

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15742 of 2018

1. Council Of Allama Iqbal College and Allied Institutions, Biharsharif, (Nalanda), through its Secretary
2. Allama Iqbal College, Biharsharif, Nalanda, through its Secretary, Shah Jawedy, Son of Abdul Wadood, Resident of Village and Police Station- Biharsharif, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, New Secretariat Building, Patna
3. The Principal Secretary, Finance Old Secretariat, Government of Bihar, Patna.
4. The Director, Higher Education, Government of Bihar, Patna.
5. The Magadh University, Bodhgaya, Gaya, through its Registrar.
6. The Vice-Chancellor, Magadh University, Bodhgaya, Gaya.
7. The Patliputra University, Near Rajendra Nagar Terminal, Patna through its Registrar.
8. The Vice Chancellor, Patliputra University, Near Rajendra Nagar Terminal, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Manoj Priyadarshi, Advocate
For the State	:	Mr. Amit Bhushan, AC to GP-17
For the Magadh University:		Mr. Sunit Kumar, Advocate
For the Patliputra University:		Mr. (Dr.) Anand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 28-06-2023 Heard Mr. Y.V. Giri, learned senior counsel assisted by Mr. Manoj Priyadarshi, learned counsel for the petitioners, Mr. Amit Bhushan, learned AC to GP-17 for the State, Mr. (Dr.) Anand Kumar, learned counsel for the Patliputra University and Mr. Sunit Kumar, learned counsel for the Magadh University.



2. Petitioners in the present case are seeking the following reliefs:-

“(I) To command the respondents and direct them to sanction all the teaching and non-teaching posts contemplated under letter bearing in memo 1445 dated 09.09.1998 (Annexure-6) of Education Department by which all the created posts of teaching and non-teaching by the governing body of the Allama Iqbal College, Biharsharif, Nalanda, prior to 19.10.1982 were extended status of deficit grant-in-aid and further teaching and non-teaching employees were directed to be paid directly from the University Education fund in terms of department letter no.1186 dated 06.11.1985.

(ii) To hold and declare that the Allama Iqbal College, Biharsharif, a minority one, is entitled to have all the created posts of teaching and non-teaching above sanctioned once it has been declared College of deficit grant-in-aid under policy of the department dated 09.09.1998, and in terms of Hon’ble Court’s observation rendered in CWJC No. 12329/2001 dated 05.03.2002, that commitment made by the state government in its letter above remains subsisting and binding in future.

(iii) To command the respondents state and order them to honour recommendations of two statutory authorities; Magadh University, Bodh Gaya and Bihar Inter University Board, Patna, that at notice of government had carried



inspection and each made recommendations to sanction similar number of seventy six teaching including Principal and seventy six non-teaching posts (Class III-38 and Class IV-38 Posts) on 15.02.2005 and 16.02.2005 respectively according to U.G.C. norms, staffing pattern and number of existing students studying at the college, in order to meet immediate needs there till final determination of teaching and non-teaching posts, as teaching and non-teaching employees have been working in the college since decade or more.

(iv) To order the respondents to pay salary and allowances to all the employees that included teaching and non-teaching both following approval/sanction of posts in the College above and also pay the current salary on monthly basis, which they are entitled to be paid in the facts and circumstances of the case.

(v) For any other reliefs to which petitioners are found entitled to in the eyes of law.”

Brief facts of the case

3. On perusal of the writ application, it appears that the college in question has been accorded minority status. It was granted permanent affiliation to conduct all the courses up to Honours in graduation level from the session 1990-91/1991-92. By a letter dated 09.09.1998 (Annexure- ‘6’) the Education Department decided to extend deficit grant-in-aid to the posts created by the governing body of the college. The Department



approved the creation of posts by the management of the college that had created posts through resolutions dated 08.10.1978, 13.05.1979 and 11.07.1982 respectively. It is stated that the employees had been paid directly from the University Education Fund by the Education Department.

4. It further appears that year to year the strength of the students in numbers were increasing but vide letter dated 13.08.2001 the Department rescinded its letter dated 09.09.1998 which was challenged in CWJC No.13329 of 2001. This Court quashed the letter dated 13.08.2001 by which approval of creation of posts by the college was rescinded as a result whereof the status and the effect of the letter dated 09.09.1998 according deficit grant-in-aid to the college was reinstated.

5. It is further case of the petitioners that the Department of Education sought and invited details of posts existing in the college and recommendations thereafter for proposed approval from Magadh University, Bodh Gaya and Bihar Inter University Board, Patna. It is stated that the University and the Board both verified the records of the college and submitted their respective recommendations on 15.02.2005 and 16.02.2005 separately. While making such recommendations, the authorities had taken into consideration



the U.G.C. norms, staffing pattern and number of students in the college. Both the authorities were unanimous in recommending seventy six posts each for teaching and non-teaching employees in the college. The copies of the recommendations have been brought on record vide Annexure- '7' series to the writ application.

6. The grievance of the petitioners is that for no recorded reason the Department on its own determined 64 teaching posts including that of principal and 52 non-teaching posts and they approved the same for this college vide memo no.517 dated 30.03.2005 (Annexure- '8'). Since then the petitioners are agitating the issue with the Department for approval of the rest of the recommended teaching posts and non-teaching posts. According to the petitioners, the respondents are obliged to sanction 12 teaching posts and 24 non-teaching posts for the college.

Submissions on behalf of the petitioners

7. Learned senior counsel for the petitioners has submitted that earlier when a counter affidavit was filed on behalf of respondent nos.1 to 4 on or about 10th of October, 2018, this Court was informed vide paragraph '9' of the counter affidavit that the proposal for sanction/approval of the



remaining posts of teachers and non-teaching staffs are under consideration and the matter is under deliberation between the Education Department and Finance Department.

8. It is submitted that taking note of the aforesaid statements of the respondents, this Court earlier granted time to the respondents to file a supplementary counter affidavit to furnish the updated position. Pointing out the statements made in the supplementary counter affidavit, learned senior counsel submits that now the Education Department has called for a report from the university which would be evident from letter dated 24.05.2019 (Annexure- 'A' to the supplementary counter affidavit). The Magadh University, Bodh-Gaya has in response thereto vide letter no.131 dated 19.08.2019 written to the Director, High Secondary Education stating that earlier the decision was taken at the government level vide letter no.517 dated 30.03.2005 and even as on today the power is vested with the government to grant sanction, therefore, if the government takes a decision for the additional posts the University will have no objection. It is submitted that because of lack of coordination among the various departments and the university, the matter relating to grant of sanction of posts of teaching and non-teaching staffs are not being resolved.



Submissions of the State

9. On the other hand, learned counsel for the State submits that the department has requested the Registrar of the then University to send an opinion after examining the proposal sent by the college in question as no facts with respect to the justification of the creation of the posts in question is available in the letter dated 19.08.2019. A copy of the letter written by the Department has been brought on record as Annexure- 'C' to the supplementary counter affidavit.

10. Learned counsel for the State submits that the requirement of posts is directly related with the number of courses that is being offered in a college, number of students pursuing in these courses, infrastructure etc. The University has not examined the proposal of the college in question for creation of posts and in this background the department has vide letter no.909 dated 15.03.2023 requested the Registrar of the Patliputra University, Patna and Secretary/Principal of the college in question to supply the information. It is also pointed out that in the proposed meeting no representative of the Patliputra University, Patna participated, however, the Secretary of the college in question has participated in the said meeting. Reference has also been made to letter no.972 dated 21.03.2023



written by the department to the university. In paragraph '17' of the supplementary counter affidavit it is stated that the department will take appropriate decision in the matter after receiving the required report/information from the Patliputra University, Patna and after analyzing the actual need for further posts, as per the relevant law prevailing today.

11. Mr. (Dr.) Anand Kumar, learned counsel for the Patliputra University is present. He is unable to explain as to why no representative from Patliputra University was present in the meeting.

Consideration

12. Having heard learned senior counsel for the petitioners, learned counsel for the State and the Universities, this Court is of the considered opinion that this matter has been kept pending for last about 18 years for no plausible reason. The lack of coordination writs large. The Patliputra University which has now been asked to submit a report has not even participated in the last meeting.

13. In the nature of the stand taken by the department, at this stage, this Court directs the Patliputra University, Patna (respondent no.7) to immediately take a view on the proposal of the college in question, examine the same in accordance with



the prevailing norms and submits a clear report to the department within a period of two months from today. On receipt of the report from the University, the Department of Education would take an appropriate view of the matter in consultation with the Department of Finance and in case it is so required a meeting of the University representative, Department of Education and the Department of Finance be convened and held for this purpose. Such meeting, if required be held within a period of another six weeks after submission of the report. This Court, therefore, directs the respondents to resolve this matter by taking an appropriate decision in accordance with law within a period of four months from the date of receipt/production of a copy of this order.

14. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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