

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20666 of 2019

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Nityanand Sanskrit College Amarut through its Principal namely Damodar Mishra, aged about 64 years (male), son of Late Deodutt Mishra, Resident of Village- Sungarise, P.s.- Paraiya, Distt.- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
2. The Principal Secretary Department of Education, Govt. of Bihar, Patna
3. The Director Higher Education, Govt. of Bihar, Patna
4. Kameshwar Singh Darbhanga Sanskrit University Darbhanga through its Registrar
5. The Vice Chancellor Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
6. The Registrar Kameshwar Singh Darbhanga Sanskrit University, Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr.Satyam Shivam Sundaram, Adv.
For the University	:	Mr. Awadhesh Pd. Sinha, Adv.
For the Respondent/s	:	Smt.Binita Singh (Sc28) Mr. Nishant Kumar Jha, SC-28

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 16-10-2019 Heard learned counsel for the petitioner and the counsel appearing on behalf of the State and learned counsel appearing on behalf of the University.

2. The grievance of the petitioner in the present writ application is against the order dated 16.9.2019 (Annexure-4).

3. Mr. P.K. Shahi, learned senior counsel appearing on behalf of the petitioner would submit that institution in question was established in 1972 and due to arbitrary act of the



respondent State the institution has to suffer set back.

4. Mr. Shahi submits that petitioner's affiliation is rejected on the ground of availability of only six teachers against 10 sanctioned. The University is taking plea that unless the affiliation is granted the selection committee shall not be constituted, how the petitioner shall comply the direction as to appointment of remaining four teachers.

5. Mr. Shahi submits that objection as to the 6 teachers against 10 prescribed under the statute is concerned, the action of respondents is arbitrary. He submits that University is not constituting selection committee on the ground of lack of affiliation whereas the State Government is insisting time and again that unless there is 10 teachers the institution shall not be granted affiliation.

6. So far as the other objection as to 6 teachers out of 10 prescribed under the University Statute, Mr. Shahi is correct in making submission that imposing this condition is thoroughly misconceived and discriminatory. He submits that almost all the institutions of the State is working strength less than approximately 50 per cent teaching staff therefore, the education department before imposing such condition has to see that all the institutions whether Government or constituent unit



are equipped with 100 per cent of teaching strength and if they apply the same standard then they have to close almost all their institution before refusing affiliation to the petitioner.

7. The Court also finds substance in the submission of Mr. Shahi that the petitioner cannot comply with the requirement of appointing of all teachers unless the affiliation is granted.

8. The requirement under the University Act for appointment is that there should a selection committee duly constituted by the University and unless the University constitute the selection committee appointment cannot be made in the institution. In fact, similar situation was noted by the Full Bench in the case of Braj Kishore reported Full Bench has considered the requirement of setting of institution vis- a -vis the requirement under section 35 of the Bihar State University Act. The Full Court held out that no institution can exist without minimum infrastructures but the principle laid down in that case is only for academic use for the department as they are not understanding the judgment of the Full Bench and they are insisting upon the requirement of appointment of all 10 teachers in terms of of the statute which is impossible in the absence of affiliation.



9. Under the aforesaid circumstances, the Court is constrained to quash Annexure-4 the order dated 16.9.2019. The Court directs the respondents to revisit and pass fresh appropriate order considering the fact that the institution is old one established in 1972 and it has requisite area of land. The University at the same time is directed to constitute selection committee for appointment of teachers in the institution in question within a period of one month from today so that the institution may take appropriate decision for selection and appointment of teachers.

10. In the meanwhile, the respondent State shall grant temporary affiliation to the institution for appointment all the teachers against sanctioned strength of 10 teachers and thereafter the State Government is required to pass appropriate fresh order for grant of permanent affiliation to the institution having regard to the fact that the institution in question is approximately 37 years old and it find mention in the Bihar Gazette.

11. Necessary decision at the level of the University shall be taken within a period of one month and the State Government within a period of 45 days from the date of receipt/production of a copy of this order for grant of temporary



affiliation so that the University may take steps for appointment of regular teachers.

12. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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