

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14160 of 2017

-
1. Neelam Singh, Daughter of Sri Ram Binod Singh, resident of Kanti Factory Road, Mahatama Gandhi Nagar, P.O.- B.H. Colony, P.S.- Kankarbagh, Patna.
 2. Anamika, Wife of Kumud Ranjan, Resident of 2nd Floor in the house of Umesh Kumar, Behind Anamika Hotel, Near CDA Building Rajendra Path, Patna.
 3. Shobha Kumari, Daughter of Ram Suresh Singh, Resident of F (HUDCO) 259, BSEB Colony, Rajbanshi Nagar, P.S. Shastrinagar, Patna.
 4. Arihant Nachiketa, son of Ram Singh, Resident of 201 Dharam Apartment, Gokul Path, Patel Nagar, Patna- 800001.
 5. Kalpana Kumari, Daughter of Muneshwar Prasad, Resident of Anishabad, Beur More, Near Hanuman Mandir, Saichak, Patna- 800002.
 6. Arachana Bharti, Daughter of Yogendra Prasad, in the house of Bhagwan Prasad, Chailital (Sangat Ki Gali), Gulzarbagh, Patna- 800007.
 7. Neelam Kumari, Daughter of late Sheonandan Mistry, at present residing at Gokul Path, Patel Nagar, Patna- 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Bihar, Patna.
2. The Principal Secretary, Education Department, Bihar, Patna.
3. The Magadh University, through Vice Chancellor, Bodh Gaya.
4. The Vice Chancellor, Magadh University, Bodh Gaya.
5. The Registrar, Magadh University, Bodh Gaya.
6. The Examination Controller, Magadh University, Bodh Gaya.
7. University Grant Commission, through its Secretary, New Delhi.
8. Chancellor of University, Governor House, Patna

... .. Respondent/s

Appearance :

For the Petitioners	:	Mr. Anjani Kumar Jha
For the State	:	Mr. Sanjay Kumar, AC to GP 23
For the University	:	Mr. Shivendra Kishore, Sr. Adv. Mr. Priyank Deepak
For the Chancellor	:	Mr. Rajendra Kumar Giri Ms. Shailja
For the U.G.C.	:	Mr. Amarendra Nath Verma

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL



Date : 01-12-2017

Heard learned Counsel for the petitioners, learned Counsel appearing on behalf of the State of Bihar and learned Counsel for the University Grants Commission. Also heard learned Senior Counsel appearing on behalf of the Magadh University, Bodh Gaya, and learned Counsel representing the Chancellor, Universities of Bihar.

2. This application has been filed for a direction to the respondents to consider the Ph.D. course, which he is pursuing in Magadh University, Bodh Gaya, to be under the University Grants Commission (Minimum Standards and Procedure for Awards of M.Phil/Ph.D Degree) Regulation, 2009 (hereinafter referred to as the 'Regulation, 2009') . The petitioners also seek a direction to the University to accept pre-submission of their thesis in terms of the Regulation, 2009, and allow them to complete the entire procedure for award of Ph.D. degree in terms of the said Regulation, 2009.

3. The claim of the petitioners is based on the plea that they were admitted to the Ph.D. course after coming into force of the said Regulation, 2009, through pre-Ph.D. test, conducted by the Magadh University, Bogh Gaya, which is one of the conditions under the Regulation, 2009, for admission to Ph.D. course.



4. This fact is not being disputed that the petitioners, after having qualified in the pre-Ph.D. test, were allowed admission to Ph.D. course. The test was held in the year 2011.

5. There is another crucial fact, which is also not in dispute that the said Regulation, 2009, has been adopted for the Universities of Bihar with the issuance of Ordinance and Regulations, governing the award of Ph.d. degree by the Universities of the State of Bihar with effect from 06.11.2012, when the Chancellor, Universities of Bihar, assented to the uniform Ordinance and Regulations, governing award of Ph.D. degree by the various Universities of the State of Bihar, on the recommendation of the University Advisory Committee, in exercise of power vested in the Chancellor, under Section 38 (4) of the Patna University Act, 1976, and Section 39 (2) (ii) of the Bihar State Universities Act, 1976.

6. The primal question, which this writ application involves, is as to whether the said Regulation, 2009, can be said to have become effective for the Universities established in the State of Bihar under various State enactments with effect from the date of coming into force of the said Regulation, 2009, made by the University Grants Commission or they can be said to have come into force for such Universities of the State of Bihar from the date



the Chancellor, Universities of Bihar, gave assent to the draft Ordinance and Regulations, governing the award of Ph.D. degree, i.e. 06.11.2012.

7. Learned Counsel appearing on behalf of the petitioners has submitted that after coming into force of Regulation, 2009, all Universities, irrespective of the fact whether established under the Central Act or the State Act or Deemed Universities were obliged to follow the provisions of the said Regulation, 2009. The said Regulation, 2009, according to the petitioners, applies uniformly to all such Universities. He has also submitted, with reference to the Supreme Court's decision, in the case of **Kalyani Mathivanan v. K. V. Jeyaraj and Others**, reported in **(2015) 6 SCC 363**, that to the extent the provisions governing award of Ph.D. degree in the State of Bihar are in conflict with the Central Legislation, including Regulation, 2009, which has the character of subordinate legislation, the same is inoperative. According to him, Regulation, 2009, must prevail over any other provision in force in the Universities of the State of Bihar for award of Ph.D. degree.

8. Relying on the same decision, it is the stand on behalf of the Office of the Chancellor, Universities of Bihar, that the relief, as prayed by the petitioners in the present writ



application, cannot be allowed. The Ph.D. course, which the petitioners are pursuing, on the basis of their admission in the year 2011, cannot be said to be in accordance with the Regulation, 2009, since the said Regulation, 2009, had not been adopted by the Universities in the State of Bihar till assent was given to the Draft Ordinance and Regulations Governing the Award of Ph.D. Degree to the State Universities, Bihar, prepared for the said purpose by the Chancellor of the Universities of Bihar on 06.11.2012. It is the specific stand on behalf of the Chancellor, Universities of Bihar, and Magadh University, Bodh Gaya, also that the petitioners' Ph.D. course cannot be treated to be course under Regulation, 2009.

9. In reply to the submission made on behalf of the Chancellor and the University, learned Counsel appearing on behalf of the petitioners has submitted that Regulation, 2009, prescribes procedure for pursuing Ph.D. course, including procedure for admission. It is the case of the petitioners that they have prepared their thesis and after preparation of their thesis, they have completed their course work too in the year 2015. It is accordingly the case of the petitioners that since they fulfill all the requirements of Regulation, 2009, their cases should be considered by treating them as Research Scholars under Regulation, 2009.



10. I must first take note of the provisions of Regulation, 2009, which lay down minimum standards and procedure for awards of M.Phil/Ph.D degree. The Regulation, 2009, has been framed by the University Grants Commission in exercise of powers conferred to the University Grants Commission under Clause (e) and (g) of sub-section (1) of Section 26 of the University Grants Commission Act, 1956. Regulation 9 of Regulation, 2009, prescribes the procedure for admission to Ph.D. course, which includes an entrance test followed by an interview. It also requires that at the time of interview, the candidates are expected to discuss their research interest area and only the predetermined number of students can be admitted to M.Phil/Ph.D. programme. It is not known whether the said procedure was followed while granting admission to these petitioners. Once a student is admitted to Ph.D. course under Regulation, 2009, a Supervisor for the candidate is to be decided by the Department, whereafter the Ph.D. student is required to undertake 'course work' for a minimum period of one semester. Regulation 13 of the Regulation, 2009, prescribes specifically that the course work shall be treated as pre-M.Phil/Ph.D. preparation and must include a course on research methodology which may include quantitative methods and computer applications. It is evident from Regulation



13 of the Regulation, 2009, that the course work is pre-Ph.D. preparation. Without completing pre-Ph.D. preparation, as contemplated under Regulation 13 of the Regulation, 2009, a student cannot proceed for the research work. It is further evident from Regulation 14 of the Regulation, 2009, that only upon satisfactory completion of the course work and research methodology, a Ph.D. scholar can undertake research work and produce a draft thesis within a reasonable time.

11. This is an admitted fact that the petitioners did not undertake the course work, as contemplated under Regulation, 2009, and immediately after their admission, they were allowed to undertake research work. In such circumstance, the manner in which the petitioners pursued their Ph.D. course cannot be said to be in tune with the provisions, as contained in Regulation, 2009, and, therefore, in no circumstance, the University can be asked to treat the petitioners to be pursuing their Ph.D. course under Regulation, 2009.

12. The main question, however, in the present case, is as to whether in the absence of adoption of Regulation, 2009, by the Universities in the State of Bihar, the Ph.D. course conducted in the State of Bihar can be said to be under Regulation, 2009.



13. This has to be kept in mind that UGC (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions Affiliated to it) (3rd Amendment), Regulation, 2009, there is a provision for exemption from the requirement of minimum eligibility condition of National Eligibility Test (NET)/State Level Eligibility Test (SLET) for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions, for those who have been awarded Ph.D. degree in compliance of the Regulation, 2009.

14. This is the main reason of concern for the Ph.D. Scholars why do they want to get their Ph.D. degrees declared to have been awarded in accordance with Regulation, 2009.

15. The Supreme court, in **Kalyani Mathivanan** (supra), had the occasion to deal with the question as to whether the UGC Regulations of Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010 (hereinafter referred to as the 'Regulations, 2010') was mandatory or directory. The Supreme Court, in **Kalyani Mathivanan** (supra), tracing the source of framing of the said Regulation, 2010, under the University Grants Commission Act,



functions of the Commission under the Act and consequence of failure of the University to comply with the recommendations of the Commission, upon analysis of constitutional and statutory provisions, concluded, in paragraph 62, that the Regulations, 2010, are directory for the universities, colleges and other higher educational institutions under the purview of the State Legislation and the matter has been left to the State Government to adopt and implement the scheme. The Supreme Court specifically held, in paragraph 56 of the said decision, that the said Regulations, 2010, were not applicable to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State Governments' wish to adopt and implement the scheme.

16. In my view, the reasons assigned by the Supreme Court, in **Kalyani Mathivanan** (supra), would apply in relation to the Regulation, 2009 also and the consequence of not following Regulation, 2009, will be, *inter alia*, that the candidates with such degree will not be exempted from clearing NET/SLET for the purpose of appointment to the post of Assistant Professor/ Associate Professor etc.

17. In my view, therefore, the relief, as sought, in the present writ application cannot be granted.



18. Learned Counsel for the petitioners has, however, submitted that since the petitioners have been allowed to complete their course work and they are eager to complete their Ph.D. course in accordance with Regulation, 2009, as adopted subsequently by the Universities of Bihar, with the assent of the Chancellor, with effect from 06.11.2012 and, therefore, they should be allowed to complete their course under Regulation, 2009.

19. Learned Senior Counsel, appearing on behalf of the University and learned Counsel representing the Chancellor, have submitted that admission of these petitioners to Ph.D. course cannot be said to have been given under Regulation, 2009, since Regulation, 2009, was not in force, when they were admitted in the course.

20. To the said extent, learned Senior Counsel appears to be correct in his submission, but the Court is perturbed about the manner in which the University asked the petitioners to do their course work, after they are said to have already completed the research work

21. In that view of the matter, I dispose of this application with a direction to the Vice Chancellor, Magadh University, Bodh Gaya, to take a decision afresh as to whether these petitioners can be shifted to Ph.D. course under Regulation,



2009, adopted by the Universities of Bihar, with the coming into force of Ordinance and Regulations, 2012, for the purpose of completing their course from the stage of completion of their course work.

22. Such decision must be taken within a period of three months from the date of receipt/production of a copy of this order.

23. This application is, accordingly, disposed of.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	21-12-2017
Transmission Date	N/A

