

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.900 of 2015

Prof. (Dr.) Arun Kumar, son of Sri Ram Chandra Prasad Sinha, resident of North of Income Tax Colony, Bhutnath Road, PO- Lohiyanagar, PS-Agamkuan, Patna 800024.

... Petitioner ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Science & Technology, Government of Bihar, Patna.
3. The Director, Department of Science & Technology, Government of Bihar, Patna.
4. Bihar Public Service Commission, Jawaharlal Nehru Marg, Patna.

... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kunal Tiwary, Adv.
For the Respondent-State	:	Mr. Amresh Kumar Sinha, AC to GA-1
For the Respondent-BPSC	:	Mr. Sanjay Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 04-02-2019

This appeal filed under Clause 10 of the Letters Patent of the High Court of Judicature at Patna arises from a judgment and order dated 27.02.2015 of a learned Single Judge passed in CWJC No.1052 of 2014, whereby the writ petition has been dismissed.

The facts leading to the writ petition briefly stated is that the appellant-writ petitioner, an applicant for the post of Principal, Government Engineering Colleges within the State of Bihar in response to Advertisement No.04 of 2009, though was found suitable for such appointment by the Bihar Public



Service Commission (hereinafter referred to as 'the Commission') and even recommendations were made to such effect but the State Government in the Department of Science and Technology were of different opinion and the Principal Secretary of the Department by the order impugned in the writ petition has been pleased to reject the recommendation on grounds that the appellant-writ petitioner did not possess the Ph.D. qualification which is essential for appointment to the post of Professor, at the time of his such appointment in a Private Engineering College in Maharashtra and thus not qualified for appointment. The order passed by the Principal Secretary, Science and Technology Department, Bihar, Patna bearing Memo No.448 dated 14.02.2014 was upheld by the learned Single Judge to dismiss the writ petition and feeling aggrieved he is before this Court.

We have heard Mr. Kunal Tiwary, learned counsel appearing for the appellant-writ petitioner, Mr. Amresh Kumar Sinha, learned Assisting Counsel to Government Advocate No.1 for the State and Mr. Sanjay Pandey, learned counsel representing 'the Commission'.

Mr. Tiwary, learned counsel appearing on behalf of the appellant-writ petitioner has canvassed that the order of the



Principal Secretary, Science and Technology Department is wholly illegal inasmuch as the appellant-writ petitioner possessed the qualification for appointment on the post of Professor in the Engineering College and also obtained the Ph.D. degree in 2002 much before it was made mandatory under the regulations framed by the All India Council for Technical Education ('AICTE' for short) and even before the advertisement in question was published in the year 2005. He submits that despite repeated recommendations by 'the Commission' for the appointment of the appellant-writ petitioner against one such post of Principal, the Principal Secretary, Science and Technology Department has illegally denied this appointment to the appellant-writ petitioner on a completely irrelevant issue i.e. eligibility of the appellant-writ petitioner to hold the post of Professor when there is nothing on record to demonstrate that the appellant-writ petitioner was found wanting on qualification for holding such post.

Mr. Tiwary submits that in a similar manner another applicant Dr. Achintya was denied appointment by the State but thereafter fearing of contempt that he was provided with the appointment which eludes the appellant-writ petitioner.

The argument advanced by Mr. Tiwary has been



seconded by Mr. Pandey, learned counsel appearing for 'the Commission' who submits that it is on a complete misconception of the issue that the recommendation of 'the Commission' has been rejected by the Principal Secretary.

Mr. Amresh Kumar Sinha, learned Assisting Counsel to Government Advocate No.1 while defending the order impugned has submitted that since the very status of the appellant-writ petitioner to hold the post of Professor was under cloud and which was an essential criteria for appointment to the post of Principal, no infirmity can be found in the order impugned and even if a similarly placed applicant namely, Dr. Achintya was given such appointment albeit under the orders of this Court, the appellant-writ petitioner cannot seek similar treatment.

Having heard learned counsel for the parties we are satisfied to note that the appellant-writ petitioner has been wronged and the order of rejection is not only *per se* illegal but is a reflection of perversity because a non-issue regarding the eligibility of the appellant-writ petitioner for being appointed as Professor in the Engineering College at Pune is set up as a defence to justify the illegal action by the Principal Secretary, Science and Technology Department leading to the rejection



order even when the pleadings on record confirm that not only the Engineering College in which the appellant-writ petitioner was appointed as Professor was affiliated to Pune University and was not a private college, the appellant-writ petitioner acquired the Ph.D. qualification in the year 2002 much prior to laying down of such mandatory qualification by 'the AICTE' which got implemented in the State of Bihar with effect from 30.12.2003 and in the State of Maharashtra subsequently on 24.03.2006.

We deem it necessary to refer to some of the dates gathered from the pleadings on record and which have strong bearing on the opinion formed by us hereinabove because the events noted hereinbelow, are uncontested.

The petitioner is a Bachelor in Engineering (Civil), M.Sc. in Civil Engineering and also possesses Ph.D. in Civil Engineering. With these qualifications the appellant-writ petitioner had applied for appointment against one post of Principal in the Government Engineering Colleges in the State of Bihar but has been denied by the respondent-State.

The relevant dates leading to the order impugned are as follows:

17.08.1990: The petitioner appointed as a Lecturer at S.R.E.S.



College of Engineering, Kopargaon, District-Ahmadnagar in the State of Maharashtra, a permanently affiliated Engineering College with Pune University.

09.07.1992: The appellant-writ petitioner was appointed as an Assistant Professor in the said College on which post he continued till 30.09.2000.

15.03.2000: 'AICTE' laid down service conditions for Degree Level Technical Institutions vide Annexure 'A' to the counter affidavit and made it effective with effect from 01.01.1996 or with effect from the date of notification issued by the State Government/Union Territory Administrations.

The regulation at table E/1 prescribed Ph.D. degree for the post of Professor.

05.06.2000: An advertisement was published inviting applications for appointment on the post of Professor in Civil Engineering, in the college where the appellant-writ petitioner was serving.

26.09.2000: The appellant- writ petitioner was appointed as a Professor in Civil Engineering in the College of Engineering, Kopargaon where he was serving as



an Assistant Professor vide Annexure 1 to the writ petition.

09.01.2001: The University of Pune granted approval to the appointment of the appellant-writ petitioner as Professor in Civil Engineering in the College of Engineering, Kopargaon, District- Ahmadnagar with effect from 1.10.2000 vide Annexure 3 to the writ petition.

Dec., 2002: The appellant-writ petitioner was awarded Ph.D. degree from Vinoba Bhave University, Hazaribag vide enclosure to Annexure 'G' to the counter affidavit of the State in the writ petition.

30.12.2003: 'AICTE' Regulations were implemented in the State of Bihar by Resolution bearing Memo No.1995 dated 30.12.2003 vide Annexure 'C' to the counter affidavit of the State in the writ petition.

24.03.2006: The 'AICTE' recommendations implemented in the Pune University vide English translation of Annexure 19.

04/2009 : The Commission' published advertisement for appointment to the two posts of Principal in Government Engineering Colleges in the State of



Bihar vide Annexure 6 to the writ petition.

02.04.2009: 'The Commission' published corrigendum inviting applications for appointment against 7 posts of Principal vide Annexure 7 to the writ petition.

09.03.2011: 'The Commission' recommended the names of 3 persons, namely, Dr. Achintya, Dr. Dhruva Prasad and Dr. Arun Kumar (the appellant-writ petitioner) vide Annexure 8 to the writ petition.

23.11.2011: Letter of the Assistant Registrar, Pune University clarifying that at the time of appointment of the appellant-writ petitioner as Assistant Professor there was no requirement of possessing Ph.D. qualification and thus his appointment as Professor without Ph.D. qualification was in accordance with the service rules vide Annexure 21 to the writ petition.

17.04.2012: On a writ petition filed by Dr. Achintya complaining of delay by the State in acting on the recommendation, the High Court directed the State to take a decision on the recommendation vide Annexure 9 to the writ petition.

29.11.2012: 'The Commission' reiterated the recommendation



and in fact the full Board of 'the Commission' after holding meeting passed a resolution that the State should have made the appointments as per the recommendation.

29.11.2012: 'The Commission' taking note of the objection raised by the State for not appointing the appellant-writ petitioner against the post of Principal for not possessing the Ph.D. degree sought clarification from the Joint Secretary of the Science and Technology Department, Government of Bihar while informing them that the appointment of the petitioner to the post of Assistant Professor and Professor had been done by a Selection Committee constituted by the Pune University after succeeding in an open selection vide Annexure 11 to the writ petition.

07.05.2013: The Full Board of 'the Commission' reiterated their recommendations dated 09.03.2011 for appointment of the three candidates against the post of Principal vide Annexure 14 to the writ petition.

27.05.2013: Another recommendation was made for appointment by 'the Commission' vide Annexure



15 to the writ petition.

10.01.2014: Present writ petition was filed by the appellant-writ petitioner seeking a direction to the respondents to act on the recommendation of 'the Commission' and issue appointment letter for his appointment as Principal, Government Engineering College.

14.02.2014: While the writ petition was pending, the order bearing Memo No.448 dated 14.02.2014 was passed by the Principal Secretary, Science and Technology Department and though the case of the appellant-writ petitioner and that of Dr. Achintya was on similar footing, but while approving the recommendation in so far as Dr. Achintya is concerned apparently to preempt the contempt proceeding but the recommendation of the appellant-writ petitioner was again rejected on grounds that he did not possess Ph.D. qualification at the time of his appointment as Professor in Pune University.

A plain reading of the sequence of events above would confirm that the service rules regulating the



appointment of Professor under the Pune University did not mandate Ph.D. qualification as eligibility qualification for being appointed against such post in the year 2000 when the petitioner was appointed against one such post.

The sequence of events also confirm that for the first time under the 'AICTE' Regulation, 2000 the qualification of Ph.D. became a mandatory qualification for holding such post but the implementation of the 'AICTE' Regulation was left at the discretion of the respective State Government/Union Territories and whereupon, whereas the State of Bihar chose to implement the same with effect from 30.12.2003, in so far as Pune University is concerned, they implemented it with effect from 24.03.2006 and much prior to the implementation of the 'AICTE' Regulation in Bihar and Maharashtra, the appellant-writ petitioner had already acquired the Ph.D. qualification in the year 2002.

In other words, neither the appointment of the appellant-writ petitioner against the post of Professor in the Engineering College at Pune suffered any infirmity for want of eligibility qualification nor the Engineering College was a private Engineering College rather was affiliated with the Pune University as manifest from Annexure 3 seen alongside



Annexures 1 and 2 to the writ petition.

‘The Commission’, fully vested with jurisdiction in such matters of selection, having examined each aspect of the matter, made repeated recommendations to the Government on 09.03.2011, 07.05.2013 and again on 27.05.2013 but the obstinate nature of the Principal Secretary, Science and Technology Department, Government of Bihar, did not permit him to appreciate the opinion of the Full Board of ‘the Commission’, rather he chose to stick to his own view that the appellant-writ petitioner was ineligible for appointment because he did not possess the Ph.D. qualification at the time of appointment as Professor in the Engineering College at Pune.

Unfortunately for the petitioner, even the learned Single Judge has missed to take notice of these relevant aspects of the matter rather he has proceeded on the premise that possessing Ph.D. was an essential qualification for appointment as a Professor even when the letter of the Pune University on record at Annexure 21 had clarified this position.

Another aspect of the matter which perhaps weighed in the mind of the learned Single Judge was that in



between this period, the appellant-writ petitioner was appointed against the post of Director, Department of Science and Technology, Government of Jharkhand but subsequently discharged on similar ground of lacking in requisite qualification.

We are in respectful disagreement with the opinion formed by learned Single Judge on this count because the termination of service of the appellant-writ petitioner by the Jharkhand Government, even if on similar grounds is neither conclusive on the legality of the decision making process leading to termination nor on the eligibility of the appellant-writ petitioner for appointment as a Principal, Government Engineering College.

Another interesting part of the contest is that the Principal Secretary, Science and Technology Department, Government of Bihar has not rejected the recommendation of 'the Commission' on grounds that the petitioner is ineligible for appointment as Principal in Government Engineering Colleges rather he has disqualified him on grounds that the petitioner was not eligible for appointment as a Professor in the Engineering College at Pune for want of Ph.D. qualification, which in our opinion was an irrelevant



consideration for rejecting the recommendation of 'the Commission' because it is not the appointment of the appellant-writ petitioner as a Professor in Pune University which was put to test rather it is undisputed that when the appellant-writ petitioner applied for the post of Principal, Government Engineering Colleges pursuant to the advertisement in question, he not only held the post of Professor in the Pune University but had also acquired the Ph.D. qualification in the year 2002 and also had requisite working experience, which persuaded 'the Commission' to recommend his name for one such post.

We completely fail to appreciate as to how in such undisputed circumstances, the recommendation of 'the Commission' for appointment of the appellant-writ petitioner as Principal, could be rejected by the Principal Secretary, vide order dated 14.02.2014.

This appeal was heard by a Division Bench of this Court on 16.12.2015 and after hearing the parties, by way of interim measure the Division Bench directed that the filling up of the posts of Principal in the Government Engineering Colleges in the State of Bihar pursuant to Advertisement No.4 of 2009 would be subject to the outcome of the appeal.



For the discussions above, we are persuaded to hold that the appellant-writ petitioner has been wronged, wholly on account of obstinacy of the Principal Secretary, Science and Technology Department in not appreciating the repeated recommendations of the Full Board of 'the Commission' who found the appellant-writ petitioner fully qualified for appointment as a Principal in Government Engineering Colleges in the State of Bihar.

The order of rejection dated 14.02.2014 in so far as it deals with the case of the appellant-writ petitioner at paragraph 7 is a perversity because the rejection rests on reasons which were irrelevant for appreciating the recommendation of 'the Commission'.

In result, the order of the Principal Secretary, Science and Technology Department, bearing Memo No.448 dated 14.02.2014 in so far as it rejects the recommendation made by the Full Board of 'the Commission' for appointment of the appellant-writ petitioner against the post of Principal in Government Engineering Colleges in the State of Bihar cannot be upheld and is accordingly quashed and set aside and consequentially the Principal Secretary, Science and Technology Department, Government of Bihar, Patna is



directed to act on the recommendation of ‘the Commission’ dated 09.03.2011 and take it to its logical conclusion expeditiously and preferably within three months from the date of receipt/production of a copy of this judgment.

The order of the learned Single Judge passed in CWJC No.1052 of 2014 is accordingly set aside and the writ petition is allowed.

The appeal is allowed but without any order as to costs.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Skpathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA

