

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11834 of 2014

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1. Shri Moammad Shafique S/o Late Mohammad Naseeruddin working as a Peon in Oriental College, Patna City
 2. Shri Mohammad Salim S/o Shri Mohammad Sulaiman, working as a Peon in Oriental College, Patna City
 3. Shri Satyendra Paswan S/o Shri Yogendra Paswan working as a Peon in Oriental College, Patna City
 4. Kum. Shabnam Azami D/o Late Shri Nesar Asmi, working as a Peon in Oriental College, Patna City
 5. Shri Shankar Ram S/o Shri Jalim Ram, working as a Peon in Oriental College, Patna City
 6. Shri Ranjit Kumar Ravi S/o Shri Rajendra Paswan,, working as a Peon in Oriental College, Patna City..... .. Petitioner/s

Versus

1. The State of Bihar, through the Pr. Secretary, HRD, Deptt. Govt. of Bihar, Patna
2. The Principal Secretary, HRD, Government of Bihar, Patna
3. Magadh University HRD Dept. Bodh Gaya through the Registrar of the University
4. The Vice-Chancellor Magadh University Bodh Gaya
5. The Registrar, Magadh University, Bodh Gaya
6. The Principal Oriental College, Patna City
7. The Governing Body Oriental College, Patna City through the Secretary of the College..... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Raghav Prasad No.-1
For the Respondent/s : Mr. Sc5- Satyadeo Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

- 3 24-07-2018 1. Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State as well as University.



2. Learned counsel for the petitioners has placed reliance on Annexure- 'C' i.e. report submitted by the committee constituted by the University which according to the petitioner stands in favour of the petitioners the report reads as follows:-

To,
The Registrar,
Magadh University,
Bodh-Gaya.

Sir,

With reference to M.U. Letter No. 209/GIIB/16 dtd-28.09.2016, we examined in detail the relevant documents of six (06) non-teaching (IVth grade) employees of Oriental College, Patna City, a minority deficit grant institution of the Magadh University, Bodh-Gaya.

After due examination of papers, we wish to submit the following facts:

1. The six (06) employees referred to as above, were appointed on, posts created by the G.B. of the college and sanctioned by the state government. These appointments were made on 30.09.2009 by a selection committee of the G.B. after due advertisement was published. The selection committee was headed by late (Justice) Ali Ahmad who also happened to be the President of the G.B. of the college.



II. The G.B. of the college accorded approval to these appointments and the matter was forwarded to the University for its approval.

III. The University accorded approval to these appointments effective 13th/14th October, 2009 vide letter No. 90/GIIB dtd-28.06.2011.

IV. The University gave concurrence to their appointment vide letter no. 5/00/2011 dtd-22.10.2011.

V. The pay fixation of these employees has been completed and notified vide letter no. 90/GIIA dtd-28.06.2011.

VI. The names of these employees have been included in the annual budget of the college, which has been approved by the university.

In view of the facts mentioned above, we opine and conclude that these employees should be paid their salaries as they fulfill all the criteria laid down for appointment of non-teaching employees.

This is for your information and the needful in the matter.

Yours faithfully
(Dr. T.K. Shandilya)

3. He has also placed reliance on paragraph-7 and 10 to 12 of counter affidavit filed by the respondent No. 1 and 2 is



relevant which is quoted below:-

7. “That Section 35 of the Bihar State Universities Act deals with the creation of posts in the University and college. Section 35 (1) (I) provides that after commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government. Section 35 (2) of the Act provides that notwithstanding anything contained in this Act, no college other than mentioned in clause (a) and (b) of sub-section (1), shall after commencement of this Act, appoint any person on any post without the prior approval of the State Govt. Section 35 (3) of the Act further provides that any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules or Regulations made thereunder or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time.



The expenditure incurred by the University against such appointment or promotion shall be realized from the officer making such appointment or promotion as a public demand under the provision of the Public Demand Recovery Act.

10. That in spite of repeated request of the Education Department, the University failed to send relevant documents as called for by the Education Department as aforesaid.

11. That the Education Department is unable to take any decision regarding approval of services of the petitioners in absence of certain documents.

12. That it is humbly stated here that the petitioners are entitled to get the salary only after approval of their services by the State Government.

4. In view of the above, it appears that the matter is pending at the level of the University as the University failed to provide the necessary document for which request was made by the State as contained in Annexure- 'B' and 'C' of the counter affidavit of the respondent No. 1 and 2.

5. Under the aforesaid circumstance, the Court is not inclined to issue any positive direction to the University or the



State, but considering the totality of the fact situation, it would be appropriate that the college in question may provide the necessary document to the University and thereafter the University will provide the documents to the State Government so that the final decision may be taken by the State in the matter of approval of the service of these petitioners and for ensuring payment of salary as college in question.

6. Necessary information may be submitted by the College and University to the State Government within a maximum period of four months from the receipt/production of a copy of this order and thereafter the State Government will take final decision on the approval of the service of the petitioners within three months. It goes without saying that if matter decided in favour of the petitioners then respondents will ensure all consequential benefit within a further period of one month.

7. With the aforesaid writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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