

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 20018 of 2013

=====

Dr. Birendra Kumar S/0 - Late Rameshwar Prasad Lecturer & Head of Zoology Department DNY College AT/P.S. - Rajnagar District & Town Madhubani - Resident Under Care of Shiv Bachchan Pandey at Kanta Kunj, Vachaspati Colony (Kumhrar) District & Town- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Director Higher Education, New Secretariat, Bihar, Patna.
2. Mr. Chandra Shekhar Prasad S/0 Dev Narayan Yadav, Lecturer in Zoology, DNY College, AT/P.S. Rajnagar District & Town- Madhubani.
3. The Secretary-Governing Body (Sashi Nikaye) DNY College, AT & P.S. Rajnagar District & Town- Madhubani.
4. The Principal DNY College AT & P.S. Rajnagar District & Town Madhubani.
5. The Registrar - LNMU, Darbhanga.
6. The Vice Chancellor LNMU, Kameshwar Nagar P.S. LNMU Campus District & Town Darbhanga.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma and Mr. Md. Kamran, Advocates
For the Respondent No. 2	:	Mr. Pushkar Narain Shahi, Sr. Advocate
For the Respondent Nos. 5 & 6 (L.N.M.U.)	:	Mr. Mritunjay Kumar, Advocate Mr. Ajay Behari Sinha and Mr. Upendra Kumar Singh, Advocates
For the State	:	Mr. Sunil Kumar Singh, A.C. to S.C. 27

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 08-05-2017

Heard Mr. Banwari Sharma along with Mr. Md. Kamran, learned counsel for the petitioner; Mr. Ajay Behari Sinha along with Mr. Upendra Kumar Singh, learned counsel for the L.N. Mithila University, Darbhanga; Mr. Sunil Kumar Singh, learned AC to SC-27 for the State and Mr. Pushkar Narain Shahi, learned senior



counsel assisted by Mr. Mritunjay Kumar, learned counsel for the respondent no. 2.

2. The petitioner has moved the Court for quashing of the decision of the Syndicate as communicated in Letter No. 3690-92 dated 10.04.2006, by which the service of the respondent no. 2, on the post of Lecturer in the subject of Zoology in D.N.Y. College in the District of Madhubani has been approved on the first post as also the order communicated by the Registrar of the University dated 08.08.2013, by which it has been stated that because the matter is 7 years old, the objection of the petitioner cannot be considered.

3. Learned counsel for the petitioner submitted that the Bihar College Service Commission, as it then was, on 04.03.1992, recommended the petitioner for appointment on the first sanctioned post of Zoology in the said college at serial no. 1 whereas respondent no. 2 was at serial no. 2 and on the second post the name of the respondent no. 2 was at serial no. 1 whereas that of Smt. Indu Kumari was at serial no. 2. Learned counsel submitted that in terms thereof, the Managing Committee of the college communicated the decision under letter dated 05.09.1997, appointing the petitioner on the first post of Lecturer in Zoology and the respondent no. 2 was appointed on the second post. Learned counsel submitted that the said appointment was sent to the University for approval and in the



meeting held on 16.09.2005 of the Syndicate, the recommendation relating to such appointment was approved. Learned counsel submitted that since the petitioner was appointed on the first post, as the Syndicate had approved such appointment, it clearly meant that the service of the petitioner on the first sanctioned post had been approved by the Syndicate. Learned counsel submitted that despite this, the respondent no. 2 has wrongly been issued the approval letter, which is impugned herein, dated 10.04.2006. Learned counsel submitted that the petitioner being aggrieved by the same moved the University which had set up two fact finding Committees to enquire into the matter and both have found that it was the petitioner who has been appointed on the first sanctioned post and the Syndicate may rectify its decision. He submitted that the same was not carried out and in fact, a third Committee was also formed, which was collusive and has opined against the petitioner. Learned counsel submitted that in law, the petitioner being entitled to such appointment on the first sanctioned post and him having been so appointed and also working, the respondent no. 2 has managed to get the approval in his favour, which is illegal.

4. Learned counsel for the University as well as respondent no. 2 submitted that the petitioner may have had a claim on the first sanctioned post based on the recommendation of the



Bihar College Service Commission as well as his appointment by the Managing Committee in the year 1997, but because he had not joined on his post, when the matter was sent to the University for approval, such fact was mentioned and thus, the Syndicate after due deliberation had approved the appointment of the respondent no. 2 on the sanctioned post as the petitioner was found not to have joined on that post. Learned counsel further submitted that the petitioner became suddenly interested in such employment due to the reason that in the year 2008, the Government for the first time started giving some grant-in-aid to the college for payment to the teaching and non teaching staff and prior thereto, no such money was given and thus, the petitioner was never interested in such appointment whereas, respondent no. 2 has been discharging his duties sincerely and regularly. They further submitted that as per the verification from the acquittance roll and attendance register, the petitioner was neither making any attendance to shown that he had worked nor is there any record with regard to him having been given any payment for any work. Learned counsel submitted that the final and detailed enquiry report submitted by the Three Men Committee dated 03.05.2016, clearly demonstrates that the petitioner besides not having joined, was also responsible, in collusion with the then Principal in financial irregularities for which various steps including



lodging of F.I.R. has been taken.

5. Having considered the matter, the Court has no doubt that such heavily disputed facts cannot be adjudicated in the present proceeding under Article 226 of the Constitution of India. There is no unanimity even with regard to basic facts and even in the official records, there are more than one enquiry reports in favour of either of the parties.

6. In view thereof, as the University itself has initiated action in the matter by constituting Committees to look into the factual aspect and give report and such reports are before the University, it is deemed appropriate that such process be taken to its logical conclusion, in accordance with law, after giving proper opportunity of hearing to all the stake holders including the petitioner and the respondent no. 2. Learned counsel for the University assures that a decision would be taken and if required, placed before the Syndicate expeditiously.

7. In view of the aforesaid, the respondent no. 6 is directed to take a view with regard to the issue as would emanate from the enquiry report as well as the materials and points raised on behalf of the stake holders including the petitioner, respondent no. 2 and the Managing Committee of the college concerned as well as on the basis of the undisputed records available. Further, if asked for,



the parties shall also be given an opportunity of personal hearing. The said exercise be completed within three months from the date of production of a copy of this order before the respondent no. 6. It goes without saying that all consequential steps, as may be required to be taken, including the matter to be placed before the Syndicate once again, shall also be done in terms of the statutory provisions and in accordance with law.

8. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	

