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

**Civil Writ Jurisdiction Case No.4044 of 2010**

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Dr. Shailesh Kumar Sinha, S/O Sri Chhotu Singh, R/O Mohalla- Ganesh Kunj, Pandriba Lane, Patna

.... .... Petitioner/s

Versus

1. The State of Bihar through the Commissioner Cum Secretary, Higher Education Department, Bihar, Patna
2. The Vice Chancellor, Magadh University, Bodh Gaya
3. The Secretary, University Grant Commission, Bahadur Shah Zafar Marg, New Delhi
4. Secretary, Governing Body L.P. Sahi College, Patna, Ram Krishna Nagar, P.S.- Ram Krishna Nagar, Distt.- Patna-800027.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Daya Shankar Prasad, Advocate
For the Respondent/s : Mr. (SC8)
For L. P. Shahi College : Mr. Anil Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

ORAL JUDGMENT

**Date: 19-09-2018**

Heard Mr. Daya Shankar Prasad, learned counsel appearing on behalf of the petitioner and the respondents.

2. The present writ application has been filed by the petitioner for implementation of Section 35 of the Bihar State Universities Act in affiliated College and thereby for grant of such benefit to the petitioner including payment of salary by the State Government.

3. The Scheme of Section 35 of the Bihar State Universities Act is quoted herein below:

> **"35. No post for appointment shall be created without the prior sanction of the State Government:-** Notwithstanding anything contained

in this Act, no University or any College affiliated to such a University, except such College-

(a) as is established, maintained or governed by the Government; or

(b) as is established by a religious or linguistic minority;

(i) After the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government.

(ii) shall either increase the pay or allowance attached to any post, or sanction any new allowance;

Provided that the State Government may, by an order, revise the pay scale attached to such post or sanction any new allowance.

(iii) Shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no College other than one mentioned in Clauses (a) and (b) of Sub-Section (1), shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government.

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by a candidate possessing the prescribed qualification.

(3) 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 provisions of the Public Demands Recovery Act, 1914."

4. Section 35 of the Act nowhere guarantees payment of salary to the teachers appointed in affiliated College. The College, in question, was established in the year 1987 much after commencement of the Vit Rahit Shiksha Niti.

5. Mr. Prasad, referring to Annexure-6 dated 21.11.2008 and Annexure-16 submitted that the State Government has already taken decision to recall the Vit Rahit Shiksha Niti. Reading Annexure-6 would indicate that after coming to force of Vit Rahit Shiksha Niti on 09.10.1982 a new scheme was introduced based on the performance of the students of the College forming basis of grant-in-aid. The relevant part of Annexure-6 dated 21.11.2008 reads as follows:

वित्त रहित शिक्षा नीति की समाप्ति का औचित्य

वित्त रहित संस्थाएँ जो निजी प्रयास से खोले गये है

एवं राज्य सरकार से वित्तीय सहायता प्राप्त नहीं कर रहे हैं, उन्हें वित्त रहित संस्था की श्रेणी में रखा जा सकता है । चूँकि राज्य सरकार नें उन्हें किसी प्रकार की सहायता नहीं देने की नीति बना रखी थी इसलिए यह नीति ''वित्त रहित नीति''कही जाती रही है । विभिन्न स्तरों की शिक्षण संस्थाएँ वित्त रहित की श्रेणी में है । कतिपय मूल बातें इन सभी सस्थाओं में समान है । यह सस्थाएँ किसी न किसी रूप मेें विश्वविद्यालयों से सबंद्धता प्राप्त है । इनके अपने आय के श्रोत प्रयात्त नहीं है, जिससे कि ये समुचित ढंग से संचालित हो सके । वर्तमान में विश्वविद्यालयों को वित्तीय सहायता राज्य सरकार द्वारा प्रदान नहीं की जाती है । इन संस्थाओं के संबंध में कहा जा सकता है कि :–

(क) यह संस्थाएँ खोली गयी, क्योंकि सरकार ने कि शिक्षा के विभिन्न स्तरों पर नई संस्थाएँ खोलना प्रायः बंद कर दिया था ;

(ख) इन संस्थाओं के पास भूमि, भवन आदि है तथा इनका सरकारी स्तर पर उपयोग करने में सरकार को नयी संस्थाओं को शुरू करने के लिए नया निवेश नहीं करना पड़ेगा;

(ग) इनके पास शिक्षक एवं शिक्षकेत्तर कर्मचारी;

(घ) इस प्रकार ये शिक्षा की ''माँग'' तथा ''पूर्ति'' के अन्तर को भरने का कार्य कर सकते है ।

अतएव राज्य सरकार ने निर्णय लिया है कि शैक्षणिक वातावरण में सुधार एवं छात्रों को गुणात्मक शिक्षा प्रदान करने के उद्देश्य से वैसे अर्हता प्राप्त संबद्ध डिग्री महाविद्यालयों की जो शिक्षण का कार्य संतोषजनक ढंग से कर रहे हो, वित्तीय सहायता उपलब्ध कराई जाए । सम्बद्ध महाविद्धालयों को वित्तयय सहायता/अनुदान निम्नलिखित शर्तो एवं प्रकियायाओं के अंतर्गत दी जाएगी :–

(i) समबद्ध डिग्री महाविद्यालयों को अनुदान देने हेतु

आवेदन तथा आंकड़ें सकलित किये जायेगा । समीश्रेपरांत अगर आवश्यक समझा गया तो विभागीय स्तर पर अथवा किसी स्वतंत्र एजेन्सी के माध्यम से महाविद्यालय द्वारा प्रेषित सूचनाओं एवं आंकड़ों की जाँच कराई जाएगी । विभाग की प्रति शिक्षण संस्थान लिये जाने वाले अनुदान के लिए छात्र–छात्राओं का न्यूनतम एवं अधिकतम संख्या निधी करने का अधिकार होगा ।

(ii) महिला शिक्षा को प्रोत्साहित करने के उद्देश्य से समबद्ध महिला महाविद्यालयों के मामलों में निर्धारित अर्हताओं को शिथिल करने की शक्ति विभाग को होगी ।

(iii) वित्त रहित शिक्षा नीति की समाप्ति के पश्चात वित्त रहित डिग्री महाविद्यालयों की स्थपना पूर्व की भांति नहीं की जाएगी । संकल्प संख्या 1065 दिनांक 9 दिसम्बन 1982 की कंडिका 3 को आवश्यकतानुसार संशोधित किया जाएगा ।

(iv)........अस्पष्ट ।

(v)............अस्पष्ट ।

(vi) नई व्यवस्था के तहत निजी प्रबंधन कायम रखते हुए अर्हत्ता प्राप्त शिक्षकों के भुगतानों की जिम्मेवारी निजी प्रबंधन की ही रहेगी ।

(vii) सरकार द्वारा अर्हत्ताधारी सम्बद्ध डिग्री महाविद्यालयों को वित्तय सहायता /अनुदान लोक–निजी भागीदारी के सिद्धांत पर दी जाएगी । डिग्री महाविद्यालय के लिए स्नातक स्तर पर वित्तय सहायता के स्वरूप का मूल सिद्धांत प्रति सफल विद्यार्थी भुगतान आधारित होगा ।

(viii) प्रथम, द्वितीय एवं तृतीय श्रेणी में उत्तीर्ण/छात्राओं के लिए महाविद्यालय प्रबंधन को निम्न रूप से अनुदान अनुमान्य होगा :–

| श्रेणो | प्रथम श्रेणी | द्वितीय श्रेणी | तृतीय श्रेणी |
|---|---|---|---|
| छात्र | रू0 8500/– | रू0 8000/– | रू0 7500/– |
| छात्रा | रू0 8700/– | रू0 8200/– | रू0 7700/– |

अनुदान की गणना स्नातक ( प्रथम, द्वितीय एवं तृतीय खण्ड) में उत्तीर्ण होने वाले छात्रों की वास्तवीक संख्या के आधार पर की जाएगी ।

(ix) इन अनुदान का उपयोग महाविद्यालयों के प्रबंध समिति द्वारा शिक्षक/शिक्षकोत्तर कर्मचारियों के भुगतान पर किया जाएगा । अनुदान की राशि का व्यय एकाउट पेई चेक के माध्यम से ही किया जाएगा । प्रति सफल विद्यार्थी अनुदान देने का मुख्य उद्देश्य भी प्रबंध समिति को इस उदेश्य हेतु आर्थिक सहायता उपलब्ध कराना है किसी भी परिस्थिति में अनुदान की राशि का विचलन नहीं किया जाएगा ।

(x) अनुदान मात्र वैसे पाठ्कमों एवं अवधि के लिए अनुमान्य होगा जिस पाठ्कम एवं जिस अवधि के लिए महाविद्यालय को विधिवत संबंधन प्राप्त होगा ।

(xi) उत्कृट कोटि के सम्बद्ध महाविद्यालयों को जो गुणवतापूर्ण शिक्षा प्रदान करेगें तथा जिनमें छात्रों की पर्याप्त संख्या होगी एवं जिनका परीक्षाफल संतोषजनक होगा वैसे महाविद्यालयों के आधारभूत संराचनाओं के विकास के लिए भविष्य में राशि की उपलब्धता होने पर प्रति सफल विद्यार्थी आधारित अनुदान के अतिरिक्त अन्य प्रकार की सहायता देने पर विचार किया जाएगा ।

6. Annexure-16 is the letter issued by the Secretary dated 04.09.2010, which was issued in continuation of letter dated 27.07.2006. Annexure-16 is quoted herein below for ready reference:

"अतः 27 जुलाई 2006 में विभाग द्वारा कार्यकारी आदेश को तत्कालीन प्रभाव से वापस लिया जाता है । तथा सम्बद्ध महाविद्यालयों लिए पद सृजन में बिहार राज्य अधिनिम 1976 की धारा–35 और 59 में अंकित प्रावधान के अनुसार कार्रवाई करते हुए प्रस्ताव अनुमोदन हेतु राज्य सरकार को भेजे जाए । और सृजन के फलस्वरूप उन सम्बद्ध महाविद्यालय को तय र्फामूले क तहत

मिलनेवाले अनुदान के अलावा और कोई अनुदान नहीं दिया जाएगा ।"

7. From tenure of Annexure16, it appears that in the matter of creation of post without financial liability, there is interplay of Section 35 of the Bihar State Universities Act, as Section 35 will be taken in case of financial liability. In Annexure-16, there is reference of Resolution no. 1846 dated 21.11.2008, which is the scheme of performance based grant to the institution. Reading Annexures-16 and 6 together will lead to one irresistible conclusion that while creating the post under Sections 35 and 52 of the Bihar State Universities Act, apart from the Scheme from the financial aid in terms of Resolution no. 1846 dated 21.11.2008, there is new formula for grant based on performance and no other ground financial owe is available. A plain reading of Annexures- 6 and 16 render the whole submission of the petitioner misconceived. There is no recall of Vit Rahit Shiksha Niti and it has only introduced for grant of performance based aid to the institution affiliated after coming into force the Vit Rahit Shiksha Niti in December 1982.

8. In view of the discussion, the Court does not find any merit in the contention of the petitioner that by virtue of Annexures-6 and 16, the petitioner has acquired right to deficit grant.

9. Mr. Prasad has referred to the decision in the case of **Purbottar Railway College** to contend that the post, which created

in 1987 without financial liability was interfered by this Court as discriminatory and a direction was issued to consider the case of the petitioner as discrimination is impermissible. Referring to the judgment of **Purbottar Railway College** case he submitted that the discrimination discussed in that case is also applicable in the present case, as the State Government cannot adopt two different yardstick, one for the constituent college and deficit college and the other to affiliated college. The Court is unable to approve the submission advanced by the petitioner as question of discrimination pre-supposes that the persons claiming status are similarly circumstanced. The status of the deficit grant college, constituent college and the affiliated college to which the petitioner belongs are different in nature. **Purbottar Railway College** is deficit grant college and in that college certain post was created with financial liability whereas other post was created without financial liability that factual point is not available in this case. It is well settled that if similar are treated dis-similar then the inequality arose for if the unequal treated equal even in that the case in the result.

10. Mr. Prasad has referred to the decision of the Apex Court in the case of **Uttam Kumar Vs. U.P. Higher Education Service Commission, Allahabad & Others**, reported in **1995 Supp (1) 460** where the apex Court has interfered in the matter where the

service of the petitioner was terminated after 15 years on the ground that there was no prior approval of the post by the State Government. The decision relied upon by Mr. Prasad is of no help to the petitioner for two fold reason (i) the judgment was rendered prior to coming to the force of Constitution bench Judgment of the Apex Court in the case of **Secretary, State of Karnantaka & Ors. Vs. Uma Devi**, reported in **(2006) 4 SCC 1** wherein the new jurisprudence in the matter of regular appointment was formulated by the Apex Court. (ii) that was the case of termination and it has no application in the present case where the petitioner is seeking payment of salary at par with the teachers of constituent colleges and the deficit grant college indicated herein above, the teachers of constituent college and the deficit college stands on different footing and as such there is no question of any similarity and discrimination.

11. Considering the aforesaid, the Court does not find any merit. Accordingly, the application stands dismissed.

**(Anil Kumar Upadhyay, J)**

Uday/-

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