

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18573 of 2018

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1. Md. Kalam, Son of Md. Maroon, Resident of Chirmara, P.O.-Bhuskaul, P.S.-Keoti, District-Darbhangha.
 2. Md. Inam Uddin, Son of Md. Zeya, Resident of Chhoti Ballia Uppertola, P.O.-Lakhminia, P.S.-Ballia, District-Begusarai.
 3. Mukund Kumar Thakur, Son of Ram Khelawan Thakur, Resident of P.O +P.S.-Singhia, District-Samastipur.

... .. Petitioners

Versus

1. The State of Bihar Through the Principal Secretary, Education Department, Bihar, Patna.
2. The Chandellor of Universities of Bihar, Raj Bhawan, Patna.
3. L.N. Mithila University, Darbhanga through its Registrar
4. Vice Chancellor. L.N. Mithila University, Darbhanga.
5. Registrar, L.N. Mithila University, Darbhanga.
6. Controller of Examinations, L.N. Mithila University, Darbhanga.
7. Deputy Controller of Examinations, L.N. Mithila University, Darbhanga.
8. Head of the Department of Education, L.N. Mithila University, Darbhanga.

... .. Respondents

Appearance :

For the Petitioners :	Mr. Abhinav Srivastava, Advocate
For the Respondent State:	Mr. Umesh Narayan Dubey, AC to GP-27
For the Respondent University :	Mr. Ajay Behari Sinha, Advocate
	Ms. Seema Ghazala, Advocate
For the Chancellor :	Mr. Rajendra Kumar Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

8 22-01-2019 Three petitioners are seeking direction in the present writ application to the respondent Lalit Narain Mithila University, Darbhanga (hereinafter referred to as ‘the University’), to allow their registration to pursue Pre-Ph.D. course work under the University in the Department of



Education of the University on the basis of them having qualified Pre-Ph.D. registration test, 2017, conducted by the University. They are also seeking direction to the University to refrain from acting in furtherance of subsequent notification dated 23.07.2018 in respect of Ph.D. Admission Test, 2018, so far as the same relates to the subject of Education.

Counter affidavit and supplementary counter affidavits have been filed on behalf of the University and an affidavit has also been filed on behalf of the Office of the Chancellor.

I have heard Mr. Abhinav Srivastava, learned counsel appearing on behalf of the petitioners, Mr. Ajay Behari Sinha, learned counsel appearing on behalf of the University and Mr. Rajendra Kumar Giri, learned counsel representing the Office of the Chancellor. Mr. Umesh Narayan Dubey, learned A.C. to G.P.-27 is also in attendance.

It transpires from the pleadings on record that applications were invited through Notification dated 04.09.2017, issued by the University for Pre-Ph.D. Registration Test, 2017, to be conducted by the University for registration in Ph.D. Programme in different subjects including the subject of Education. From the notification, it appears that six vacancies in



Education Department of the University were shown for the Ph.D. course. The petitioners claim that they were eligible for admission and accordingly applied and appeared for Pre-Ph.D. Registration Test, 2017 (PRT). The test was held on 15.10.2017. The result of the test was declared subsequently. It is the case of the petitioners that though only six vacancies were shown in the advertisement, as per the result, there were 16 seats and 30 candidates qualified. The petitioners claim that they were also successful for Pre-Ph.D. Registration Test. On 17.01.2018, the University came out with a list of 18 provisionally selected candidates for admission to Ph.D. programme, 2017 in subject Education. It is accordingly the case of the petitioners that though only six seats were advertised, the University came out with a list of 18 candidates, who have been selected for admission in Ph.D. Course. It is the case of the petitioners that no exercise at all was conducted for determining the number of vacancies before publication of the advertisement and the entire exercise of selection of candidates for Ph.D. admission is contrary to the UGC (Minimum Standard and Procedure for Award of M.Phil/Ph.D. Degree) Regulation, 2009 (hereinafter referred to as 'the 2009 Regulation').

Mr. Abhinav Srivastava, learned counsel appearing on



behalf of the petitioners, has submitted that Regulation 8 of the 2009 Regulation specifically prescribes that the number of seats for Ph.D. must be decided well in advance and notified on the University's *website* or advertisement. Regulation 7 of the 2009 Regulation requires that all Universities, Institutions, Deemed to be Universities, must lay down and decide on annual basis, a pre-determined and manageable number of M.Phil and Pre-Doctoral students depending upon the number of available Faculty, Supervisors. He contends that under the said provision, a Supervisor cannot have, at any given time, more than eight Ph.D. scholars and five M.Phil scholars. Referring to the said provision, he submits that whereas only six vacancies were advertised, 18 candidates have been declared successful for admission, which shows that the University authorities had no pre-determined number of vacancies for Ph.D. admission. On this ground alone, the petitioners seek this Court's interference in the process of selection of admission to Ph.D. course.

It is noteworthy that it is not the case of the petitioners in the present writ application that persons of inferior merit, based on the entrance test, have been selected for admission in Ph.D. course ignoring their merit. It is also not their case that for the purpose of admission in Ph.D. course they have, in any



manner, been prejudiced because of selection of more persons than number of vacancies advertised. Mr. Abhinav Srivastava has contended that there was no stipulation in the advertisement inviting application that the seats were likely to increase and decrease and, therefore, selection of more candidates than the advertised vacancies is completely illegal, requiring this Court's interference. According to him, the University has attempted to fill up even future vacancies, which could have been filled up on the basis of future advertisement.

In the counter affidavit filed on behalf of University, it has been stated that the position of the petitioners in the merit list is much below. They are at Sl. Nos. 40, 31 and 37 respectively, whereas 16 vacancies only had been determined. In respect of entrance test to be held on the basis of 2018 notification, it is the case of the University that these petitioners have not even applied against the said notification and their prayer to stay the process of selection based on 2018 notification is not sustainable. On the point of calculation of vacancies it is stated in the counter affidavit that though only six seats were notified for Education, there were 10 more seats, which were kept for National Eligibility Test (NET) qualified candidates, which number was added to the vacancies



advertised since NET qualified candidates were also asked to fill up the application along with PRT-2017. In addition, there were two seats, which were meant for Teachers already under the service of the University in accordance with Clause 5 of the Ordinance and Regulation for Ph.D. Degree issued by the Governor's Secretariat dated 06.11.2012. This is how, it has been stated that numbers of the vacancies (6) was rectified as 16 before the last date fixed for submission of application. It has also been stated that the University carried out the exercise as per the UGC Regulation and the Ordinance and Regulation for Ph.D. Degree duly approved by the Chancellor. It has been emphasized that decision to increase the vacancies to 16 was taken before expiry of the last date of application for PRT.

When the case was taken upon on 27.09.2018, the Court, upon going through the counter affidavit filed on behalf of the University, had directed the University to file a supplementary affidavit stating the exercise undertaken by the University to determine number of vacancies before issuance of the notice for Pre-Ph.D. Registration Test dated 04.09.2017 and Ph.D. Admission Test-218 dated 23.07.2018. In the supplementary affidavit filed in compliance thereof, the University took the plea that vacancy in the Department of



Education for PRT was calculated on the basis of list prepared in May 2016 and provided by the University. There were, however, 16 vacancies out of which 10 seats were for NET/JRF successful candidates and six for PRT candidates. For PRT-2018 again, the Deputy Controller of Education has provided the list of prospective Supervisors prepared by the Committee on the basis of which 46 vacancies have been calculated. The Court, being not satisfied with the averments, which did not disclose the manner of calculation of vacancies, by order dated 20.11.2018 made tentative observation that there was no such exercise undertaken, which was mandatory under the extant Regulations. Order dated 20.11.2018 reads thus :-

“Supplementary affidavit, which has been filed on behalf of the University, does not answer the specific query made by this Court in order dated 27.09.2018 inasmuch as it does not disclose the specific exercise undertaken by the University for the purpose of computation of the number of vacancies for admission to Ph.D. Course in the subject of Education. This is enough indication to show that in fact there was no such exercise undertaken, which is a mandatory requirement under the extant regulations. This also suggests that the respondents are either unaware of the mandatory statutory provisions governing admission to Ph.D. course or they are acting deliberately in breach thereof.

On the next date fixed, the Court will expect the parties to address this Court extensively dealing with the provisions under University Grants Commission (UGC)



(Minimum Standards and Procedures for Awards of M.Phil./Ph.D. Degree) Regulation, 2009 and University Grants Commission (UGC) (Minimum Standards and Procedures for Awards of M.Phil./Ph.D. Degree) Regulation, 2016, as the Court is of the view that unless specific directions are issued to the Universities in the State of Bihar to be followed strictly in the matter of admission to Ph.D Course, situation is very unlikely to improve.

For the said purpose, let the matter be listed on 06.12.2018 under the heading 'For Admission' to be taken up at 11:00 a.m."

A second supplementary affidavit has thereafter been filed wherein it has been stated that prior to 2017, NET/JRF qualified candidates were allowed admission at the department level, which suggests that prior to 2017, the University was not following any procedure prescribed under the 2009 Regulations for admission to Ph.D. Course. It is thereafter mentioned that the Departmental Research Committee in its meeting held on 31.05.2017 decided to reserve 10 seats for NET/JRF qualified candidates. The manner in which the 16 vacancies came to be worked out has been described in paragraph 7 and 8 of the supplementary counter affidavit, paragraph 7 reads thus :-

"7. That thereafter university prepared Panel of Supervisors. List of 23 number of eligible Supervisors was prepared by the University and vacancy was calculated on the basis of number of supervisors available. It will not be out of place to mention here that as per the UGC norms 2012



and Bihar State Universities Act 1976 (as amended upto date) norms were prepared for allotment of scholars initially 23 vacancies were identified. Two candidates wanted guide of their choice therefore the remaining effective vacancy was 21. Since five vacancies left for modification of their Synopsis (due to shortage technically) only 16 seats were advertised. Out of 16 seats which were advertised 10 were reserved for NET/JRF candidates. While advertising these seats reservation policy was followed.”

It is the stand on behalf of the University, with reference to the aforesaid averments made in the counter affidavit and supplementary counter affidavits that there is no irregularity in determining the number of vacancies. The University Grants Commission, in exercise of powers conferred by Clause (e) and (g) of sub-Section (1) of Section 26 of the University Grants Commission Act, 1956, has framed 2009 Regulation laying down minimum standards and procedures for award of M.Phil/Ph.D. Degree.

There is no gainsaying that the said Regulation is mandatory for award of a Ph.D. Degree under the said Regulation. It lays down, *inter alia*, eligibility criteria for M.Phil/Ph.D. Supervisors, mode and manner of notifying the number of seats for M.Phil and Ph.D. Course to be filled-up, keeping in mind manageable number of M.Phil. and Doctoral students depending upon the number of eligible



Faculty/Supervisors. Regulation 7 requires that the Universities/Institutions must lay down a principle to decide on annual basis a pre-determined and manageable number of students depending upon the number of Supervisors. It further stipulates that one Supervisor cannot have, at any given point of time, more than eight Ph.D. Scholars and five M.Phil Scholars. Regulation 8 mandates that number of seats for M.Phil and Ph.D. must be decided well in advance and notified on the University's *website* or advertisement. The Universities/Institutions are required to widely advertise the number of available seats for M.Phil/Ph.D. status and conduct admission on regular basis.

From the language of Regulation 8, it can be easily seen that much emphasis has been given on advertising the number of available seats for the said courses, apparently with the clear purpose to allow opportunity to all eligible willing candidates to participate in the process of selection for admission in Ph.D./M.Phil Courses. Regulation 9 lays down the procedure for admission, Sub-Regulation (i) of which requires admission through an entrance test conducted at the level of the individual University. The provisions enables the University to decide separate terms and conditions for those who have



qualified UGC/CSIR(JRF) Examination/SLET/GATE/Teacher Fellowship Holder or have passed M.Phil Programme for Ph.D. Entrance Test. The entrance test is to be followed by an interview to be organised by the University as per sub-Regulation (ii) of Regulation 9. Sub-regulation (iii) requires that at the time of interview the Doctoral candidates are expected to discuss their research interest/area. Regulation 9 further requires that only the pre-determined number of students may be admitted to M.Phil/Ph.D. Programme. Regulation 11 requires due attention to National/State reservation policy while granting admission to students in M.Phil/Ph.D. Courses. It seems and which is not in dispute that 2009 Regulations could be adopted for the Universities of the State of Bihar. In November, 2012, with coming into force of Draft Ordinance and Regulations governing the award of Ph.D. Degree by the State Universities, in tune with what has been provided in 2009 Regulation, the procedure for admission to Ph.D. Programme has been laid down. The Ordinance too stipulates advertisement in leading newspapers and uploading on University's *website*, and an interview to follow the written test as prescribed in 2009 Regulation. Clause 4(iii) of the Ordinance states that the candidates, who have qualified in UGC/CSIR(JRF)



Examination/SLET/GATE/Teacher Fellowship Holder or have passed M.Phil Programme for Ph.D. Entrance Test, are eligible for registration for Ph.D. Programme without appearing in PRT.

What is evident from 2009 Regulations and the Ordinance of 2012 issued by the Office of the Chancellor, Universities of Bihar, is that following steps are to be essentially followed by the Universities/Institutions for admission to Ph.D. Courses :-

(i) Pre-determination of number of available seats for Ph.D. Courses in the manner prescribed under 2009 Regulation.

(ii) Due advertisement of available seats not only on the University's *website* but also in the leading newspapers while inviting applications for admission for the programme.

(iii) Candidates, irrespective of the fact, whether they are NET/JRF qualified conducted by UGC/CSIR/CSSIR/ICHE and GATE, are required to apply for admission against the vacancies so advertised.

(iv) An entrance test has thereafter is to be held to be conducted by the University at least once every year. The applicants, who are UGC/CSIR(JRF) Examination/SLET/GATE (Teacher) qualified or Fellowship Holder or who have passed M.Phil Programme, are eligible for registration without



appearing in PRT. The exemption to UGC/CSIR(JRF) Examination/SLET/GATE/ Teacher Fellowship Holder or those who have passed M.Phil Programme for Ph.D. Entrance Test qualified candidates from appearing in the written test would certainly not mean that a University/an Institution can allow their admission to Ph.D. Course even without advertising the available seats. The available seats will have to be widely advertised in the admission notice. Candidates, who are not UGC/CSIR(JRF) Examination/SLET/GATE/Teacher Fellowship Holder or have passed M.Phil Programme for Ph.D. Entrance Test qualified, are equally entitled to be considered for the available seats. The only exemption granted to UGC/CSIR(JRF) Examination/SLET/GATE/Teacher Fellowship Holder or have passed M.Phil Programme for Ph.D. Entrance Test qualified candidates is that they will not be required to appear in the entrance test.

I fail to understand the provisions under which the University decided to keep 10 seats reserved for NET qualified candidates and six to be filled up on the basis of entrance test. The scheme adopted by the University, in my view, is not in consonance with 2009 Regulation nor the Ordinance of 2012.

Further, 2009 Regulations have been replaced by



UGC (Minimum Standard and Procedure for Award of Ph.D. Degree) Regulation, 2016 (hereinafter referred to as 'the 2016 Regulation'), which has come into force with effect from July 5, 2016. Based on 2016 Regulation, common Ordinance and Regulation for award of Ph.D. Degree has been framed for the Universities of Bihar, which prescribes, *inter alia*, that procedure for admission to Ph.D. Programme in different Departments would be overall governed by the UGC Regulations, 2016. The said Ordinance appears to have come into force with effect from 21.09.2017, i.e., after the selection process, in question, began. The Ordinance lays down that there would be two streams of applicants, namely, those coming through a Ph.D. Admission Test to be conducted by the concerned University, termed as Ph.D. Admission Test (PAT in short) and those exempted from PAT. It further states that all candidates should be pooled together and will have to appear before the interview board. Final selection of both the categories of candidates in Ph.D. programme would be based on the performance of the candidates in the interview as well as on the basis of marks obtained in PAT and NET Examination. The said procedure also does not contemplate any reservation for those who are UGC qualified and those who are not.



On the facts, I do not find any reason to entertain the claim of the petitioners in view of admitted fact that they were much below in the merit list prepared on the basis of PRT. Admission of the candidates done by the University to Ph.D. Course in the subject Education is not specifically under challenge in the present proceeding nor they have been made respondents in the writ application. However, I have gone in detail, dealing with the procedure for admission in Ph.D. Course because I have been noticing in many cases that the Universities are not strictly adhering to the prescribed statutory procedure for admission to Ph.D. Course.

I accordingly dispose of the writ application with observation that a University shall be required, for allowing admission to Ph.D. Course under 2009 Regulation/2017 Regulations to necessarily follow the following steps: -

- (i) There will have to be a pre-determination of number of available seats for Ph.D. course on annual basis.
- (ii) The Universities must hold entrance test for admission to Ph.D. programme at least once a year.
- (iii) The entrance test must follow due advertisement of number of available seats.
- (iv) Based on the policy of the University,



UGC/CSIR(JRF) Examination/SLET/GATE/Teacher Fellowship Holder or those who have passed M.Phil course, may be exempted from appearing in the entrance test, in accordance with extant Regulations/Ordinance. However, for the purpose of filling up of the available seats, there cannot be any reservation for those coming from two or more different modes to face the interview.

(v) An interview will have to be conducted thereafter of the candidates successful in the admission test and those exempted from the test.

(vi) Based on performance of the candidates in the interview and considering other attributes, as prescribed in the Regulations/Ordinances, only such number of candidates will have to be declared successful, as number of the available seats which have been advertised.

In the background of the above, I dispose of this application with the observation that what has been noted above is the minimum which is required to be followed by the Universities for admission to Ph.D. Course under 2009/2016 Regulations. This is without prejudice to what other provisions are there under the Regulations in respect of the admission procedure.



This application stands disposed of.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	25.01.2019
Transmission Date	N/A

