

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5651 of 2017

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Amir Hasan Sakur Ahmad Mahavidyalaya Shikshak Karamchari Sangh through its Secretary Dinesh Kumar, S/o Late Shivnath Ram, resident of Village- Kolhrampur, P.S.- Barhara, District- Bhojpur at present posted as Lecturer Department of Physiology Amir Hasan Sa'kur Ahmad Mahavidyalaya, Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Higher Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
4. The Registrar, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratanakar Jha
For the Respondent/s : Mr. Ashutosh Ranjan Pandey-Aag15

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 11-04-2018 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Petitioner has filed the present writ application for a direction to the respondents to constitute a selection committee for screening candidature of the lecturers working in the college in question in terms of amended provision of Bihar State University Act 57(A).

Learned counsel for the University submits that last date for constitution of selection committee has now expired. The court does not appreciate the stand of the University if the



University was obliged to constitute a selection committee in terms of statutory obligation then failure on the part of the University cannot disentitle the petitioner to raise issue and pray for issuance of direction to the University to constitute selection committee.

In fact the Bombay High Court has considered the failure on the part of the respondents in discharging their duty and on account of non-performance of the duty. The court rejected the submission that the right of the petitioner stands frustrated on account of non-performance of the duty of the respondents.

The Chief Justice Chagla in the case of all India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City, AIR 1954 Bom.232 has held out as follows:-

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-Section (2) of S. 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person- We take it that the Income-tax Department is included in that definition-can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that



default.”

In view of the above, respondent University is directed to take steps for constitution of a selection committee within a period of fortnight from the date of receipt/production of a copy of this order and complete the obligation in the matter of selection and approval of the teachers appointed up to 2007.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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