

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2326 of 2016

In
Civil Writ Jurisdiction Case No.17807 of 2016

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Dr. Ajay Kumar Thakur, S/o Shri Manindra Nath Thakur, resident of village
& P.O. Gangauli, P.S. Simri, District - Buxar 802131

... .. Appellant/s

Versus

1. Bihar Public Service Commission through its Secretary, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001
2. The Chairman, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001
3. The Secretary, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001
4. The Additional Secretary - Cum - Controller of Examination, Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001
5. The Section Officer, Direct Recruitment Branch, (5B), Bihar Public Service Commission, 15, Jawahar Lal Nehru Marg, Bailey Road, Patna - 800001
6. University Grants Commission (UGC), through its Secretary, Bahadur Shah Zafar Marg, New Delhi
7. The Secretary, University Grants Commission (UGC), (NET BUREAU) through its Secretary, Bahadur Shah Zafar Marg, New Delhi null null
8. University Grants Commission (UGC), (NET BUREAU) through its Deputy Secretary, Benito Juarez Marg, New Delhi null null
9. Banaras Hindu University, through its Registrar, Varanasi - 221005

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Ms. Vagisha Pragya Vacaknavi, Advocate
For the Resp.No.9	:	Mr. Rajesh Ranjan, Advocate
For Resp Nos. 1 & 2	:	Mr. Sanjay Kumar Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 05-03-2018

The instant appeal has been preferred by the writ petitioner under Clause 10 of the Letters Patent of the Patna High Court Rules against the judgment of the Writ Court in CWJC No. 17807 of 2016 whereby the Writ Court dismissed the writ application on consideration of the entire facts and circumstances of the case. The writ court held out that method of marks



calculation followed by the Bihar Public Service Commission can only be questioned, if information is gathered by the petitioner under RTI Act in favour of the petitioner.

2. Ms. Vagisha Pragma Vacaknavi, learned counsel for the appellant submitted that the Writ Court has committed error in dismissing the writ petition on the premise that the appeal of the appellant was pending under Right to Information Act. She submitted that the appeal under the Right to Information Act was not the relevant factor for adjudication of the issue raised in the writ petition. She submitted that the writ petitioner-appellant was entitled to award of 10 marks in the selection of the Assistant Professor in view of the advertisement contained in Annexure-P/1 as the petitioner was NET as well as Ph.D. in terms of 2009 UGC Regulation, whereas the petitioner was granted only 5 marks. She placed reliance on Annexure-P/6, the certificate issued by the Banaras Hindu University dated 30.01.2014.

3. Banaras Hindu University was noticed vide order dated 17.7.2017 in view of the fact that the petitioner has placed reliance on Annexure-P/6 to contend that the Ph.D. degree of the petitioner was under 2009 Regulation of the UGC and as such, the petitioner was entitled to grant of marks of Ph.D. while calculating marks for academic achievement of the petitioner.



4. On behalf of the Banaras Hindu University, respondent No. 9, a counter affidavit has been filed in the present appeal, in paragraph Nos. 8 to 10, following stands have been taken:

“8. That the University Grants Commission issued a Notification dated 05th May, 2016 on UGC (Minimum Standard and Procedure for Award of M.Phil. Ph.D Degrees) Regulations 2016 in supersession of the UGC (Minimum Standard and Procedure for Award of M.Phil/Ph.D Degrees) Regulation, 2009 notified the Gazette of India (No. 28, part-III-section 4) for the week July 11, July 17, 2009). The aforesaid UGC Regulations 2016 was further amended by notification dated 11/07/16 wherein following provision was inserted:

3. The proviso prescribed under Regulation 3.3.1, 4.4.1, 4.4.2, 4.4.2.2, 4.4.2.3, 4.5.3 and 4.6.3 in the University Grants Commission (Minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and other measures for the maintenance of standards in higher education) (3rd & 4th Amendment) Regulations, 2016 regarding exemption to the candidates registered for Ph.D. programme prior to July 11, 2009 shall stand amended and be read as under:-

“Provided further, the award of degree to candidates registered for the M.Phil/Ph.D.



programme prior to July 11, 2009, shall be governed by the provisions of the then existing Ordinances/Bylaws/Regulations of the Institutions awarding the degree and the Ph.D. candidates shall be exempted from the requirement of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities/Colleges/Institutions subject to the fulfillment of the following conditions:-

(a) Ph.D. degree of the candidate awarded in regular mode only;

(b) Evaluation of the Ph.D. thesis by at least two external examiners;

(c) Open Ph.D. viva voce of the candidate had been conducted;

(d) Candidate has published two research papers from his/her Ph.D. work out of which at least one must be in a referred journal;

(e) Candidate has made at least two presentations in conferences/seminars, based on his/her Ph.D. work (a) to (e) as above are to be certified by the Vice-Chancellor/Pro-Vice Chancellor/Dean (Academic Affairs)/ Dean (University instructions)". Photo copy of the notification dated 11.07.16 is annexed herewith and marked as Annexure-A to this affidavit.

9. That the appellant has requested for issuance of a certificate in the light of the aforesaid amendment and accordingly the University has



issued certificate dated 05/08/2016 to the appellant. As per the criteria laid down in the aforesaid notification dated 11.07.16 the appellant who was registered for the Ph.D. programme prior to 11.07.09, has also fulfilled all the five conditions mentioned in the said notification and therefore he is entitled for exemption from the requirement of NET/SLET/SET for recruitment and appointment to the post of Assistant Professor or equivalent position in Universities/Colleges/Institutions. Photocopy of the certificate dated 05/08/16 is annexed herewith and marked as Annexure-B to this affidavit.

10. That so far the controversy relating to award of marks for Ph.D. degree is concerned it is humbly submitted that the answering respondent has no concern with the same as it is the prerogative of the respondent Bihar State Public Service Commission.”

5. In view of the stand of the Banaras Hindu University, respondent No. 9 as per the statement made in the counter affidavit, we do not find any merit in the case of the appellant as the entire case of the appellant is based on Annexure-P/6, the certificate of the Banaras Hindu University. In the counter affidavit filed by the University, respondent No. 9 in the Letters Patent Appeal indicating the stand that the Ph. D. of the petitioner



is only for the purpose of eligibility and not for award of marks and it is the prerogative of the BPSC to award marks in the matter of selection.

6. Considering the above stand of the Banaras Hindu University, we do not find any merit in the appeal. The Letters Patent Appeal is, accordingly, dismissed.

(Rajendra Menon, CJ)

spandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2018
Transmission Date	

