

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.9726 of 2017**

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1. Dr. Jitendra Narayan Singh, son of Late Ram Chandra Singh, resident of Uma Nagar, P.S.- Chapra Mufassil, District- Saran.  
2. Ravindra Nath Tiwari, son of Late Sampat Kumar Tiwari, resident of Bhagwati Nagar, P.S.- Bettiah, District- West Champaran.

.... .... Petitioner/s

Versus

1. The Honble Chancellor of Universities of Bihar, Raj Bhawan, Patna.  
2. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.  
3. Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Registrar.  
4. Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.  
5. Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.  
For the State : Mr. Bishwa Bibhuti Kr. Singh, AC to AG  
For the Chancellor : Mr. R.K.Giri, Adv.  
For the K.S.D.S.U. : Mr. Gyanand Roy, Adv.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date: 23-07-2018**

Petitioners in the present case have moved this Court in  
its extra-ordinary writ jurisdiction for the following reliefs:-

*“(i) Issuance of a declaration holding that part of the amendment brought about in the Statutes for the Grant of Retirement Benefits as approved by the Hon’ble Chancellor and notified by Letter No.BSU-52/80-5285/GS (I) dated 18/11/1980, contained in letter dated 15/01/2014 (Annexure-4), by which, by way of condition no.5 it has been stipulated that the benefit of payment of post-retirement benefits under the said Statutes would be given to the employees of*



*only such deficit grant affiliated and deficit grant minority colleges that have at least 250 students appearing annually at the university examination consistently during each of the preceding 10 years from the date of publication of a resolution dated 18.01.2011 is ultra vires the Constitution of India the same being in violation of article 14 of the Constitution of India;*

*(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities in the office of the Hon'ble Chancellor of Universities of Bihar as well as the Education Department of the State Government to take necessary corrective measures in terms of the resolution dated 18/10/1976 (Annexure-1) issued by the Education Department of the State Government, by which the requirement with respect to the minimum number of students who are to appear in the university examinations annually from a recognized deficit grant Sanskrit College has been prescribed as 60, which remains in force till date and accordingly, steps be taken for the purposes of extending the benefits of payment of retirement benefits in favour of teaching and non-teaching employees working in different deficit grant Sanskrit colleges affiliated to Kameshwar Singh Darbhanga Sanskrit University, Darbhanga (hereinafter referred to as "the University") in terms of the Statutes regarding Retirement Benefits as mentioned above, if 60 or more than 60 students from such colleges have appeared annually in the University examinations;*

*(iii) Any other relief/reliefs that the petitioner may*



*be found to be entitled to in the facts and circumstances of the present case.”*

It is the contention of the petitioners that by virtue of the amendments which are under challenge the respondents have prescribed that at least 250 candidates must be appearing in the annual examinations held by the University during the preceding 10 years from 10.01.2011 as a prerequisite for extending the benefits of provident fund-cum-pension-cum-gratuity in favour of the teaching and non-teaching employees working in different deficit grant affiliated Sanskrit Colleges within the State of Bihar. It is submitted that such a condition is in complete conflict with and in violation of the provisions contained under resolution dated 18.10.1976 (Annexure-1 to the writ application) issued by the Education Department of the State Government.

Mr. Abhinav Srivastava, learned counsel representing the petitioners has drawn the attention of this Court towards Annexure-1 to show that when the college in question was recognized as deficit grant Sanskrit College the minimum number of students who were required to appear in the university examination annually was prescribed at 60 nos. of students and the same remains in force till date. It is submitted that the criteria fixed by the resolution dated 18.10.1976 remained guiding factor for the purpose of extending



payment of retirement benefits in favour of the teaching and non-teaching employees working in different deficit grant colleges affiliated to Kameshwar Singh Darbhanga Sanskrit University, Darbhanga (hereinafter referred to as “the University”) in terms of the statutes regarding retirement benefits.

Learned counsel submits that prescription now provided by making it compulsory that 250 students must appear in the annual university examination for the preceding 10 years consistently from a deficit grant affiliated Sanskrit college and only then the benefits of provident fund-cum-pension-cum-gratuity will be available to the employee of such college is highly illegal, arbitrary and bad in law. It is also contrary to the provisions contained in resolution dated 18.10.1976 (Annexure-1) issued by the Education Department of the State Government which remains in force till date.

Further referring to a judgment of this Court passed in CWJC No.9085 of 1999 and CWJC No.9154 of 1999 (Annexure-2 to the writ application), learned counsel submits that when on earlier occasion it was contended on behalf of the State respondents while denying the affiliation and payment of salary to the teachers of different Sanskrit colleges within the State of Bihar, then as per the regulations issued by the respondents under the Education Department of the State Government with respect to the minimum number of



students at graduate level such colleges should not be less than 250 students admitted annually, the learned writ Court rejected the contention and held that the resolution dated 18.10.1976 (Annexure-1) had not been interfered with or amended by the concerned authorities in the Education Department of the State Government and, therefore, the said resolution in so far as the requirement of minimum number of students admitted annually into the Sanskrit Colleges was prescribed as 60 continued to be valid and in force. Learned counsel submits that despite their being adjudication to that extent, the impugned notification has been issued which is liable to be quashed.

On behalf of the respondent no.2 a counter affidavit has been filed. The stand of the State is that pursuant to the demand of the employees of the deficit grant minority colleges and other deficit grant colleges to provide them the triple benefit scheme of retirement benefits i.e. General Provident Fund-cum-Pension-cum Gratuity, the State government vide its resolution no.171 dated 18.01.2011 (Annexure-3) decided to extend the benefit of triple benefit scheme to the employees of the deficit grant minority colleges as well as other deficit grant colleges. It is submitted that consequently the amendment has been made in the Statute for grant of retirement benefits to the teachers by the Hon'ble Vice Chancellor vide memo dated 05.01.2014 (Annexure-4 to the writ application). By this



amendment after sub-section 2, after clause 'm' a new clause '2n' has been inserted, which reads as under:-

*"2n:- deficit grant affiliated colleges including deficit grant minority colleges mean colleges established and managed by managing committee including colleges established and managed by religious and linguistic minorities which are already in receipt of deficit grant from the State Government."*

It is further submitted that in section 3, 3(1) and 4 (a) deficit grant affiliated college including deficit grant minority college has been added, besides the existing University/constituent College to extend the post retirement benefit to the employees of these colleges provided:-

*"1. The employee, teaching as well as non-teaching has been legally appointed against sanctioned post and whose deficit of pay and other allowance is borne by the State Government.*

*2. The post retirement benefit will be available only to those teaching and non-teaching employees of deficit grant minority colleges who were legally appointed on the sanctioned post on or before 31.08.2005. Employees appointed after 31.08.2005 will not be entitled to benefit accruing in accordance with this statute.*

*3. Employees appointed on or after 01.09.2005 will be covered by the new pension scheme adopted by the Government.*

*4. The benefit will be given only to the teaching and*



*non-teaching employees working on the effective date of amendment and not to the retired teaching and non-teaching employees.*

*5. The benefit will be given to the employees of only such deficit grant affiliated and deficit grant minority colleges having at least 250 students appearing annually at the University examination consistently during each of the preceding ten years from the date of notification of the resolution.*

*6. After the amendment made in the statute, total contribution (State share) including the interest accrued there upon made by the State Government to the teaching and non-teaching employees, appointed before 01.09.2005, who are at present covered under Contributory Provident Fund scheme, shall have to be legally adjusted or recovered, because of being covered under the old pension scheme.*

*7. The amendment will come into force from 31.08.2010.”*

It is contention of the State that number of students appearing in university examination has been fixed for the entire deficit grant in aid colleges including the Sanskrit colleges. The stand of the State is that there cannot be any further classification in a class within class. The minimum number of students according to the State has been rightly fixed at 250 and the conditions prescribed under Clause-5 of the Statute. Reliance on the resolution dated 18.10.1976 and the order passed by this Court in CWJC No.9085 of 1999 would



not help the petitioners. In the counter affidavit it has been tried to be argued that in view of the resolution dated 18.10.1976, 60 students is required to be admitted in each honours subjects and in this way total number of students required to be admitted should not be less than 250. It is submitted that even if the contention of the petitioners is accepted that the resolution dated 18.10.1976 provides minimum 60 students for granting affiliation, the total number of students in Sanskrit colleges admitted cannot be less than 180 students as the Shastri course is of three parts and in each part minimum of 60 students are required to be admitted per year, meaning thereby the minimum number of students appearing in Part-I examination of the Shastri course would be 60. On the strength of these arguments clause 5 has been sought to be defended by the State.

We have heard learned counsel for the parties and perused the records. It is not in dispute that the resolution dated 18.10.1976 (Annexure-1) is still in existence and remains valid. It is not the case of the State that while granting affiliation to these colleges, the total number of students admitted was found at 180 or 250. Learned counsel for the petitioners has rightly drawn our attention towards the resolution dated 18.10.1976 with a submission that a bare perusal of the same would show that what is being tried to be argued on behalf of the State is nowhere mentioned in the



resolution as contained in Annexure-1 to the writ application. The learned counsel seems correct in saying that on the face of what is appearing from Annexure-1, the contention of the State in its counter affidavit is liable to be rejected.

We find force in the submissions of learned counsel for the petitioners. On the face of it the resolution dated 18.10.1976 (Annexure-1 to the writ application) does not prescribe minimum number of students in each year of Shastri course as 60 which is now the contention of the State. Fallacy in the argument of the State writ large when we find that the minimum number of students prescribed in the resolution is 60 as a whole and not part-wise. This fact has been taken note of by the learned writ Court in its judgment as contained in Annexure-2 to the writ application. In the said case the Hon'ble Writ Court specifically considered and held that the resolution no.2261 dated 18.10.1976 minimum number of students at Shastri level i.e. graduate level was mentioned as 60. The Court proceeded to consider whether relevant part of the said resolution no.2261 dated 18.10.1976 stand repealed and what will be the consequence of such repeal, but after going through the arguments advanced on behalf of the parties the learned Writ Court held in paragraph 11 of the judgment as under:-

*“From conjoint reading of the abovementioned condition relating to the minimum number of students*



*in different categories of schools/college I have no manner of doubt that the number refers to the students on rolls of the schools/college, as the case may be, in the particular class, and not the number of students actually appearing at the examination. There is no ambiguity in the aforesaid resolution of the government that the basis of student strength is the number of students on rolls of the schools/college, I fail to understand as to how any stand which is not in conformity with the resolution, can be taken or made basis of the impugned decision.”*

In view of what we have noticed and discussed hereinabove, we find no merit in the contention of the State. The condition no.5 as contained in letter no. BSU-52/80-5285/GS(I) dated 18.11.1980, contained in letter dated 15.01.2014 (Annexure-4) is declared illegal, arbitrary and bad in law. The condition no.5 is ultra vires to Article 14 of the Constitution of India and hence shall not operate.

The writ application is allowed in terms of prayers made in paragraph 1 of the writ application.

**(Rajendra Menon, CJ)**

**(Rajeev Ranjan Prasad, J)**

Arvind/-

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