

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1086 of 2015
IN
Civil Writ Jurisdiction Case No. 1407 of 2015**

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Bhartendu Prasad Rai son of Sri Yogendra Prasad Rai, resident of village Sahpur diara, P.S Sonapur district Saran

.... Appellant/s

Versus

1. Harikant Barua son of late Siya Sharan Prasad Sinha, resident of village + P.O- Balua Bahuara, via Bidupur Railway Station, P.S- Rajapakar, district Vaishali.
2. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
3. Jai Prakash University, Chapra through its Registrar.
4. Vice- Chancellor, Jai Prakash University, Chapra.
5. Registrar, Jai Prakash University, Chapra.
6. Purvottar Railway College, Sonapur, district-Chapra, through its Principal.
7. The Secretary, Governing body, Purvottar Railway College, Sonapur, district-Chapra.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jai Kishor Poddar

For the Respondent/s : Mr. RAJIV KUMAR SINGH

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 29-08-2017

In this intra court appeal, the appellant has challenged the oral judgment dated 23.04.2015 passed in C.W.J.C. No. 1407 of 2015 whereby the writ court on consideration of the materials



available on record and also in the light of the judgment rendered in the case of *Mitrajeet Singh Vs. B.R. Ambedkar University and Ors.* in C.W.J.C. No. 1978 of 2011 has held out that the voter list prepared by the In-charge Principal of the Purvottar Railway College, Sonpur, Chapra is truncated kind of voter list and accordingly quashed the notification of the University whereby the added private respondent no.7 vide I.A. No. 2387 of 2015 was declared elected as the elected representative of the teachers of the college and issued follow up direction to the District Magistrate, Chapra to ensure preparation of an electoral role including all the teachers of Purvottar Railway College, Sonpur, Chapra whose names figure in (Annexure-6) i.e. advice for payment of honorarium salary for imparting instruction in the college in question. Annexure-6 contains list of 51 lecturers for whose payment through bank account, advice was sent to the Branch Manager, PNB, Sonpur, Saran with debit note. The writ court accordingly directed holding of fresh election in free and fair manner.

The respondent no.7 of the writ petition who was impleaded as party respondent by way of I.A. No. 2387 of 2015 has filed the present letters patent appeal and has challenged the order of the writ court primarily on the ground that the teachers



who were appointed without of recommendation of the commission against the unsanctioned post are not entitled to be included in the voter list for election of the teachers representatives.

Mr. Shivendra Kishore Sr. advocate appearing on behalf of the appellant submits that governing body of the college was to be constituted in terms of section 60 of the Bihar University Act. Under section 60(1) (ii) there is provision for election of the teachers' representatives from amongst the teachers of the college and he submitted that the writ petitioner and others were not appointed against the sanctioned post on the basis of recommendation of the commission and as such they cannot be included in the voter list for election of the teachers' representatives and the writ court has committed error in interfering with the voter list prepared by the college and approved by the University. He also submitted that the writ court has committed error in directing inclusion of all the teachers mentioned in Annexure-6 for election, as Annexure-6 is only debit note of the Principal of the College for payment of honorarium salary and as such, the direction of the writ court to prepare voter list as per Annexure-6 runs contrary to the scheme of election contemplated under section 60 (1) (ii).

Mr. Abhinav Srivastava appearing on behalf of the writ petitioner submits that the writ court has committed no



illegality in allowing the writ petition as the writ court has consistently followed the principle that all the teachers who are getting payment from the fund of the State are entitled to be included in the electoral role as held out in the case of *Mitrajeet Singh vs. B.R. Ambedkar Bihar University Act*.

Section 60(1) (ii) talks about election of teachers' representatives. Section 60 (1) is reads as follows:-

“There shall be a governing body for the management and administration of each affiliated College other than a College owned and maintained by the State Government or a College established and administered by a minority on the grounds of religion or language or an affiliated technical or medical college.

It shall consist of following members-

- (i) Principal of the College-Ex-Officio,***
- (ii) a member elected by and from amongst the teachers of the College,***
- (iii) a representative of the University nominated by the {Vice Chancellor}***
- (iv) an officer of the State Government posted in the district, being not below the rank of a sub-divisional magistrate, nominated by the {Vice Chancellor}***
- (v) a member elected by such donors from amongst themselves as have donated at least twenty five thousand to the College,***
- (vi) One members to be nominated by the {Vice Chancellor}, who is a member of the Parliament or the State Legislature and mainly resides in the district of the area in which the College is situated; and***
- (vii) One member co-opted by the Governing Body from amongst such educationists or persons residing in the district where the College is situated***



as are reputed for their academic interest”.

From perusal of the scheme under section 60 (1) (ii), it appears that it talks about the election of the teachers' representatives from amongst the teachers of the college. The writ court has followed the principle discussed in the case of Mitrajeet Singh (supra) wherein the writ court in almost identical facts situation has held out that all those teachers receiving payment against the fund released by the State are entitled to be included in the electoral role and relaying upon the judgment in Mitrajeet Singh (supra) the present writ application was allowed by the writ court and the election of the appellant was quashed and follow up issued direction to the District Magistrate to ensure preparation of electoral role of all teachers who are working in the college and are being paid for imparting instruction in the college.

The submission of Mr. Shivendra Kishore, Sr. advocate that writ petitioner was not duly appointed against the sanctioned post and as such he could not have been included in the voter list and all other teachers who were appointed without recommendation of the commission are not entitled to be included in the voter list for electing the teachers representatives is fallacious. Firstly, the admitted factual position is that as per the debit advice the Principal of the College has admitted that 51 teachers are working in the



college and Section 60 clause 1 (ii) talks about the teachers' election from among the teachers. It does not make any distinction between the teachers appointed on the recommendation of the commission in the affiliated college against the sanctioned post or any other category of teachers. In addition thereto, the provision of Section 57A (6) makes it crystal clear that teachers appointed prior to 19.4.2007 without the recommendation of the Bihar College Service Commission are accepted as valid teachers provided they have requisite qualification.

Section 57 A (6) is reproduced for ready reference:-

The Selection Committee, subject to this Act, will complete the scrutiny of the cases of the teachers of affiliated degree colleges appointed prior to 19.4.2007, without the recommendation of the Bihar College Service Commission on the basis of qualifications in force at the time of appointment of such teachers upto 31.3.2017, otherwise such appointment will not be treated valid.

Thereafter the Governing Body of the college will accept the names recommended by the Selection Committee, which shall be finally approved by the concerned University.

Distribution of the amount of grant sanctioned by the State Government will be made amongst the teachers in the concerned affiliated degree colleges by its Governing Body upto 31.3.2017”.



Mr. Shivendra Kishore during the course of hearing of this case has admitted the fact that these teachers are also receiving the amount of grant sanctioned by the State Government. Thus, in view of the provision of Section 60 clause 1 (ii) read with section 57 A (6) and the undisputed document contained in Annexure-6. The writ petitioner and all other teachers mentioned in Annexure-6 are teachers of the college and as such entitled to be included in the voter list of teachers for election of teachers representative.

We are of the considered view that the writ court has committed no illegality in directing the District Magistrate to ensure preparation of electoral role of all the teachers who are working in the college and whose names figure in Annexure-6 of the writ application. The writ court has maintained consistency in following the principle discussed in Mitrajeet Singh's case (supra) and rightly interfered with the notification of election of the appellant which was held on the basis of truncated kind of voter list by excluding the large number of teachers from the voter list. Fair election of teachers representatives demands that the all teachers who are working in the college should be included in the voter list and after preparation of such voter list the teachers may elect their representatives to represent the interest of the teachers in the governing body in terms of section 60 of the Bihar State



University Act.

Accordingly, we are in agreement with the view expressed by the writ court. We do not find any infirmity much less warranting any kind of interference in the order of the writ court dated 23.04.2015. The letters patent appeal lacks substance and is accordingly dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
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