
prayer of the writ petitioner that there can be no reservation in
matters of appointment of Principal of Colleges under the VKS
University inasmuch as the same is an isolated post and there
can be no reservation for such post as it will amount to 100%
reservation.

4. In coming to the aforesaid conclusion that the
post of Principal is a single cadre post and such post cannot be

grouped together for the purposes of reservation, the learned Single Judge heavily relied upon the Division Bench judgment of this Court in the case of **Dr. Mrs. Annapurna Devi Vrs. State of Bihar and others**, reported in **1997 (1) PLJR 965**, and in particular paragraph 5 thereof, which is quoted hereinbelow:

"The legal position that emerges, thus, is that for being appointed as the Principal of a College, a person must possess the requisite qualification and the necessary experience as a teacher in one of the subjects assigned to the faculty to which the College belongs or in other words in one of the subjects being taught in the College. For example, a person must possess the requisite qualification and the necessary experience as a teacher in a science subject for being appointed as Principal of the Patna Science College and in law for being appointed as Principal of the Patna Law College. Similarly, in paragraph-13 of this judgment, it is held "once it is held that the Principal of a College is also a teacher, it follows there from that he must be a teacher having the requisite qualification and experience to teach the subject taught in the College of which he is appointed as a Principal."

5. Before we examine the issues involved in these cases, it would be necessary to notice the facts in some detail. One Dr. Pramod Kumar Singh, who is respondent in both the appeals, challenged the advertisement, bearing No.01/08, dated 14.9.2008, published by VKS University, inviting applications from eligible candidates for filling up 13 vacant posts of Principal out of 17 Constituent Colleges. The



advertisement specified that out of these 13 vacancies, 7 posts will be for the General Category, whereas 2 posts each for the Most Backward Category, Backward Classes and Scheduled Castes. The details, regarding eligibility and other requirements, were not mentioned in the advertisement and the same were to be gathered from the *website* of the VKS University.

6. The submissions of the writ petitioner before the Writ Court were as follows:

(i) Every college is an independent unit with only one post of Principal and reservation, on such a post, will amount to 100% reservation, which is impermissible in law;

(ii) The University Statute, bearing No. BSU-40/81-732-GS, dated 30.7.1982, which prescribed reservation for Officers and Non-teaching staff, provides that each college (constituted or affiliated) has to be treated as a separate unit of reservation inasmuch as each constituent college, unlike Post Graduate Department, is an independent unit and has own Controller of Examination and there can be no reservation to single cadre post either directly or indirectly; and

(iii) The University in the impugned advertisement notified 13 posts of Principals for different colleges without specifying as to which post of Principal is vacant for which College.



7. The VKS University opposed the stand of writ petitioner and justified the application of principle of reservation in appointment of Principals of Constituent colleges of the University. The submission of the University before this Court is that the appointment to the post of Principal made by it, in the year 2009, was for the group of constituent colleges under the University and not for one particular college. The advertisement, as such, was not for one post, but for plurality of posts and, as such, the policy of reservation was applicable. The case of **Dr. Mrs. Annapurna Devi (supra)** was not relevant as this decision was rendered in the case of filling up of posts of various faculties in Patna University, which has single unit post in its constituent colleges.

8. The learned Single Judge, on consideration of cases of the parties, accepted the plea of the writ petitioner that the post of Principal is an isolated post and, as such, any reservation, for such post, would amount to 100% reservation.

9. The learned Single Judge, relying upon the decision in **Dr. Mrs. Annapurna Devi (supra)**, observed that a Principal is, first, a teacher and his/her appointment, as Principal of a particular college, is necessarily to be correlated to his/her educational qualification and teaching experience in the concerned subject. For instance, a Science teacher cannot be appointed as a Principal of Law College, when Science is not

one of the subjects taught in a Law College. Similarly, the Principal of Law College cannot be *vice versa* appointed as a Principal of a Science College, when he has no teaching experience and necessary qualification of a Science teacher.

10. Being aggrieved by the order of the learned Single Judge, the VKS University has filed L.P.A. No.226 of 2009. One Dr. Smt. Savitri Kumari Singh, who belongs to reserved category and was also an applicant for the post of Principal, has also filed an appeal giving rise to L.P.A. No.321 of 2009.

11. During the pendency of the two Letters Patent Appeals, a writ application, bearing C.W.J.C. No.1691 of 2016, was filed, in the year 2016, by way of Public Interest litigation, by Nav Mithila Vikash Samiti, through its Organizing Secretary, challenging the appointment of Principals of different colleges made, on 28.2.2009, on the basis of reservation, by the Vice Chancellor, L.N. Mithila University, Darbhanga (hereinafter referred to as "the LNM University"). The writ petitioner has virtually adopted the case of writ petitioner of C.W.J.C. No.15917 of 2008, filed by Dr. Pramod Kumar Singh of VKS University, opposing the appointment of Principals on the basis of reservation.

12. Both the VKS University and LNM University have made the following common submissions in support of filling up posts of Principal on the basis of reservation. They submit that



the appointments, which had been made by the Universities in the year 2009, were for the group of Constituent Colleges under the University and not for one particular college. The applications, which had been invited from the eligible candidates for appointment to the posts of Principal, were all under the services of the University. The constituent colleges are managed and controlled by the University and, as such, these constituent units cannot be considered a separate and independent unit for the purposes of its functioning. The advertisement was not for one post, but for plurality of posts and, as such, the policy of reservation would apply to these appointments. The post of Principal of the Constituent colleges constitutes a *cadre*. In support of these submissions, reliance has been placed on a decision, in the case of ***Dr. Chakradhar Paswan vs. State of Bihar & Ors, (A.I.R. 1988 SC 959)***, particularly, paragraph Nos. 8 and 16 thereof.

13. In support of the submission that policy of reservation was justifiable, learned counsel refers to Section 26(6)(iv) of the Bihar State Universities Act, 1976, which makes the post of Principal a transferable post. In terms of these provisions, a person can continue against the post of Principal in one College for a maximum period of five years and, thereafter, he is liable to be transferred to another College as Principal. Since the Principal can be transferred from one college to another under

the same University, the post of Principal is not to be treated as a single unit post; rather, cadre of Principals, under the University, is tactically implied.

14. It is the case of both the Universities that the majority of the Colleges, under a University, covered by the provisions of the Bihar State Universities Act, 1976, are multi-faculty colleges and, as such, the person, working as a Principal in one multi-faculty college under the University, is also eligible for appointment and posting in another multi-faculty college. According to the VKS University, out of 17 constituent colleges under the University, 16 of the colleges are multi-faculty colleges having Arts, Science and Commerce.

15. The writ petitioner, Dr. Pramod Kumar Singh, has opposed the contention of the appellant. It is submitted on his behalf that the post of Principal is an independent solitary post and each college is a distinct and separate unit and, as such, the post of Principal cannot be clubbed together and subjected to reservation; more so, when the colleges have different faculties; some colleges are single subject college and some are multi-faculty colleges and, as such, the posts of Principal are not interchangeable. The Principal is the head of a college and also a teacher as per Section 2(v) of the Bihar State Universities Act, 1976, and is required to take classes like other teachers and gets teaching allowance. Hence, a teacher,



having qualification of being appointed as a science teacher, can neither be transferred nor appointed as Principal in an Arts College. Similarly, a teacher of Arts subject cannot be appointed and transferred to a college if his own subject is not taught in that college. It is further submitted that the post of Principal is a post of integrity, dignity, greater responsibility and excellence, on which the future of every college depends. Hence, no reservation is permissible on this ground also in the light of law laid down in the cases of ***Ratneshwar Prasad Singh vs. The State of Bihar***, reported in ***1996(1) PLJR 351***; ***Javed Rasool Bhatt & Ors vs State of Jammu and Kashmir***, reported in ***(1984) 2 SCC 645***.

16. Furthermore, the University statute, bearing No. BSU-40/81-723/GS(i), dated 27.3.1982, provides that each college (constituent or affiliated) has a separate unit for reservation and, thus, clubbing of various posts of Principal is expressly barred. As per the statute, all Post Graduate departments shall be treated as a separate unit and each college (constituent or affiliated) shall be a separate unit. The statute further provides that reservation of posts to the extent prescribed for each category shall be made unit wise and group wise by taking into account the total number of vacant posts in a particular unit and group. Moreover, 9 Judges Bench of the Supreme Court, in the case of ***Indira Sawhney vs.***

Union of India, (A.I.R. 1993 SC 477), in paragraph 442, observed that there should be no reservation in teaching occupation of higher education. The relevant extract of para-442 is reproduced below:

".....The teaching profession, therefore, holds a key position in societal life. It is the quality of education received that determines and shapes the equipment and the competitive capacity of the individual and lays the foundation for his career in life. It, is, therefore, in the interests of all sections of the society-socially backward and forward- and of the nation as a whole, that they aim at securing and ensuring the best of education..... **It is, therefore, necessary that there should be no exclusive quota kept in the teaching occupation for any section at all.....**".

17. The writ petitioner, in support of his submission that the post of Principal of an educational institution, is not amenable to reservation, has relied upon the following decisions:

(i) Dr. (Mrs) Annapurna Devi Vs. State of Bihar, reported in **1997(1) PLJR 965;**

(ii) Ratneshwar Prasad Singh vs. State of Bihar, reported in **1996(1) PJR 352, para-12**

(iii) Dr. Chakradhar Paswan vs. State of Bihar, (A.I.R. 1988 SC 959)

(iv) Post Graduate Institute of Medical Education & Research, Chandigarh vs Faculty Association and ors, reported in **(1998) 4 SCC 1.**

18. We have heard learned counsel for the parties and perused the materials on record.

19. As noticed in the earlier paragraphs, the issue before this Court is whether the post of Principal, under the provisions of the Bihar State Universities Act, 1976, is amenable to reservation?

20. The view of the learned Single Judge as well as the case of the writ petitioner is that the post of Principal is an isolated post and there can be no cadre of such a post and, as such, the principle of reservation would not apply, while filling up such post. The reservation policy, under Article 16(4) of the Constitution, pre-supposes the availability of, at least, more than one post in that *cadre*. According to the writ petitioner, there can be many teachers in a college, but the post of Principal is only a single post.

21. In a nut-shell, the contention of the respondents is that advertisements were invited for a group of constituent colleges, all governed and controlled by the respective Universities and, as such, there were plurality of posts. Further-more, the post of Principal is a tenure post in view of Section 26(6)(iv) of the Bihar State Universities Act, 1976, and a person can continue against the post of Principal, in one college, for a maximum period of 5 years and, thereafter, he is liable to be transferred. Thus, the post of Principal cannot be

treated as a single unit post. In this view of the matter, most of the colleges are multi-faculty colleges and, as such, the person, working as Principal in multi-faculty colleges under the University, is also eligible for being appointed and posted as Principal of another multi-faculty college.

22. The issue of reservation in educational institution has been the subject of consideration in a number of cases. In **Dr. Chakradhar Paswan** (supra), the Apex Court observed that there can be no reservation in respect of only one post in the cadre either for recruitment at initial stage or filling up future vacancy in respect of that post. The scope of reservation, under Article 16(4), pre-supposes availability of, at least, more than one post in that cadre. Separate and distinct posts cannot be clubbed together for reservation of post. Elaborating the term 'cadre', the Supreme Court observed, in **Dr. Chakradhar Paswan** (supra), at paragraph 7A, as follows:

".....In service jurisprudence, the term 'cadre' has a definite legal connotation. In the legal sense, the word 'cadre' is not synonymous with 'service'. Fundamental R. 9(4) defines the word 'cadre' to mean the strength of a service or part of a service sanctioned as a separate unit".

23. The Constitution Bench, in the case of **Post Graduate Institute of Medical Education & Research, Chandigarh vs. Faculty Association and ors**, reported in **(1998) 4 SCC 1**, reviewing the earlier decision in the case of same parties, reported in **(1997) 6 SCC 283**, observed that



reservation of single cadre post cannot be applied to roster or, else, it would amount to 100% reservation, which is not permissible. The Apex Court observed that unless there is plurality of posts in the cadre, the question of reservation would not arise. The device of rotation of roster, in respect of a single post cadre, would only mean that on some occasions, there will be complete reservation and the appointment to such posts is kept out of bounds to the members of a large segment of the country. It has been further held that Article 16(4) of the Constitution, which provides for reservation, is not in the nature of an exception to Articles 16(1) and 16(2), but an instance of classification permitted by Article 16(1). Article 16(4) does not cover the entire field covered by Articles 16(1) and 16(2).

24. Later on, in the year 2009, the Supreme Court, in the case of ***State of Karnataka & Ors vs. K. Govindappa & anr.***, reported in ***(2009) 1 SCC 1***, reiterated the earlier view that the reservation cannot be applied to a single isolated post as it would amount to 100% reservation.

25. It is, thus, apparent from the judicial pronouncements, noticed above, that reservation is not permissible in a single cadre post at the initial stage or even at a later stage; but the main dispute in this case, is whether the post of Principal is a single cadre post or not.



26. In terms of provisions contained under Section 26(6)(iv) of the Bihar State Universities Act, 1976, a person can continue against the post of Principal in one college for a maximum period of 5 years and, thereafter, he would be liable to be transferred. As the provisions still holds good, the persons, working on the post of Principal, are amenable to transfers from one college to another, under the same University, after every five years.

27. We are, therefore, in agreement with the submissions of learned counsel for the appellants, University as well as appellant of L.P.A. No.321 of 2009 that the post of Principal is not to be treated as a single unit post. However, this principle, extending the benefit of reservation, cannot be extended against the post of Principal in the case of a single faculty college, where the post of Principal would be a single unit post. The basis of the principle is that a teacher of a particular subject may be eligible to be appointed as a Principal in a single faculty college, but must be eligible to be appointed and posted as Principal in another single faculty college under the same University, where his/her subject is taught.

28. Conscious of the aforesaid provisions, the Chancellor of the University has issued guidelines under Sections 10 and 14 of the Bihar State Universities Act, 1976, with respect to the manner in which the Principal, in a University, are to be



transferred. For instance, a teacher of Science, Arts or Medicines cannot be appointed as a Principal of Law College, where his subject is not taught. Similarly, the Principal of Law College cannot be transferred to, and appointed as, Principal of a Science College, as it is another single faculty college, where his/her subject is not taught. We may have no dispute with respect to the principle laid down by the Division Bench in the case of **Dr. (Mrs) Annapurna Devi (supra)**, which was rendered in case of Patna University, which has mainly single faculty colleges. The application of the same would not be relevant to the case of VKS University or LNM University, with exception of small few, where most of the colleges are multi-faculty colleges.

29. In the facts and circumstances, as noticed above, we are unable to subscribe to the view of the learned Single Judge that the post of Principal in different colleges, have different faculties and are, thus, dissimilar and separate. To the contrary, it appears from the facts and figures brought to our notice that most of the colleges, under the VKS University and LNM University, are multi-faculty colleges. Besides this, under section 26(6)(iv) of the Bihar State Universities Act, 1976, the post of Principal has been made transferable. As such, we disagree with the view of learned Single Judge that the post of Principal, in general, is an isolated post save and except,

where the college is a single unit college and not a multi-faculty college.

30. Learned counsel for the writ petitioner, in C.W.J.C. No.15917 of 2008, vehemently argued, at this stage, that Section 26(6) (iv) was introduced in the year 2010 and the advertisement, issued by the VKS University, is of the year 2008. Further-more, in the year 2008, many of the colleges were single unit college and not multi-faculty colleges and, as such, there should not have been any reservation in the appointment made in the year 2009.

31. The submission of the writ petitioner cannot be said to be wholly misconceived to the extent that most of the colleges may not be multi-faculty colleges in the year 2008 inasmuch as quite a few of them have become multi-faculty over a period of time. However, in the absence of facts and figures, as to which college was a single faculty college or multi-faculty college in the year 2008, we are not in a position to issue any positive direction. Further-more, the appointments, on the posts of Principal, were made in the year 2009 and many of them might have retired or may not be continuing as Principal. In these aforesaid circumstances, the last plea of the writ petitioner would also not be of any aid and the submission to the aforesaid effect is, accordingly, rejected.

32. We, for the reasons discussed in the foregoing



paragraphs, set aside the order of the learned Single Judge that the Principal of a college is an isolated post and no reservation would be permissible as it would amount to 100% reservation. We also set aside the order quashing the advertisement and directing issuance of fresh advertisement without reservation. We further hold that the order of the learned Single Judge only hold good in respect of a single faculty college.

33. For the reasons discussed above, C.W.J.C. No.1691 of 2016, challenging the appointment of 20 reserved candidates in LNM University on the basis of reservation, is hereby dismissed.

34. No order as to costs.

(Samarendra Pratap Singh, J.)

I. A. Ansari, CJ.- I agree

(I. A. Ansari, CJ.)

Md.Jamaluddin Khan

AFR/NAFR AFR

CAV DATE 28-06-2016

Uploading Date 03-08-2016

Transmission
Date