

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.991 of 2016

In
Civil Writ Jurisdiction Case No.20490 of 2014

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Randhir Kumar Singh Son of Late Raghubansh Singh, Resident of Village
+P.O.-Rasalpura, P.S. -Doriganj, District - Saran (Chapra).

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department,
Bihar, Patna.
2. The Vice Chancellor, Jai Prakash University, Chapra.
3. The Registrar, Jai Prakash University, Chapra.
4. The Examination Controller, Jai Prakash University, Chapra.
5. Bihar Public Service Commission, Patna through its Secretary.
6. Chairman, Bihar Public Service Commission, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Avanindra Kumar Jha, Adv. Mr. Purushottam Kumar Jha, Adv.
For the Chancellor		Mr. Rejendra Giri, Adv.
For the University		Mr. Anjani Kumar, Sr. Adv.
For the BPSC	:	Mr. Sanjay Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT
(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date : 19-12-2018

Heard learned counsel for the appellant, learned
counsel appearing on behalf of the State, learned counsel
appearing on behalf of the J.P. University (hereinafter referred
to as the 'University' and learned counsel for the Bihar Public



Service Commission (hereinafter referred to as the 'Commission').

Appellant has assailed the order of the learned Single Judge passed in C.W.J.C. No. 20409 of 2014 dated 17.03.2016 whereby and whereunder the prayer of the appellant for issuance of Ph.D degree certificate under the University Grants Commission (Minimum Standards and Procedure for Award of M.Phil/Ph.D. degree) Regulation, 2009 (hereinafter referred to as 'UGC Regulation, 2009) has been rejected.

Certain facts are not in dispute. The University Grants Commission published its Regulation, 2009 known as University Grants Commission (Minimum Standards and Procedure for Awards of M.Phil/Ph.D degree Regulation, 2009 dated 01.06.2009 published in the Gazette of India (weekly) New Delhi on 11-17th July which is Annexure-1 to the writ application. The appellant aspirant for Ph.D submitted his synopsis to the University on 05.06.2010 and by memo no. 1582 dated 07.06.2012, the Comptroller of Examinations of the University selected the appellant as a Ph.D. candidate w.e.f. 05.06.2010 which is contained in Annexure-2 of the writ



application. Having completed his Ph.D., a notification dated 04.01.2014 was issued by the respondent Comptroller of Examinations of the University as contained in Annexure-5 of the writ application wherein relevant dates of the appellant as a Ph.D. candidate is as follows:-

*“Date of Registration : 05.06.2010
Date of Submission of the Thesis : 06.03.2013
Date of Viva-Voce Examination : 16.12.2013
Effective Date of Publication of Result:
04.01.2014”*

The provisional certificate of Ph.D. in Political Science in the faculty of Social Science was issued on 23.01.2014 by the University which is Annexure-6 to the writ application. A notification being letter no. C/4028 dated 27.08.2014 was issued by the University in which candidates who were desirous of getting Ph.D certificates in accord with Regulation, 2009, were informed to submit a duly filled form along with enclosures in the office of the Comptroller of Examinations of the said University (Annexure-7 of the writ application). An advertisement was issued on 14.09.2014 by the Commission inviting applications from eligible candidates for consideration of the cases of the appointment against post of Assistant Professor in different subjects in different



Universities within the State of Bihar which is Annexure-9 to the writ application wherein with regard to Educational Qualifications clause (3) and clause (4) would be relevant which is extracted hereinbelow:-

“3. The Candidates who have obtained Ph.D. Degree on the basis of Minimum Standard and Procedure Regulation, 2009 framed by the University Grants Commission for M.Phil/Ph.D. Degree, shall be exempted from passing the National Eligibility Test.

4. NET/SET shall also not be required for such Masters Programmes in disciplines for which NET/SET is not conducted.”

Learned counsel for the appellant submitted that an application along with duly filled in form for certificate of Ph.D. degree under Regulation, 2009 before the University on 11.10.2014 was submitted but the said certificate of having done Ph.D under Regulation, 2009 has not been granted as yet by the University. Although the Regulation, 2009 specified at clause (3) that the said Regulations would come into effect from the date of publication in Gazette of India and having been published on 11th July, 2009 the petitioner having been registered on 05.06.2010, thus a certificate of Ph.D. degree ought to have been awarded to the petitioner under the UGC



Regulation, 2009.

However, the writ application preferred by the appellant was dismissed on the basis of the averment made in the counter affidavit filed by the University which stated that the 2009 Regulation of the University Grants Commission has the first batch having been started since July, 2014 for award of Ph.D. degree under UGC Regulation, 2009, the petitioner having been registered in the University on 05.06.2010 for award of Ph.D. degree under the old Regulation and passed out from the University and a provisional certificate granted on 23.01.2014, no direction in favour of the petitioner could be given. Learned counsel for the appellant thus, challenges the order of the learned Single Judge stating that since UGC Regulation, 2009 came into force w.e.f. 11th July, 2009, the appellant having enrolled as Ph.D. candidate in 05.06.2010 and a provisional Ph.D. certificate having been granted on 23.01.2014 the Regulation, 2009 which came into force from the date of its publication on 11th July, 2009, a Ph.D. degree ought to have been issued and as such the appellant ought to have been given exemption from passing the National Eligibility Test (NET) for applying for appointment to the post of Assistant



Professor in view of the advertisement issued by the Commission. He submits that as per clause -20 of the UGC Regulation, 2009, a Ph.D. degree ought to have been issued under the said Regulations as the appellant had registered for Ph.D. course with the University on 05.06.2010, results were published on 04.01.2014 and a provisional certificate issued on 23.01.2014. A representation was also filed by the appellant before the University vide Annexure-10 to the writ application dated 11.10.2014 for grant of Ph.D. certificate under UGC Regulation, 2009 and a form having been filled for grant of the said certificate by the appellant, but the University is sitting tight over the matter. He submits that the petitioner having not been granted the Ph.D. degree under the UGC Regulation, 2009 he has passed the National Eligibility Test (NET) in December, 2015 and submitted the same before the Commission vide Annexure-14 and that some of the candidates who have passed Ph.D. in the year 2007, 2008, such candidates have been called for interview in pursuance to Advertisement no. 51 of 2014. He submits that the UGC Regulations, 2009 has been accorded assent by the Governor Secretariat w.e.f. 06.11.2012 as is evident from Annexure-13 hence certificate of Ph.D. granted to



the petitioner in the year 2014 ought to be granted under UGC Regulation, 2009. He submits that in view of the decision in the case of **Prof. (Dr.) Jagdish Pd. Sharma Vs. State of Bihar & Ors.** **since reported in 2009 (4) PLJR 680** with specific reference to para-19 and 30 submits that the UGC being the supreme central authority, the recommendation of the UGC has to be given effect to by the State and State Universities and there cannot be different dates for its implementation as it has to be the same as made applicable by the UGC. Since the UGC Regulation, 2009, came into force from the date of its publication on 11th July, 2009 as the appellant was registered Ph.D. candidate on 05.06.2010 and certificate having been issued on 23.01.2014 a Ph.D., certificate ought to be issued under UGC Regulation, 2009. However, during course of hearing of the present appeal, the appellant has filed an interlocutory application being I.A. No. 5821 of 2018 stating therein to permit the appellant to take part in the interview in terms of the advertisement so issued for appointment of Assistant Professor in pursuance to Advertisement no. 57 of 2014. He has further submitted that now the UGC Regulations, 2016 has come into force w.e.f. 5th May, 2016 and as per clause



12 and specifically clause 12.1, candidates who have been registered under the Ph.D. program on 11th July, 2009 shall be governed by the UGC Regulations, 2009. For ready reference clause-12 and 12.1 of the said Regulations is extracted below:

“12. Award of M.Phil/Ph.D degrees prior to Notification of these Regulations, or degrees awarded by foreign Universities:

12.1 Award of degrees to candidates registered for the M.Phil/Ph.D. programme on or after July 11, 2009 till the date of Notification of these Regulations shall be governed by the provisions of the UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D Degree) Regulation, 2009.”

He submits that the appellant had cleared his pre Ph.D. test prior to 11th July, 2009 hence even under the UGC Regulation, 2016 the appellant is entitled for a Ph.D. certificate under UGC Regulation, 2009.

A counter affidavit has been filed by the State stating therein that the State Government has no power for issuance of certificate of M.Phil/Ph.D degree under UGC Regulation, 2009.

A counter affidavit has also been filed by the University stating therein that the petitioner was not registered for award of Ph.D degree under UGC Regulation, 2009.



Petitioner had appeared in the pre Ph.D registration test conducted by the University in the month of September, 2008 for registration in Ph.D programme under old Regulation. Thereafter, he submitted synopsis on 05.06.2010 which was accepted by the University on 07.06.2012 which is Annexure-2 of the writ application. The UGC Regulation, 2009 was implemented in the Universities of the Bihar in July, 2014 assent having been given by the Governor Secretariat vide letter dated 06.11.2012 and the State Government has also issued letter with regard to the same in the year 2015. Hence, appellant having done his Ph.D. degree under old Regulation, certificate cannot be issued prospectively in the light of UGC Regulation, 2009.

Counsel for the respondent no. 2, the Vice Chancellor, J.P. University, Chapra also submits that the UGC Regulation after its assent and adoption would be prospective and not retrospective. He further submits that it has been held by a Division Bench in **L.P.A. No. 1340 of 2017 in the case of Sweta @ Sweta Raj Vs. The Patna University, Patna dated 06.10.2018** in a similar matter which came for consideration before this Court and having found that the original writ petitioner did not comply with or fulfilled the procedure to be



followed as per Regulation, 2009 of the UGC and unless and until all requirements laid down under Regulation, 2009 for award of Ph.D. degree are satisfied, the candidates shall not be entitled to the award of Ph.D. degree under UGC Regulation, 2009. He further submits that the UGC Regulation, 2009 has laid down criteria for candidates aspiring for M.Phil/Ph.D programmes. He submits that clause 6 to 18 of the UGC Regulation, 2009 has framed rigorous conditions wherein admission to the Ph.D. programme would have an entrance test followed by interview and would include a course on research methodology with the review of published research in the relevant field. The University or institutions would then decide the minimum qualifying requirement for allowing students to proceed further with the writing of the dissertation. Then there would be evaluation and assessment method wherein prior to submission of the thesis, the student shall make Ph.D. presentation before the department which would be open to all faculty members and research students for getting feedback and comments. The Ph.D candidate shall then publish a research paper in a referred journal before submission of the thesis/monograph for adjudication. Thereafter, the thesis produced by a M.Phil/Ph.D student shall be evaluated by at least



two experts one of whom would be from the outside the State. He submits that the appellant was not subjected to such rigors of eligibility procedure, evaluation and assessment method under the UGC Regulation, 2009. Hence, he is not entitled to certificate under the Regulation, 2009. It is further submitted that the UGC Regulations, 2016 is a supersession of UGC Regulation, 2009 and clause 12 and 12.1 of Regulation, 2016 is a saving clause wherein the candidates who have registered for M.Phil/Ph.D programme under UGC Regulation, 2009 would be governed under the provisions of Regulations, 2009. But since the appellant completed his Ph.D course under the old Regulations without being subjected to the rigorous of Regulation, 2009, a certificate of Ph.D degree cannot be granted under UGC Regulation, 2009 as no procedure as envisaged in UGC Regulation, 2009 was followed.

Counsel for the Commission submits that the appellant has passed his NET exam in December, 2015 and the last date of application in pursuance to the said advertisement being 05.01.2015 the petitioner is not entitled to be considered in view of clause 2 of Educational Qualification of the advertisement as contained in Annexure-9 of the writ application.



Heard the parties.

The appellant had applied for a Ph.D course for which a pre test was held in the year 2008. The appellant had submitted a synopsis on 05.06.2010 which was accepted by the University on 07.06.2012 w.e.f. 05.06.2010. Admittedly, the pre test was conducted before the existence of UGC Regulation, 2009. From a plain reading of UGC Regulation, 2009, it appears that a candidate aspirant for Ph.D degree has to be first recognized as a Research Professor. As per clause 6 to 18 of the UGC Regulation, 2009 a candidate aspirant for Ph.D. has first to undergo an entrance test and would have to pass the M.Phil programme for Ph.D entrance test which would be followed by an interview and candidates at the time of interview are expected to discuss the research entrance/area. After having been admitted as a Ph.D student the candidate would have to undertake course work for a minimum period of one semester and must include a course on research methodology and also involve reviewing of published research in the relevant field. Thereafter, the University would decide the minimum qualifying requirement for allowing student to proceed further with the writing of dissertation. It is thereafter on satisfactory completion of course work and research methodology, the



scholar shall undertake research work and produce draft thesis prior to submission of the thesis. The student shall make a pre Ph.D. presentation in the department open to all faculty members and research students for getting feedback and comments. The Ph.D candidate would then publish one research paper in a referred journal before submission of thesis/monograph for adjudication and produce evidence for the same in the form of acceptance letter or the reprint. The thesis produced by a Ph.D student would then be evaluated by at least two experts one from outside the State. It is thereafter, after completion of evaluation process, a Ph.D thesis would be submitted to the UGC by the University for grant of degree. From the comparative reading of Annexure-2 and Annexure-5 of the writ application, it appears that a synopsis was submitted to the University for a Ph.D degree by the appellant on 05.06.2010. The appellant was then provisionally selected for his Ph.D course on 07.06.2012 w.e.f. 05.06.2010. Apart from this letter, the appellant was not subjected to the rigors of the pre evaluation entrance test and either eligibility criteria for entrance in the Ph.D. course as envisaged in UGC Regulation, 2009. A notification of having passed the Ph.D examination as contained in Annexure-5 of the writ application dated



04.01.2014, only specifies the date of registration, submission of thesis, date of interview and date of publication of the result. The rigors envisaged in UGC Regulation, 2009 and the procedure which was required under the UGC Regulation, 2009 has not been followed. Unless and until all the requirements laid down under UGC Regulation, 2009 for award of Ph.D degree are specified and fulfilled, the candidates could not be entitled to the award of Ph.D. degree under UGC Regulation, 2009. So far as the contention of the petitioner that the UGC Regulation, 2016 clause 12 and 12.1 envisages that all candidates who have registered for the M.Phil/Ph.D programme on or after July, 2009 till the notification of Regulation, 2016 shall be governed by the UGC Regulation, 2009 and Ph.D degree having been awarded after the UGC Regulation, 2009 and before the coming into force of 2016 Regulation, the appellant is entitled for award of Ph.D degree under UGC Regulation, 2009 is without any substance as the UGC Regulation, 2016 was in supersession of UGC Regulation, 2009 and clause 12 and 12.1 was a saving clause for candidates who were registered under UGC Regulation, 2009. The petitioner not having been registered under Regulation, 2009, the procedure required under UGC Regulation, 2009 not having been undertaken by the appellant



as held in the case of **Sweta @ Sweta Raj** (supra) the appellant is not entitled to be granted a Ph.D degree under UGC Regulation, 2009. The appellant is not entitled to the relief as claimed in the appeal. The order of the learned Single Judge passed in C.W.J.C. No. 20409 of 2014 dated 17.03.2016 does not suffer from any infirmity.

The appeal is dismissed, however without any cost.

(Jyoti Saran, J)

(Nilu Agrawal, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08.01.2019
Transmission Date	NA

