

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4758 of 2017

1. Dr. Ram Pukar Yadav, son of Late Kameshwar Yadav, resident of Village- Kewal, Police Station- Garhpura, District- Begusarai.
2. Dr. Uma Shanker Kumar, son of Sri Rajan Prasad Yadav, resident of Village- Maliniya, P.O.- Mojarganj, District- Sitamarhi.
3. Dr. Arun Kumar, son of Late Shivji Prasad Mahto, resident of Village- Kambara, Police Station- Hathauri, District- Samastipur.
4. Dr. Sanjay Kumar, son of Sri Madan Mohan Mishra, resident of Village- Patailyhat, Police Station- Angarghat, District- Samastipur.
5. Dr. Shanti Kumari, W/o Dr. Ram Pukar Yadav, resident of Village- Kewal, Police Station- Garhpura, District- Begusarai.
6. Dr. Subodh Kumar, son of Sri Laxmi Yadav, resident of Village- Barahi, Police Station- Bithan, District- Samastipur.
7. Rajesh Kumar, son of Late Bansh Lal Rai, resident of Village- Ganga Dharampur, Police Station- Tariyani, District- Sheohar.
8. Sushil Kumar, son of Late Ramesher Rai, resident of Village- Marra-Jeev, Police Station- Rosera, District- Samastipur.
9. Rana Kamedra Kumar Singh, son of Late Rana Ram Singhasan Singh, resident of Village- Raspur Pataria, Police Station- Mohiuddin Nagar, District- Samastipur.
10. Ranjan Kumar, son of Late Raghunath Mahto, resident of Village- Kharauna, Police Station- Belhar, District- Banka.
11. Moti Lal Rai, son of Sri Ram Chandra Rai, resident of Village- Darba, Police Station- Darba, District- Samastipur.
12. Smt. Sunita Kumari, D/o Sri Shashi Bhushan Yadav, resident of Village- Parora, Police Station- Parora, District- Begusarai.
13. Devendra Ram, son of Sri Ramashish Rai, resident of Village and Post- Jitwarpur Nizamat, District- Samastipur.
14. Navin Kumar Niranjana, son of Sri Dineshwar Prasad Yadav, resident of Village- Bithan, Police Station- Bithan, District- Samastipur.
15. Smt. Hemlata Kumari, D/o Sri Ram Narain Yadav, resident of Village- Banbhaura, P.O.- Tetrahi, District- Samastipur.
16. Ram Naresh Prasad, son of Sri Sukhdeo Singh, resident of Village- Patailyhat, P.O.- Chandauli, District- Samastipur.
17. Amresh Kumar Azad, son of Sri Ram Jatan Mahto, resident of Village- Mohanpur, P.O.- Mahathi, District- Samastipur.
18. Gangesh Kumar, son of Sri Rajmani Rai Mani, resident of Village and Post- North Dhamaun, Police Station- Patori, District- Samastipur.
19. Ramesh Shanker Rai, son of Late Ram Ekbal Rai, resident of Village- Magardahi, Ward No.29, P.O.- Samastipur, District- Samastipur.
20. Sumant Kumar Singh, son of Sri Ram Narain Singh, resident of Village- Samartha, Police Station- Bibhutipur, District- Samastipur.



21. Dip Narain Sah, son of Sri Begai Sah, resident of Village- Birsinghpur, P.O.- Birsinghpur, District- Samastipur.
22. Madan Kumar, son of Sri Lakshman Rai, resident of Village- Jitwarpur Maslanchak, P.O.- Samastipur College, District- Samastipur.
23. Suresh Kumar Roy, son of Late Sukhram Rai, resident of Village and P.O.- Kalyanpur, District- Samastipur.
24. Rohit Kumar Raman, son of Sri Ram Sharan Yadav, resident of Village- Paridah, P.O.- Hasanpur Sugar Mills, District- Samastipur.
25. Mithilesh Kumar Rai, son of Sri Ram Prit Rai, resident of Village and Post- Bhagwanpur Desua, District- Samastipur.
26. Sanjeev Kumar, son of Sri Sidheshwar Yadav, resident of Village- Maranchi Ujaigar, P.O.- Hasanpur Sugar Mills, District- Samastipur.
27. Ashok Kumar Yadav, son of Sri Damodar Yadav, resident of Village and P.O.- Rahua, District- Samastipur.
28. Smt. Kumkum Kumari, s/o Late Baidyanath Prasad Singh, resident of Village and P.O.- Muktapur Kothi, District- Samastipur.
29. Dinesh, son of Late Dhannu Rai, resident of Village and P.O.- Bhagwanpur Desua, District- Samastipur.
30. Upendra Rai, son of Late Jhari Lal Rai, resident of Village and P.O.- Jitwarpur Chauth, Police Station- Muffasil, District- Samastipur.
31. Vijay Kumar Vimal, son of Sri Ugeshwar Yadav, resident of Village- Banbhaura, P.O.- Tetrahi, District- Samastipur.
32. Abdul Khalik, son of Md. Shabbir Ahmad, resident of Village- Amari, P.O.- Amari, District- Begusarai.
33. Radhey Shyam Mahto, son of Late Rejeshwar Mahto, resident of Village- Mahotar, P.O.- Rosera, District- Samastipur.
34. Anil Kumar, son of Sri Mahendra Thakur, resident of Village and P.O.- Morba Bazar, District- Samastipur.
35. Annu Kumari, D/o Sri Kamaldeo Yadav, resident of Village and P.O.- Korbatha, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Department of Higher Education, Government of Bihar, Patna.
3. The Joint Secretary to the Government, Department of Higher Education, Government of Bihar, Patna.
4. The Director, Department of Higher Education, Government of Bihar, Patna.
5. Lalit Narain Mithila University, Kameshwar Nagar, Darbhanga through its Registrar.
6. The Vice-Chancellor, L.N.M. University, Kameshwar Nagar, Darbhanga.



7. The Registrar, L.N.M. University, Darbhanga.
8. The Governing Body of Sant Kabir College, Samastipur, P.O., P.S. and District- Samastipur through its Secretary.
9. The Chairman of the Governing Body-cum-Chairman of the Selection Committee, Sant Kabir College, Samastipur, P.O. & District- Samastipur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suraj Narain Yadav, Advocate

For the State : Mr. Ajit Kumar, GA-9

For the University : Mr. Md. Nadim Seraj, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-08-2023

The writ petition is filed by the petitioner Nos. 1 to 35 asserting that they are teachers appointed by the Governing Body of Sant Kabir College, Samastipur (hereinafter referred to as the 'College') after 19.04.2007, who are not paid the salaries despite the College being affiliated to the 5th Respondent-University.

2. The challenge raised is to sub-section(6) of Section 57A introduced by the Bihar State Universities (Amendment) Act, 2015, by which scrutiny of the qualification of teachers of affiliated degree colleges by the Selection Committee constituted, has been confined to the teachers appointed prior to 19.04.2007.



3. It is the contention of the petitioners that they were all appointed after 19.04.2007 and there is no machinery put in place to verify their qualifications and affirm their appointments made by the Governing Body of the College. It is pointed out that the Bihar College Service Commission (hereinafter referred to as the 'Commission') was recommending appointment of teachers in the affiliated and intermediate colleges, which Commission was constituted in 1976. The colleges through their Governing Body appointed teachers on the basis of the recommendation of the Commission. In 2007, the Commission was abolished with effect from 19.04.2007.

4. A separate procedure was constituted under Section 57A, which was subject to the provisions of the Act and the Statutes framed. The Statute itself was framed only in the year 2008. There was no machinery to make recommendations for appointment of teachers after the Commission was abolished, till 2008 when the Statute was framed. The Governing Body of the colleges made the appointments and in such circumstance, when a specific provision was introduced for verification of qualifications, the State ought to have reckoned the appointments subsequent to 19.04.2007 also, is the



contention urged by the petitioners.

5. Learned counsel for the petitioners urged the above contentions with specific reference to the amendments made successively.

6. Learned Government Advocate and the learned Standing Counsel for the University oppose the prayer of the petitioners emphatically pointing out the procedure under Section 57A which regulated that issue.

7. The Bihar State Universities Act, 1976 (for brevity 'Act of 1976') as is argued, brought in a service commission for the college services for appointment to be made to the services in the colleges within the State of Bihar. By the Bihar State University (Amendment) Act, 2007, the Act of 1976 was amended. Section 57 of the Act of 1976 was substituted providing for appointment to the post of teachers and officers other than the Vice Chancellor, Pro-Vice Chancellor, Registrar and Dean of the Faculty, to be made by the University on the recommendations of the Selection Committee constituted under the said provision. The Selection Committee consisted of the Vice Chancellor of the University concerned, one member each to be nominated by the Chancellor and the Government and three experts, not connected with the University, to be



nominated by the Vice Chancellor from a panel of not less than seven names approved by the Academic Council, out of which at least one member should belong to the scheduled castes and scheduled tribes and two from outside the State. The Head of the Department of the discipline concerned was also a member of the Selection Committee. It was the duty of the Selection Committee to prepare a merit list for appointment of teachers and officers from amongst the eligible candidates and make recommendations for their appointment according to merit and in conformity with the reservation roster.

8. Section 57A was also introduced by the Amendment Act, 2007, which was subject to the provisions of the Act and the Statute made thereunder, which provided for the appointment of teachers in affiliated colleges, not maintained by the State Government, to be made by the management of the college concerned by again constituting a Selection Committee comprising of one nomination by the Vice Chancellor, three experts not connected with the college to be nominated by the Vice Chancellor from a panel of not less than seven names proposed by the management, out of which one member should belong to scheduled castes/scheduled tribes, two members to be nominated by the management of the college and the Principal



of the college. Section 57B also provided for a procedure of selection to be prescribed by the Statute, which was notwithstanding anything contained in the provision. The *non obstante* clause mandated the Selection Committee, constituted under Sections 57 and 57A of the Act, to be bound by the procedure prescribed by the Statute to be framed by the University. The Statute prescribing procedure for selection of teachers, including Principals for affiliated colleges, which are not maintained by the State Government, as contemplated under Section 57B of the Act of 1976 was brought out on 30.06.2008.

9. Subsequently, by the Bihar State University (Amendment) Act, 2015, sub-section (6) was introduced into the Act of 1976 by the aforesaid provision. The State provided a mechanism for verifying the qualifications of persons appointed without a recommendation of the Commission, prior to 19.04.2007. Hence, the appointments made under the Act of 1976, when the Commission was in place, were directed to be verified for the purpose of validating it; even if such appointments were made without the recommendation of the Commission.

10. We are of the opinion that there is no valid ground for the petitioners to challenge the aforesaid provision.



At best what could be claimed by the petitioners is that a similar procedure should be brought in place even to consider the appointments similar to that of the petitioners, made after 19.04.2007, but prior to the Statutes being framed in 2008. However, the appointments, in the instant case, made by the Governing Council of the College, as revealed from the appointment orders produced, were temporary in nature.

11. Looking at Section 57A, there is a specific mandate under the Act to carry out appointments of teachers in the affiliated colleges, not maintained by the State Government, by the Committee constituted under Section 57A. True, there was no Statute brought out under Section 57B, but that does not absolve the affiliated colleges from making appointments on the recommendations of the Selection Committee.

12. In the present case, the College which appointed the petitioners, has not responded to the writ petition. The appointment orders of the petitioners indicate only the governing council having made the appointments, without reference to any recommendation of the Selection Committee and more importantly the appointments are temporary in nature.

13. We cannot, but notice that when the Commission was in place, appointments to the affiliated



colleges could be made under the Act of 1976 only after recommendation obtained from the Commission. When the Commission was abolished and a new system introduced of a recommendation from the Selection Committee constituted under the Act; the State Government was careful to bring in a procedure by which even appointments made without recommendation from the Commission, were regularized if the teachers had the required qualifications for the disciplines in which they are appointed. The said provision is not in any manner prejudicial to the petitioners and the challenge raised is unsustainable.

14. Admittedly, Sections 57A and 57B were introduced simultaneous to the abolition of the Commission, by amendment to the Act of 1976. Section 57B directed a procedure to be introduced by way of a Statute, which Statute was brought into force only in the year 2008. The appointments of the petitioners were made in the interregnum i.e. between 19.04.2007 and prior to the Statute of 2008, but on a temporary basis. The petitioners cannot have any right to be continued or regularized and their appointments are without the recommendation of the Selection Committee constituted under Section 57A.



15. The writ petition is devoid of merit and stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.08.2023
Transmission Date	

