

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.395 of 2015

IN

Civil Writ Jurisdiction Case No. 949 of 2012

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1. Dr. Satish Chandra Mishra, son of Late Pandit Bhagirath Nath Mishra, resident of Sati Bhagirath Smriti Bhawan, Naya Tola Madhopur, P.S.- Bakhtiyarpur, District- Patna.

2. Dr. Priyambada Kumari Mishra, daughter of Late Bhagirath Nath Mishra, resident of Rawaich Bakhtiyarpur, P.S.- Bakhtiyarpur, District- Patna.

.... Appellants

Versus

1. Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Registrar.

2. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

4. The Governing Body/Ad-hoc Committee of Shri Ganesh Girivardhari Sanskrit College, Bakhtiyarpur, Patna through its Secretary

5. Dr. Balmukund Mishra, son of Shri Vidyadhar Mishra, resident of Bela More, Behind Petrol Pump, District- Darbhanga, presently working as Principal, Shri Ganesh Girivardhari Sanskrit College, Bakhtiyarpur, Patna.

6. Bundelkhand University, Jhansi, Uttar Pradesh through its Registrar

7. Nehru Post Graduation College, Lalitpur, Uttar Pradesh through its Principal.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Abhinav Srivastava, Adv.
Mr. Kushagra Raj, Adv.

For Respondent No.5 : Mr. Chitranjan Sinha, Sr. Adv.
Mr. Durga Nand Jha, Adv.

For Respondent No.4 : Mr. Anup Kumar Pandey, Adv.

For the University : Mr. Uday Chandra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 25-08-2018

This intra-Court appeal arises from a judgment and order of a learned Single Judge dated 16.08.2012 passed in CWJC No. 949/2012, whereby the writ petition was dismissed.

It is after a delay of 2 years and 149 days that the writ



petitioner has chosen to prefer this appeal which was admitted by a Co-ordinate Bench on 11.05.2016 without condoning the delay. The appeal came up for hearing before this Bench on 19.02.2018 when taking note of this fact that a time barred appeal had been admitted for hearing, we recalled the order of admission and directed the matter to be posted for consideration of the limitation petition. The appeal was posted before a Co-ordinate Bench on 04.04.2018 and when after condoning the delay of 2 years 149 days, the appeal was admitted for hearing with notice to the respondent nos. 4 and 7 at the hearing stage.

The appeal on return of notice has been posted for hearing and when Mr. Abhinav Srivastava has addressed the Court on behalf of the appellants, Mr. Uday Chandra Prasad, learned Counsel appears for respondent nos. 1, 2 and 3, the respondent no. 4, Governing Body is represented by Mr. Anup Kumar Pandey and the respondent no. 5 is represented through Mr. Chitranjan Sinha, learned Senior Counsel, who appears with Mr. Durga Nand Jha, Advocate on record. There is however no representation on behalf of the respondent nos. 6 and 7 though notices have been validly served.

It is advancing the issue raised by the appellants as writ petitioners that Mr. Srivastava has questioned the appointment of respondent no. 5 as Principal of the College of Ganesh Girivardhari Sanskrit College, Bakhtiyarpur, Patna, which is a college affiliated to



Kameshwar Singh Darbhanga Sanskrit University and the reason for such challenge is three fold, namely:

(a). The Selection Committee constituted for consideration of such appointment purportedly under section 57A (1) of the Bihar State University Act, 1976 (hereinafter referred to as 'the Act') was not in accordance with the statutory provisions;

(b). The appellant no. 2 holding the post of the In-charge Principal should have been a part of the Selection Committee but was not included; and

(c). Respondent no. 5 did not meet the eligibility requirement of possessing 10 years teaching experience which is a mandatory requirement for such appointment.

Rather exhaustive argument has been advanced by Mr. Srivastava to canvas these points in reference to the pleadings made in the writ petition and which has been contested by learned Counsel appearing for the Governing Body as well as Mr. Chitranjan Sinha, learned Senior Counsel defending the appointee Principal. The main plank of argument of Mr. Sinha learned Senior Counsel, is on the conduct of the two appellants. According to Mr. Sinha, the two appellants are guilty of suppression of material facts from this court. It is submitted that the pleadings made in the writ petition was misleading and the issues raised by the appellants-writ petitioners was



duly responded to by the Governing Body as well as by the private respondent by filing respective counter affidavit in writ proceedings, which have gone uncontested, inasmuch as no rejoinder was filed to the counter affidavit(s) and even before this Court nothing has been placed by the appellant-writ petitioners to come clear of the charges of suppression. It is further the argument of Mr. Sinha, learned Senior Counsel appearing for the private respondent, as seconded by learned counsel for the Governing Body, that the judgment and order of the learned Single Judge exhaustively deals with the issues raised by the appellants in reference to the pleadings available on the records of the writ proceedings, to reject the contentions and dismiss the writ petition, which opinion of the learned Single Judge resting on records, requires no interference.

We have heard learned Counsel for the parties and have perused the records.

The issue raised by the appellant to challenge the appointment of respondent no. 5, has already been outlined by us and need not be reiterated. It is on three counts that the challenge was posed against the appointment of the private respondent but we would come on this challenge later. We do notice that the writ petitioners while praying for a writ in the nature of certiorari, also pray for issuance of a writ of quo warranto by alleging that the respondent no.



5 did not possess the required teaching experience for holding the post of Principal.

The legal position in this regard is well settled and in case an incumbent occupying a public office is found wanting on eligibility qualification, such prayer can be made by any citizen of this country. There is no dispute on this legal position. However, before we would proceed to examine the issue raised by the appellants, we are persuaded to take note of a few paragraphs of the counter affidavit filed by the Governing Body in the writ proceedings and which questions the very conduct of the two appellants herein, who have brazenly made incorrect statements and when countered, have not bothered to file any rejoinder to come clear of the charges.

In so far as appellant no.1 Dr. Satish Chandra Mishra is concerned, he claims to be a donor of the college. The Governing Body in paragraph 4 of the counter affidavit, has specifically stated that appellant no. 1 was never declared as a donor of the college by the Governing Body or by the University. Now neither this stand of the Governing Body been answered by appellant no. 1 nor he has enclosed any evidence to support his contention of being a donor.

In so far as the conduct of the appellant no. 2 is concerned, Mr. Sinha, learned Senior Counsel has invited our attention to the statement made in paragraph 7 of the counter affidavit of the



Governing Body which demonstrates brazen suppression of fact by the appellant-petitioner no. 2. The statements reflect that the very appointment of the appellant no. 2 as an In-charge Principal was put to question and which led to an enquiry by the college and ultimate removal of the appellant-petitioner no. 2 from the post of In-charge Principal. The counter affidavit also explains the constitution of the Committee as well as the reason why the appellant no. 2 was not included in the Selection Committee and which has not been contested by the appellants-writ petitioners by filing a rejoinder. In fact even before this Court, the appellants have not bothered to contest the position. The counter affidavit mentions that notices were sent to the appellant no. 2 followed by paper publication but with no result because the appellant no. 2 never bothered to return to the College which led to her suspension and ultimate dismissal on 20.01.2013.

Learned Single Judge has taken note of this aspect of the matter which goes to the root of the challenge posed because it confirms suppression of material fact by the appellant no. 2 which disqualifies her to raise any challenge on the appointment.

Having expressed ourselves on the conduct of the two appellants in maintaining the challenge which is clothed with suppression of material facts, we certainly do not intend to shy away from examining whether or not, there is any merit in the challenge to



the legal right vested in the private respondent to occupy the post of Principal either on the issue of constitution of the Selection Committee or on the issue of qualification to hold the post.

The issue of constitution of Selection Committee has been considered by the learned Single Judge in reference to the statement made in paragraph 7(x) of the counter affidavit filed on behalf of the Governing Body which gives the details of the constitution of the Selection Committee in tune with the provisions underlying section 57A(1) of 'the Act'. The statement made in paragraph 7 (xi) again explains the reason why the petitioner was not included in the Selection Committee. Section 57A(1) of 'the Act' as it stood amended under the Bihar State Universities (Amendment) Act, 2007, (Bihar Act 21 of 2007) which was in force at the time of selection in question, reads as follows:

“57A(1)- Subject to the provisions of the Act and the Statute made thereunder, appointment of teachers of affiliated colleges not maintained by the State Government, shall be made by the management of the college concerned by constituting a selection committee consisting of following members, namely:-

- (i) One member to be nominated by the Vice Chancellor who will be the Chairman of the Selection Committee.
- (ii) Three experts not connected with the college to be nominated by the Vice Chancellor from a panel of



not less than seven names proposed by the management of the College out of which one member should belong to scheduled caste/scheduled tribes.

(iii) Two members to be nominated by the management of the College.

(iv) Principal of the College.”

Section 57A(2) of ‘the Act’ inter alia provides that the quorum for holding meeting of Selection Committee would be of 5 members, which would be inclusive of at least two experts. No doubt, the enabling provision at section 57A(1) admits the Principal of the College in the Selection Committee but sub section (2) thereof mandates a quorum of only 5 members inclusive of the two experts. Meaning thereby the rest three members can come from any of the categories for forming the Selection Committee.

In view of the statutory position so existing, the explanation given by the Governing Body on the constitution of the Selection Committee present at paragraph 7 (x) which goes unchallenged, is sufficient to hold that the constitution of the Selection Committee was lawful. We are still at loss to appreciate the reliance by Mr. Srivastava on the statement made in paragraph 15 of the writ petition as a charge to the constitution of the Selection Committee. The appellants-petitioners in this paragraph simply inform that they were unaware of the constitution of the Selection Committee. Now how does this



statement lead a charge to the constitution of the Selection Committee, we have completely failed to appreciate. It is taking note of such a vague allegation present in paragraph 15 to question the constitution of the Selection Committee that the learned Single Judge has rightly held that being unaware about the constitution of the Selection Committee cannot lead a foundation for posing a challenge as to its constitution.

As we have repeatedly observed, though the constitution of the Selection Committee was placed on record by the Governing Body, in their counter affidavit, yet the appeal is maintained on the self same allegation without any attempt to contest the position so explained.

This would bring us to the last of the issues raised and that is whether or not the respondent no. 5 possessed the required qualification to hold the post of Principal? For the purpose, we would refer to the counter affidavit of the private respondent no. 5 filed before the learned Single Judge which at paragraph 11 clarifies the position. The respondent no. 5 while giving the details of his educational qualification has also explained that he possesses the required 10 years teaching experience as well. The statement made by respondent no. 5 in paragraph 11 of his counter affidavit on the issue of teaching experience again goes uncontested, inasmuch as neither



any rejoinder was filed by the appellants at the stage of writ proceeding nor before this Court any material has been placed which would create any doubt on the assertions made by respondent no. 5 on teaching experience.

Our discussions above are sufficient to conclude that this appeal lacks merit and has been filed simply to harass the respondent by engaging them in a vexatious avoidable litigation. Neither on merits nor on the conduct of the appellants are we persuaded to interfere with the opinion of the learned Single Judge expressed in the judgment and order impugned which is on examination of not only the facts accompanying the issue but also the statutes regulating such appointment. We are constrained to record that the appellants have abused the process of the Court because the challenge is without foundation.

The Letters Patent Appeal is dismissed and with much effort we restrain ourselves from imposing heavy cost on the appellants for wasting precious hours of the Court.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Archana/Surendra

AFR/NAFR	NFAR
CAV DATE	NA
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