

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2048 of 2018

1. Brahmdev Muni Udasin Sanskrit Mahavidyalay, Subhash Chowk, Hajipur, Vaishali, through its In-Charge Principal namely Jay Kishor Pandey, aged about 61 years, Son of Sitaram Pandey, Resident of 252 Lalganj Road, Near Gas Godam, Hathsarganj, Hajipur, P.S.- Hajipur, District- Vaishali.
2. The Governing Body of Brahmdev Muni Udasin Sanskrit Mahavidyalay, Subhash Chowk, Hajipur, Vaishali through its Secretary namely Dr. Dinesh Narayan Mallik @ Dinesh Kumar Mallik Resident of 1A, Rukmi Block, Mukundkunj Apartment, Mahatma Gandhi Nagar, Patna - 800026.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
3. The Joint Secretary to the Government, Education Department, Government of Bihar, New Secretariat, Patna.
4. The Deputy Secretary to the Government, Education Department, Government of Bihar, New Secretariat, Patna.
5. The Director, Higher Education Department, Government of Bihar, New Secretariat, Patna.
6. Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Registrar.
7. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
8. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. K.N. Singh, Sr. Advocate with Mr. Arun Kumar
For the Respondent/s	:	Mr. Jitendra Kr. Roy No-1-SC-13 with Mr. Jai Prabhat Kishore, AC to SC-13
For the University	:	Mr. Gyanand Roy, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

10 03-12-2018

The petitioner had applied for grant of affiliation with

Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

The University had recommended grant of permanent affiliation



in favour of the College upon satisfaction that the College fulfilled the requisite criteria. Section 21(2)(d) of the Bihar State Universities Act, 1976 (hereinafter referred to as 'the Act') contemplates grant of approval of affiliation by the State of Bihar for an affiliation to become effective. For the said purpose, the matter was referred to State of Bihar by the University. The Education Department, Government of Bihar, however, by the impugned memo No. 1958 dated 27.11.2017, issued under the signature of the Principal Secretary, Education Department, Government of Bihar refused to grant the approval on the ground of non-fulfillment of certain conditions as prescribed in the departmental resolution No. 2291 dated 18.10.1976. This is the background in which the present writ application has been filed seeking quashing of the said order dated 27.11.2017 and seeking direction to the Respondent-State of Bihar to grant permanent affiliation to the petitioner, Brahmdev Muni Udasin Sanskrit Mahavidyalay, Hajipur at Vaishali. Since according to the petitioner, the College fulfills the entire eligibility criteria prescribed under resolution No. 2291 dated 18.10.1976 (supra).

2. I have heard Mr. K.N. Singh, learned Senior Counsel appearing on behalf of the petitioner, Mr. Gayanand



Roy, learned Counsel for the University and Mr. Jai Prabhat Kishore, learned AC to SC-13, appearing on behalf of the State.

3. When the matter was taken up on 07.09.2018, the Court noticed that there were three reasons mentioned in the impugned order for denial of approval, namely:-

- (i) the inspection fee had not been paid,
- (ii) affiliation fee had not been paid and
- (iii) against the requirement of teachers, there were only 7 teachers working.

Post of the Principal is also vacant. There are four posts of non-teaching employees which, too, are vacant.

4. It was argued by Mr. Singh, learned Senior Counsel appearing on behalf of the petitioner on 07.09.2018, that the first and the second deficiencies did not exist at all and in respect of third deficiency, it was argued that it was because of the State Government's decision not to make any appointments in affiliated Colleges that appointments could not be made. Referring to letter dated 13.10.2009 (Annexure-3), he had contended that the said letter restrained affiliated Colleges from making appointments against teaching and non-teaching posts. In view of the denial of approval on the ground of absence of sufficient number of teachers and in the



light of the submission made on behalf of the petitioner in the light of letter dated 10.10.2009 that it was the State Government which had restrained affiliated Colleges from making appointments, the Court by order dated 07.09.2018 had directed the Principal Secretary, Education Department, Government of Bihar to disclose the policy of the State Government behind stopping of the appointments against teaching and non-teaching employees in affiliated Colleges right from 2009.

5. The Court had taken serious note of the matter and had directed the Principal Secretary to inform this Court whether such decision was in public interest and was not adversely affecting the education system in the State of Bihar. The Court also wanted to know from the State Government as to whether all teaching posts in constituent Colleges in the State are filled or not since the State Government was expecting full compliance, in respect of teachers in affiliated Colleges.

6. In compliance of the said order, the Principal Secretary has also filed a supplementary counter affidavit. Referring to the letter dated 13.10.2009 (supra), it has been urged that the direction issued therein was in relation to the Universities and its constituent Colleges, as is evident from the



letters which was merely advisory in nature and it was not at all mandatory. It has also been stated that the said letter dated 13.10.2009 is not applicable to the affiliated Colleges and the University has wrongly interpreted applied the said letter dated 13.10.2009 by extending the direction contained therein to the affiliated Colleges also. Court's attention has also been drawn to a decision of the High Level Committee in its meeting dated 27.06.2011, based on which the State Government has taken a decision, as contained in resolution dated 05.07.2012 (Annexure-5/1), it is manifest from which also that the decision, in respect of the Universities and its constituent Universities only and not in respect of the affiliated Colleges, the affidavit reads..

7. In the light of the stand taken on behalf of the State of Bihar in its supplementary counter affidavit, I had directed the University by order dated 12.10.2018 to file supplementary counter affidavit, which has been filed. In the supplementary counter affidavit, the University has stated that the University had received from time to time, letters from the State Government containing the directions not to make any appointment and in the light of those directions, the University had directed the affiliated Colleges not to make appointments.



However, it has been stated that in the light of the statement made by the State Government in its present supplementary counter affidavit, it cannot be said that there is any stay of appointments to be made by the Governing Body of the affiliated Colleges, and the University will act accordingly and notify this position to all the affiliated Colleges under its jurisdiction to take steps for appointment in accordance with law against the sanctioned and vacants posts.

8. If what has been averred in the supplementary counter affidavit filed on behalf of the University is to be accepted, for nine years, after issuance of letter by the Department of Education, Government of Bihar, there were no appointments against teaching and non-teaching posts in affiliated Colleges. There is no clue whether the letter of the Education Department dated 13.10.2009 was mis-interpreted only by the present Kameshwar Singh Darbhanga Sanskrit University, Darbhanga or all Universities in the State of Bihar were carrying the same impression.

9. It is shocking to the Court that in the name of existence of some kind of confusion, for altogether nine years, appointments in educational institutions remained stayed. This Court does not have to blame any functionary under the Act for



this precarious situation. The damage caused to the institutions because of confusion is unfathomable, which every stake holder will have to accept.

10. Be that as it may, since the confusion no more survives, the petitioner shall be at liberty to take steps for appointing teaching and non-teaching employees for fulfilling the requisite conditions for grant of affiliation/approval of affiliation in accordance with law after following due procedure. Once the College does so, in accordance with law, the College will be at liberty to take steps for grant of affiliation/approval of affiliation by the University and the State of Bihar, as the case may be.

11. In the facts and circumstances of the case as noted above, I direct the Principal Secretary, Education Department, Government of Bihar to ensure that a communication in the nature of clarification is issued to all the Vice-Chancellors of the Universities in the State of Bihar referring to letter dated 13.10.2009, making it clear that the same does not refer to affiliated Colleges. The respective Universities, in turn, would be obliged to inform in this regard the Colleges which are affiliated by such Universities.

12. Let a copy of this order be communicated to the



Chancellor, Universities of Bihar and the Principal Secretary,
Education Department, Govt. of Bihar, Patna forthwith.

13. This application stands disposed of.

(Chakradhari Sharan Singh, J)

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