

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17543 of 2018

Dr. Ramjee Prasad Srivastava S/o Late Bishwanath Prasad, R/o Mohalla- Kunnu Lal Road, Mithapur, Post- G.P.O., P.S.- Jakkanpur, at District- Patna. Lecturer, Ram Krishna Dwarika College, Lohiya Nagar, Kankar Bagh, Patna- 800020. under Magadh University Bodh Gaya, Presently under Patliputra University, Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors.
2. The Principal Secretary, Higher Education, Govt. of Bihar, New Secretariat, Patna.
3. The Principal Secretary, Department of Finance, Old Secretariat, Patna, Bihar.
4. The Magadh University, Bodh Gaya through its Vice Chancellor.
5. The Vice-Chancellor, Magadh University, Bodh Gaya.
6. The Registrar, Magadh University, Bodh Gaya.
7. The Principal, Ram Krishna Dwarika College, Lohiya Nagar, Kankarbagh, Patna- 800020.
8. The Finance Officer, Magadh University, Bodh Gaya.
9. The Patliputra University through its Vice Chancellor, Kankarbagh, Patna.

.. ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Indu Shekhar Dwivedi, Adv.
For the Magadh University	:	Mr. Ajay, Adv.
For the State	:	Smt. Binita Singh, Adv.
For the Respondent No. 9	:	Mr. Rana Vikram Singh, Adv. Mrs. Rasika, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 19-09-2022

1. Heard the parties.

2. The petitioner by way of this writ petition has prayed to direct the respondent authority for absorption of service of the petitioner as a Lecturer in the R.K.D. College, Patna in Department of Commerce and further direct the respondent to make payment of salary regularly with all admissible and consequential benefits to which he is entitled.

3. The petitioner in short contends that he joined duty as a Lecturer on the 5th post in Dwarika College, Dr. Ram



Manohar Lohiya Nagar, Patna, after he was issued an appointment order on 05.09.1983. The college was taken over by the University in the year 1986. However, in the list of teaching and non-teaching staff, the name of the petitioner was not mentioned and it is alleged that another person's name who was not teaching, was mentioned in the said list. The petitioner thereafter, approached the Vice-Chancellor seeking for consideration of his name. However, the petitioner's name was not considered. He, thereafter, submitted a certificate from the Principal dated 05.01.1991 which mentioned that the petitioner was continuing in service. Another application was submitted by the petitioner, thereafter, on 16.05.1996 for regularization/absorption in the college which was taken over, known as R.K.D. College, Patna.

4. Learned counsel submits that the Lecturers working in the various colleges which had been taken over, were considered for regularization by the Committee formed by the Hon'ble Supreme Court headed by Hon'ble Justice S.C. Agarwal and the said Committee made recommendation, but the case of the petitioner was not considered as his name was not in the list. The petitioner again submitted his representation for consideration and in the subsequent Committee formed by the



Supreme Court headed by Hon'ble Justice S.B. Sinha, the petitioner name appeared in the list but his name was again not considered on the premise that the issue regarding his absorption was still pending before the Government.

5. Learned counsel submits that the Government has not taken a decision even till date and the petitioner, therefore, is before this court for directing the respondents to absorb the petitioner.

6. Learned counsel has relied on an order passed by the Coordinate Bench dated 17.07.2018 in CWJC No. 17670/2017, wherein it was observed as under :-

“ 26. It is noted here that on behalf of the petitioners in most of the cases argument was advanced on the same line as indicated in the preceding paragraphs of this judgment and as such in order to avoid repetition, the Court has noted the basic argument of the parties and deem it fit and proper to first discuss rival contention of the parties and while deciding the individual cases reference will be made to the factual aspects of each writ petition if necessary.”

7. The coordinate bench ultimately passed following orders:-

“36. In view of the report of Justice S.B. Sinha and the decision of the Apex Court in Krishnandan Yadav's case, the



University is now required to include the case of those who were appointed in the college before the takeover in case where the affiliation of the particular subject was pending before the Government before the cut off date, the University is hereby directed to consider the case of those teaching employees who were appointed against the post admissible in terms of letter dated 30.1.1979 of the State Government which clarifies that due to delay in the process of sanction of post on affiliation itself, one post shall be deemed to be sanctioned, on affiliation at intermediate level there should be two posts on affiliation at graduation level and three posts on affiliation at honours level.

37. In view of the above letter of the State Government dated 30.01.1979, the University is required to consider the case of those teaching employees, who were appointed in the subject concerned where recommendation for affiliation was pending before the cut off date.

38. Lastly the University is required to consider the case of those employees who were appointed in the erstwhile affiliated college on the date prior to take over having the eligibility for the post, if the post was sanctioned and now available on account of death, retirement or transfer. Necessary decision in this regard may be taken by the University on consideration of the individual cases within a period of four months from the date of receipt/production of a copy of this order.

39. In view of the above, the University is directed to take decision with regard to the individual cases in the light of the discussions above within a time frame of four months and in case the individual is found covered by the aforesaid discussion, necessary decision and notification may be issued by the University within the time frame indicated above.

40. It is needless to state here that in the matter of absorption the Supreme Court has categorically held out that the University has last say in the matter and the dictate of the State in the matter of absorption is unsustainable and held to be without jurisdiction. In view of the above the direction issued by



the State Government not to make payment to the people who were absorbed is also held to be unsustainable. The State responsibility is to provide fund for payment in terms of the obligation under the Bihar State Universities Act.”

8. Having noticed the submissions as above, this court finds that the case of the petitioner would not fall in any of the direction issued by the High Court (supra) as his name was never sent in the list of teachers, who were working against sanctioned post in the college which was taken over by the University.

9. It appears that he was appointed as a Lecturer, whereafter, it has come on record in the writ petition, a show cause notice was issued by the University with regard to the mis-management and wrongful appointments being made. It would be relevant to notice the observations of the Vice-Chancellor and Inspector of College, Magadh University:-

“ Magadh University, Bodh Gaya

Vice-Chancellor

As the enquire report regarding this college is to be placed in the next syndicate meeting so the concerned file with Deputy Registrar-I

1. This college suffers from chronic mismanagement. The U.R. on the G.B. has resigned out of disgust otherwise there is need to resign as U.R. for temporary absence of one month.

It would be better if his letter along with the enquiry report is placed before the syndicate.

2. The suppression matter is before the syndicate.

Further, if the Syndicate resolves to take action on



the basis of enquiry report, then the show cause notice is to be issued to the G.B.

It would be better if some alternative arrangement for intervening period, too is made.

*Inspector of College (Science)
Magadh University Bodh Gaya”*

10. The contention of petitioner that he was appointed against a sanctioned post is not made out had the petitioner's name would have been there, both the Commissions formed and headed by Hon'ble Judges of the Supreme Court would have noticed his name and would have included him in the recommendation. Thus, whose names have been recommended were to be considered for the purpose of absorption/regularization. The directions of the Coordinate Bench are also meant for the same only. The petitioner thus is not found to be having claim for consideration for regularization and absorption.

11. The writ petition is found to be without basis and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Sachin/
Pravin Kumar
Item No. 18

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