

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8089 of 2020

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Simpi Kumari (Female), aged about 28 years, wife of Abhishek Pradhan,
residing at Raja S.N. Road (Near Dr. Arun Sinha, Mashak Chak), P.S.-
Adampur, District Bhagalpur - 812001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Special Secretary, Department of Higher Education, Government of Bihar, Patna.
2. Tilka Manjhi Bhagalpur University, Bhagalpur through its Registrar.
3. The Vice-Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
4. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. The Coordinator, College Development Council, Tilka Manjhi Bhagalpur University, Bhagalpur.
6. The Officer on Special Duty (Research), Tilka Manjhi Bhagalpur University, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner	:	Mr. Dronacharya, Advocate
For the State/R1	:	Mr. Madhaw Prasad Yadav (Adv.), GP 23 with Mr. Rajesh Kumar Sinha (Adv.), AC to GP 23
For the University/R2-6	:	Mr. Ashhar Mustafa, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-02-2021

Heard Mr. Dronacharya, learned counsel for the petitioner; Mr. Madhaw Prasad Yadav, learned Government Pleader 23 along with Mr Rajesh Kumar Sinha, learned Assistant Counsel to GP 23 for the State, and; Mr. Ashhar Mustafa, learned counsel for the Tilka Manjhi Bhagalpur University (hereinafter referred to as the “University”).

2. The petitioner has moved the Court for the following reliefs:

“.... for issuance of an appropriate



Writ(s)/Order(s) or direction and thereby to issue a writ in the nature of Mandamus commanding the Respondent University, particularly the Coordinator (Respondent No.5) to allow the petitioner to appear in Interview in PAT/19/NET/JRF, to appear before Interview board of the University for taking admission in Research methodology class along with PAT-19 qualified candidates for this purpose, since she (petitioner) has already successfully passed Pre-Ph.D. Test held in Sept. 2017, Result of which has been declared in January, 2018.

- (I) The petitioner being eligible candidate be allowed to appear before the Interview board for admission in Ph.D. course along with PAT-19 (Pre-Admission Test for Ph.D.) qualified candidates.*
- (ii) The petitioner being entitled for taking admission in Research Methodology class as per Regulation of T.M.B. University be allowed to face interview and to take admission in Ph.D. course.*
- (iii) After being successful in interview she be also permitted to participate in online classes for Research Methodology class (Course).*
- (iv) The petitioner be paid the cost of legal proceeding throughout.*
- (v) The petitioner be also granted any other relief/s permissible under the facts and circumstances of the case.”*

3. The moot question for consideration in the present application is whether the concerned regulation of the University Grants Commission, as adopted by the University on 27.01.2018, would be applicable with regard to the examination viz. Pre-Admission Test for PhD 2017 (hereinafter referred to as



“PAT 2017”) insofar as the period of validity of the result of the said examination is concerned for admission into the PhD Course.

4. The following facts are not in dispute – The process for conducting the PAT 2017 examination began with publication of notice on 23.05.2017; pursuant to the same, the petitioner also applied for taking the examination, which was held on 14.09.2017, and; the result was declared on 09.01.2018.

5. Learned counsel for the petitioner submitted that the examination result of the petitioner is required to be considered valid for three years in view of the subsequent regulation adopted by the University on 27.01.2018, which stipulated such period of validity of the result of the concerned examination, and clearly specified that the same would come into effect from the 2017-18 Session. Learned counsel submitted that as the examination was held and result declared after Session 2017-18 had begun, it would but naturally cover the case of the petitioner and she has to be given such benefit and, accordingly, allowed to take admission in the PhD programme without having to again clear such examination under the new regulation.

6. *Per contra*, learned counsel for the University



submitted that the process for the PAT 2017, which the petitioner appeared for and cleared, having started in May, 2017, and governed at the relevant time by the ordinance which was issued prior to the later ordinance, clearly stipulating that the period for which the result of the examination would be valid for only one year, no benefit can be granted to the petitioner. Learned counsel clarified that based on that result, people were counselled and had taken admission in the PhD programme within one year, but the petitioner did not take any initiative within time for taking admission in PhD programme for the next two years and suddenly, she has woken up. Learned counsel submitted that the petitioner was now attempting to take advantage of the new regulation. It was submitted that the petitioner's contention(s) is/are not fit to be entertained for the reason that when the process for the PAT 2017 commenced, the new regulation, having not been adopted/promulgated by the University, was not even in existence and in any view of the matter, the adoption/promulgation of the regulation as far as the University is concerned, was only on and with effect from 27.01.2018 i.e., after the declaration of the result of the PAT 2017.

7. Learned counsel for the State adopted *in toto* the



arguments of learned counsel for the University.

8. Having considered the facts and circumstances of the case and submissions advanced by learned counsel for the parties, the Court does not find merit in the present application, so as to necessitate its intervention under Article 226 of the Constitution.

9. On a plain reading of the regulation, which was finally promulgated by the University on 27.01.2018, especially Clause 1.2 thereof, clearly reads *“those candidates, who have been registered for PhD before the promulgation of this ordinance would be governed by the earlier ordinance issued from time to time under which he/she had been admitted”*. Further, just the closing line of the Preamble at Clause 1.1 states that it *“shall come into force from the session 2017-18”*. The Court would pause here. Even though the mention/reference is to Session 2017-18, but it is no longer *res integra* that for a process which has begun on any particular date, the law applicable or in operation on the said date would apply and no subsequent change would affect the process. Admittedly, in the present case, the process was set into motion *via* publication of notice on 23.05.2017. Further, the timelines for Session 2017-18 also give support to the view being taken by this Court,



inasmuch as, the relevant academic session in the University runs from 1st July of the year to 30th June of the succeeding year. Thus, on both the aforesaid counts, benefit of the new/later ordinance cannot be granted to or claimed by the petitioner.

10. The mere publishing or circulation of model regulations by the University Grants Commission would not *ipso facto* lead to a situation where all regulations issued by the University Grants Commission could be said to be binding on the universities concerned, except when duly adopted/promulgated, when such university happens to be a State University. Hence, the new/later regulation would become effective only when adopted/promulgated by the university concerned, when such university happens to be a State University. In the present case, the University has been operating under the Bihar State Universities Act, 1976. Support for this reasoning can be drawn from the Hon'ble Supreme Court's decision in ***Kalyani Mathivanan v K V Jeyaraj, (2015) 6 SCC 363***, the relevant paragraphs being:

'20. We have heard the learned counsel for the parties and the issues that arise for our consideration are:

(i) whether the UGC Regulations, 2010 are mandatory in nature; and

(ii) whether in the event of conflict between the University Act, the regulations framed thereunder and the UGC Regulations, 2010, the pro-



visions of the UGC Regulations, 2010 would prevail or not; and

(iii) whether the post of Vice-Chancellor of a university is to be considered as part of the teaching staff.

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31. The Annexure to the UGC Regulations, 2010 prescribes the minimum qualifications for appointment and other service conditions of university and college teachers, librarians, Directors of Physical Education and Sports.

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56. We have noticed and held that the UGC Regulations, 2010 are not applicable to the universities, colleges and other higher educational institutions coming under the purview of the State Legislature unless the State Government wish to adopt and implement the Scheme subject to the terms and conditions therein. In this connection, one may refer to Para 8(p)(v) of Appendix I dated 31-12-2008 and Regulation 7.4.0 of the UGC Regulations, 2010.

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62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the institutions deemed to be universities whose maintenance expenditure is met by UGC.

62.4. The UGC Regulations, 2010 are directory for the universities, colleges and other higher educational institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.'

(emphasis supplied)

11. There is yet another lens from which the matter can be examined. The petitioner, when (i) she filled up the examination form; (ii) she gave the examination, and; (iii) the



results were declared – at all these points of time is deemed to have been aware of the fact that the results of the PAT 2017 were valid only for a period of one year. Thus, it is not a case where the petitioner is being put at a disadvantageous position, than she was in when the aforementioned sequence of events transpired.

12. In the present case, the examination was conducted, and the result declared prior to the date of promulgation of the later ordinance by the University on 27.01.2018. In the opinion of this Court, the University cannot be faulted in asserting that the benefit of the later/new regulation cannot be given to the petitioner. The Court can sympathise with the petitioner, at best, but cannot grant the relief prayed for. To quote from ***Gaurav Jain v Union of India, 2020 SCC OnLine Del 652***, ‘*Charity beyond law is an injustice to others.*’

13. Hence, in the aforesaid background, the writ application stands dismissed. However, in the facts and circumstances herein, there shall be no order as to cost.

(Ahsanuddin Amanullah, J)

J. Alam/-

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