

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.435 of 2015

In

Civil Writ Jurisdiction Case No.16936 of 2013

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1. Dr. Braj Bihari Pandey, Son of Late Ram Subhag Pandey, C/O Suresh Chandra Jha, Resident of Road No. 3/B R.M.S. Colony, East Ashok Nagar Kankarbag, Post Office - Kankarbagh, P.S.- Kankarbag, District - Patna.
 2. Dr. Md. Qunber Ali Khan, Son of Late Md. Akhtar Ali Khan, Resident of 301, Grand Apartment, New Patliputra Colony, P.S.- Patliputra, District -Patna ... Appellants

Versus

1. The State of Bihar through The Principal Secretary, Department of Education (Higher Education), Government of Bihar, New Secretariat Vikas Bhavan, Patna. null null
 2. The Principal Secretary, Education Department (Higher Education), Government of Bihar, Patna.
 3. The Joint Secretary, Education Department, Government of Bihar, Patna.
 4. The Director, Education Department (Higher Education), Government of Bihar, Patna.
 5. The Magadh University through its Registrar, Bodh Gaya, District - Gaya.
 6. The Vice - Chancellor, Magadh University, Bodh Gaya, District - Gaya.
 7. The Registrar, Magadh University Bodh Gaya, District - Gaya.
 8. The Finance Officer, Magadh University Bodh Gaya, District Gaya.
 9. The Governing Body through its Secretary Oriental College, Patna City, Police Station - Khajekalan, District - Patna.
 10. The Secretary, Oriental College Patna City, District - Patna.
 11. The Principal, Oriental College Patna City, Police Station - Khajekalan, District - Patna ... Respondents
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Appearance :

For the Appellants : Mr. Birendra Narayan Sharma
For the Respondents : Mr. Aag10- P.N.Shahi

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 31-10-2018

Heard Mr. Ajay Kumar Sinha, learned counsel for the appellants, Mr. Patanjali Rishi, Assisting Counsel to AAG VI, for the State and Mr. Kumar Amitesh, learned counsel for the University.



2. This inter contra appeal is arising from a judgment and order of the learned Single Judge passed in C.W.J.C. No. 16936 of 2013 whereby the writ petition has been dismissed.

3. The two appellants-petitioners are appointee in a minority institution by its Governing Body and they are aggrieved by an order dated 07.02.2013 passed by the State Government in reference to its earlier resolutions dated 19.06.1985 and 21.11.1985, wherein it was held that since the appointment of the appellants-petitioners was beyond the post sanctioned by the State Government for allowing financial grant, the pay fixation under the University Grants Commission scale of pay made by the College was not in accordance with the resolution and the recommendation has, accordingly, been rejected in exercise of powers vested under Section 35(2) of the Bihar State University Act, 1976 (here-in-after referred to as, 'the Act').

4. The only issue, which is raised by Mr. Sinha to question the order of the State Government is that a minority institution has been kept away from the regulatory control of Section 35 of 'the Act'.

5. We do agree with him, but, yet the situation does not improve for the appellants-petitioners for two reasons, namely, (a) paragraph 1 of the impugned order dated 07.02.2013 of the



Education Department confirms that the fourth and fifth post in Hindi was allowed for creation only if, the financial burden of salary etc would be borne by the College, itself; and

(b) the resolution of the Governing Body of the College dated 09.04.2007 enclosed at Annexure 3 to the writ petition reflects that the appellant-petitioners had been appointed on posts which were created without financial assistance from the State Government. These two undisputed circumstances are clear impediment to the claim of the appellants-petitioners as they leave no room for confusion that the appellants-petitioners were not entitled to any scale until such time, the recommendation of the College would have been made against the post nos. 1, 2 and 3 in the Hindi Department, but, such is not the case here because the order, impugned, passed by the Education Department order, dated 07.02.2013, confirms that the recommendation of the petitioner, Brij Bihari Pandey, was made against the fourth post in the Hindi Department and the appellant no. 2 was appointed on the third post of Urdu which, was 'vitya rahit' post i.e., where the State Government has not agreed to share the financial burden to the post.

6. In such situation, the judgment and order of the learned Single Judge cannot be found fault with because the terms



and conditions of the appointment of these two appellants- petitioners itself deprives them to a pay scale resting on a financial grant of the State Government, rather it is to be borne by the College, itself, and, thus, the rejection of the recommendation by the Education Department suffered no infirmity and which has been rightly upheld by the learned Single Judge, whose order warrants no interference.

7. There is no merit in the appeal, which is dismissed, accordingly.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Shamshad/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.12.2018
Transmission Date	N/A

