

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3921 of 2017

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1. Dr. Yogendra Mishra, S/o Late Tej Narayan Mishra, R/o village + P.O. Satghara, P.S. Babubarahi, District - Madhubani
 2. Md. Murtuza Hasan, S/o Abdul Ajij, R/o village + P.O. Dumra, P.S. Rudrapur, District - Madhubani
 3. Shailendra Kumar, S/o Jagdish Kumar, R/o village + P.O. Datuar, Via + P.O. + P.S. Khajauli, District Madhubani
 4. Parmeshwar Prawin, S/o Yugeshwar Mahto, R/o village - Tharhi, P.S. Andhra Tharhi, District - Madhubani
 5. Kumari Pawan Roy, W/o Sri Sugambar Roy, R/o village - Magrauna, P.O. Gonauli, P.S. Andhra Tharhi, District - Madhubani
 6. Smt. Bibha Kumari Jha, W/o Bhaktidhar Jha, R/o Ward No. 5, Jhanjharpur, P.S. Jhanjharpur, District - Madhubani
 7. Bedanand Mishra, S/o Sachchidanand Mishra, R/o village - Tharhi, P.S. Andhra Tharhi, District - Madhubani
 8. Anil Nath Jha, S/o Late Amar Nath Jha, R/o village - Tharhi, P.S. Andhra Tharhi, District - Madhubani
 9. Binay Chandra Mishra, S/o Sushil Chandra Mishra, R/o village + P.O. Gonauli, P.S. Andhra Tharhi, District - Madhubani
 10. Shailendra Mohan Jha, S/o Subh Kant Jha, R/o village - Tharbhitiya, P.S. Fulparas, District - Madhubani
 11. Bhavesh Jha, S/o Ram Chandra Jha, R/o village - Tharhi, P.S. Andhra Tharhi, District - Madhubani
 12. Dr. Vinod Kumar Jha, S/o Vasudeo Jha, R/o village - Tharhi, P.S. Andhra Tharhi, District - Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna
2. The Joint Secretary, Education Department, Government of Bihar, New Secretariat, Patna
3. The Director, Higher Education Department, Govt. of Bihar, Patna
4. The L.N. Mithila University, Darbhanga, through its Registrar
5. The Vice Chancellor, L.N. Mithila University, Darbhanga
6. The Registrar, L.N. Mithila University, Darbhanga
7. The Principal, Phool Devi Kusheshwar Jha College, Vachaspatinagar, Andhra - Tharhi, District - Madhubani

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Puroshottam Kumar Jha
For the Respondent/s	:	Mr. Ranjan Kumar, AC to GA-12
For the University	:	Mrs. Alka Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2. 03-01-2018 Heard learned counsel for the parties.



2. The petitioners assert that they are working as Lecturers in different subjects in Phool Devi Kusheshwar Jha College, Vachaspatinagar, Andhra-Tharhi in the District of Madhubani. It is their claim that they have been working as such for several years as has been indicated in paragraph 4 of the application.

3. It is not disputed that they are working against the posts, which are not sanctioned. It is their case, however, that the additional posts are to be sanctioned by the State Government in view of the policy decision of the State Government to grant aid to the affiliated Colleges. It is also their case that the Lalit Narain Mithila University, Darbhanga has written to the State Government on several occasions through letters as contained in Annexures 6,7,9,11 and 12 for sanction of additional posts in the College against which the petitioners are working. In that background, the petitioners have sought for the following relief(s) :-

“(i) To hold and declare that the action of the authorities concerned of the Respondent State Govt. of Bihar in not issuing formal order of sanction of the posts of Lecturers for the College in hand, for which the Respondent University has already sent necessary papers to the State Govt. on several occasions vide Annexures 6,7 series, 9, 11 and 12, is illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts both.



(ii) A writ in the nature of Mandamus may kindly be issued by this Hon'ble Court, commanding the authorities concerned of the Respondent State Govt. of Bihar to issue formal order of sanction of the posts of Lecturers as per the requisition submitted by the Respondent University vide Annexure-6,7 series, 9, 11 and 12 to this writ petition.

(iii) Issuance of an order/direction or a writ in the nature of mandamus commanding the Respondent University Authorities to constitute Selection Committee for the petitioners as well and to place the cases of the petitioners for being considered for the regularization of their services through the Selection Committee, which has been constituted by the Respondent University for certain other subjects in the College in hand."

4. A counter affidavit has been filed on behalf of the State of Bihar stating therein that the State Government, earlier through resolution No. 1065 dated 09.12.1982, had implemented non-aided education policy in the State of Bihar, in view of which the affiliated Colleges did not involve any financial liabilities on the State Government. In that view of the matter, the State Government of Bihar had directed the Universities to take decision in the matter of creation/saction of teaching and non-teaching posts in affiliated Colleges in accordance with the provisions under Sections 35 and 59 of the



Bihar State Universities Act. It has further been stated that vide resolution No. 1846 dated 21.11.2008, the State Government decided to do away with the non-aided education policy and instead decided to provide grants to affiliated Colleges, depending upon the performance of the students of such Colleges. Since, thereafter, the teaching and non-teaching posts of the affiliated Colleges again involved financial liabilities, the State Government of Bihar withdrew its earlier letter dated 27.07,2006 and directed the Universities to send recommendation regarding creation/sanction of the posts in affiliated Colleges to the State Government for approval. It appears from the counter affidavit that for the period 2006-2010, additional posts of teaching and non-teaching staffs in the present College were not sanctioned by the University also.

5. There is categorical statement in paragraph 13 of the counter affidavit that a policy decision regarding the parameters for creation of posts is in active consideration in the Department. It has further been stated in the counter affidavit that in terms of the parameters, which are to be fixed by the Department for creation of posts in affiliated Colleges, the Department shall take a decision in regard to the Colleges including the present College.



6. The counter affidavit was filed on 8th of August, 2017, which appears to have been sworn on 02.08.2017. The Court hopes that the State Government by now must have fixed the parameters for sanction/creation of posts in affiliated Colleges.

7. Learned counsel appearing on behalf of the petitioners has drawn my attention to a letter, dated 30.09.1981, issued by the Joint Secretary, Education Department, Government of Bihar addressed to the Director, Higher Education, Government of Bihar, which lays down the parameters for sanction/creation of posts in constitutes and affiliated Colleges.

8. In my view, in view of the statement made in the counter affidavit filed on behalf of the State of Bihar, this writ application can be disposed of with a direction that if the parameters have not been fixed by the State Government for creation/sanction of posts, let the same be done without any further loss of time.

9. Needless to say that the State-Respondents shall keep in mind the parameters as already fixed in the said letter, dated 30.09.1981(supra), if not already fixed.

10. Learned counsel appearing on behalf of the



petitioners has stated that in view of sub-section (6) of Section 57A of the Bihar State Universities Act, the exercise as contemplated under the said provisions has to be completed by 3.1.03.2018.

11. The Principal Secretary, Education Department, Government of Bihar, is directed to consider the entire aspect of the matter and take a decision on the question of sanction/creation of additional posts in the said College.

12. It is made clear that any observation made by this Court in the present order will not amount to attaching legality of the appointments of these petitioners, if their appointments are otherwise not in accordance with the provisions of law.

13. It is desirable that the question of sanction of the posts are finally decided by the State Government by the end of this month so that the University may carry out the exercise as contemplated under sub-section (6) of Section 57A of the Bihar State Universities Act, if needed.

14. This application stands disposed of accordingly.

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(Chakradhari Sharan Singh, J)

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