

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7706 of 2011

1. DR. RAM KRISHNA PANDEY PARAMHANS, son of Late Achyutanand Pandey, R/O Village-Bath, PO-Bath, PS-Bath, District-Bhagalpur.
2. DR. UDAY SHANKAR PANDEY, son of Late Vishnudev Pandey, R/O Village-Hathwa, PS-Mirganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR through the Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. Secretary, Human Resources Development Department, Bihar, Patna
3. The Director, Higher Education, Bihar, Patna.
4. Kameshwar Singh Darbhanga Sanskrit University, Darbhanga through its Registrar.
5. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
6. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga
7. Shri Dilip Kumar Jha, Reader, Department of Dharma Shastra, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
For the University	:	Mr. Binay Kumar Singh, Mr. Ravi Nandan, Advocates.
For Respondent No.7	:	Mr. Durga Nand Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV/ORDER/ JUDGMENT

15 **16-05-2023**

Heard the parties.

2. Two petitioners have challenged the appointment of Respondent No. 7 with a prayer for quashing the appointment Notification dated 02.03.2009 (Annexure-3) whereby Respondent No. 7 has been appointed on the post of Reader in the subject of Dharma Shastra at Kameshwar Singh Darbhanga Sanskrit University, Darbhanga (in short 'KSDS University') pursuant to Advertisement No. 1/2008 issued by the University.

3. By Advertisement No. 1/2008, 'KSDS University' had invited application for appointment on two posts of Reader in the subject of Dharma Shastra in the PG Department. One



post was reserved for General category candidate and one post was for Extremely Backward Class. The eligibility criteria for appointment of Reader as per advertisement was (a) Good academic record with Doctoral Degree or equivalent published work. In addition to these, candidates who join outside the University system, shall also possess at least 55% of the marks or an equivalent grade of B in the 7 point scale with letter grade O, A, B, C, D, E and F at the Aacharya's/master's degree level in the relevant Traditional subject, (b) Five years of experience of teaching and/or research excluding the period spent for obtaining the research degree and has made some mark in the areas of scholarship as evidenced by quality of publications, contribution to education innovation, design of new courses and curricula. (c) provided that the teaching and/or research experience as required for direct recruitment of Professor, Reader and Principal must have been obtained by the candidate after being appointed by the competent authority and as per the rules of the institution concerned.

4. The appointment of Respondent No.7 has been challenged on the grounds that the appointment suffers from gross irregularity/illegality and has been made in blatant violation of provisions as contained under Section 57(1) of the



Bihar State Universities Act, 1976 (hereinafter referred to as 'the Universities Act'), as amended and also the Statute framed under Section 57B of the Universities Act. The Respondent No.7 does not fulfill minimum educational qualification nor has requisite teaching experience in the subject of Dharma Shastra for appointment against the post of Reader in Dharma Shastra under the University. The petitioners claimed that they fulfilled the eligibility criteria as prescribed in the advertisement for appointment on the post of Reader in the subject of Dharma Shastra and applied in the prescribed manner within the stipulated time frame.

5. Mr. Abhinav Srivastava, learned counsel appearing for the petitioners submits that the Selection Committee was not constituted as per the provisions of Section 57(1) of the Universities Act inasmuch as three experts in the Selection Committee were to be nominated by the Vice Chancellor from the panel of names approved by the Academic Council in terms of Statute framed in this regard for each post, out of which, at least one member should belong to SC/ST and two shall be from the outside the State but in the instant case one Sri Rameshwar Das, Professor, Department of Ved, Lal Bahadur Shastri Vidyapith, New Delhi was also one of the



members of the Selection Committee as an expert whereas his name did not figure in the ten names approved by the Academic Council of the University and thus, on this score alone, the entire selection process with respect to appointment against the post of Reader stands vitiated. He further argued that as per Section 57(1) (ii) of the Universities Act, the Selection Committee was required to prepare a merit list from amongst the eligible candidates and make recommendation of their appointment according to the merit but in the present case neither merit list was prepared nor any recommendation was made. Further, the signature of the head of the Department of Dharma Shastra of the University is not there whose presence is required in the Selection Committee as per Section 57(1) of the Universities Act.

6. The main thrust of the argument of learned for the petitioner is that the Respondent No.7 has been appointed against the post of Reader in Dharma Shastra at P.G. Department but the Respondent No.7 does not have the requisite experience of teaching in the subject of Dharma Shastra and also does not possess Ph.D qualification as prescribed under eligibility criteria for a Reader under the Advertisement. Respondent No.7's teaching experience is not in Dharma



Shastra and his Ph.D is in Jyotish and not in Dharma Shastra and on the contrary, the petitioners fulfill the eligibility criteria and is having 15 years experience in Dharma Shastra and Ph.D. He also submits that Respondent No.7 was teaching the subject of Jyotish at the College and also did his Ph.D in Jyotish. Learned counsel referred to the application of Respondent No.7 which has been annexed as Annexure A/7 to the counter affidavit filed by the Respondent No.7.

7. Respondent No.4 to 6 i.e., 'KSDS University' filed two counter affidavits. In the first counter affidavit, it has been stated that petitioner no.2 does not have work experience as Reader at Sri Chhatradhari Sanskrit College, Hathua, Gopalganj as there is no post of Reader in subject of Dharma Shastra in the said College and so far as petitioner no.1 is concerned, he is not having the requisite qualification as well as experience and has not passed the NET examination and has shown the teaching experience in the subject of 'Vyakaran' in the affiliated college having no experience of teaching in 'Acharya' Class. The Selection Committee was duly constituted consisting of renowned scholars and five candidates including the petitioners appeared before the interview board and after considering the inter se merit of all the candidates, the Respondent No.7 was



appointed on the post of Reader, he is having all the required qualification and experience for the post of Reader and has passed 'Acharya' Examination in Dharma Shashtra subject with 70% marks and has also passed NET examination, got Ph.D and D.LIT degree and more than fifteen research works/books have been published. Respondent No. 7 is having teaching experience of more than 16 years and has experience of 'Acharya' Classes also.

8. The petitioners took calculative chance and participated in selection process and after being unsuccessful, they turn around and challenged the constitution of Selection Committee which is not permissible in view of settled principle of law. The appointment of Respondent No.7 was challenged before this Court in CWJC No. 5509/2009 which was dismissed as withdrawn by order dated 15.04.2010.

9. In the supplementary counter affidavit, almost the statement made in the first counter affidavit has been reiterated with further addition that at the time of appointment Respondent No.7, possessed experience in relevant traditional subject and has also fulfilled all other necessary requirements of appointment and prior to the appointment of Dr. Dilip Kumar Jha, Respondent No.7 was having experience of teaching in PG



Department also.

10. In the counter affidavit filed by Respondent No.7, it has been stated that writ application has been filed after delay of more than two years on 27.04.2011 whereas appointment of the Respondent No.7 was made on 02.03.2009. An objection of alternative remedy available to the writ petitioners has also been taken and submitted that any action of the University is amenable/appealable before the Hon'ble Chancellor being the appellate authority under the 'Universities Act' but the petitioners without exhausting the remedy before the Hon'ble Chancellor has directly approached this Court.

11. Learned counsel appearing for Respondent No.7 as well as learned counsel for Respondent 4 to 6 argued that there is no illegality or irregularity in the selection process and the Respondent No.7 was appointed by the Selection Committee after being satisfied about his educational qualifications, teaching experience and other eligibility criteria. Respondent No.7 has now been promoted to the post of Professor and the post has been confirmed and continuity of the service has been granted under Section 57(1) of 'the Universities Act'. The Academic Council in its meeting held on 07.12.2007 vide Programme No. 1(chha) approved eight names of experts in the



subject Dharm Shastra and in view of subsequent amendment of the Statue, two further names were approved by the Council in its meeting held on 13.12.2008 vide Programme No.4 (Chha) to complete the panel of ten experts and thus, the Selection Committee was properly constituted. The petitioners have no teaching experience and they do not fulfill the eligibility criteria as per the advertisement. As such, they cannot raise a question that they have been discriminated. Hence, they cannot invoke jurisdiction of this Court under Article 226 of the Constitution of India.

12. The contention of the petitioner that no merit list was prepared and no recommendation of the Selection Committee was made for appointment is also not correct inasmuch as all the six candidates including the petitioners were awarded marks by the Selection Committee which would be evident from para-9 of the supplementary counter affidavit and HOD had also participated in the selection and had awarded marks to all the six candidates.

13. Lastly, it has been argued that the petitioners, having consciously participated in selection process, cannot turn around and challenge the same. They participated in the interview and after being unsuccessful in the final selection, it is



not open for the petitioners to challenge the entire selection process and the final select list.

14. In reply, learned counsel for the petitioners submits that the writ application which was filed and the same was dismissed as withdrawn was not filed by the petitioners who are aggrieved party but the same was filed by Student Federation of India and was dismissed as withdrawn. Therefore, principle of constructive *res judicata* shall not apply against the petitioners in the present facts of the case.

15. I have heard learned counsel for the parties and gone through the materials on record. The petitioners have challenged the order of appointment issued by the University in favour of Respondent No.7 on two grounds, first; the Selection Committee was not constituted properly and second; Respondent No.7 does not have requisite qualification and experience for appointment. Both the grounds taken by the petitioners have been denied by the Respondent No.7 who has claimed that the Selection Committee was duly constituted and Respondent No.7 was having requisite qualification and experience as prescribed under advertisement for appointment of Reader in PG Department of the University in the subject of Dharm Shastra.



16. In Annexure-1, which is Advertisement No.01/2008, the eligibility criteria, in a nutshell, is that the first criteria is a good academic record with Doctoral Degree or equivalent published work. In addition to these, candidates who join outside the University system, has to possess at least 55% of the marks or an equivalent grade of B in the 7 point scale with letter grade O, A, B, C, D, E and F at the Aacharya's/master's degree level in the relevant Traditional Subject. Secondly, Five years of experience of teaching and/or research excluding the period spent for obtaining the research degree and has made some mark in the areas of scholarship as evidenced by quality of publications, contribution to educational innovation, design of new courses and curricula. Thirdly, the teaching and/or research experience as required for direct recruitment of Professor, Reader and Principal must have been obtained by the candidate after being appointed by the competent authority and as per the rules of the institution concerned.

17. The Respondent No.7 claims to have teaching experience, Ph.D degree and about 12 publications of research work to his credit prior to the advertisement. The eligibility condition (1) says 'a good academic record with Doctoral



Degree or equivalent published work', (2) says, ' Five years of experience of teaching and/or research' and condition (3) says, that the teaching and research must have been obtained by the candidates after being appointed by the competent authority. *Prima facie*, the terms of advertisement prescribes good academic record with Doctoral Degree or equivalent published work, teaching experience and/or research. The respondent No.7 in the application form has mentioned his qualification of Acharya in Dharm Shastra along with teaching experience and research work.

18. The three criteria mentioned in the advertisement with Doctoral Degree or equivalent published work, teaching experience and/or research including the teaching and research obtained by the candidate after being appointed by the competent authority can adequately be appreciated by the Hon'ble Chancellor keeping in mind the nature of appointment and the qualification and eligibility required with equivalent published work in the Traditional subject. As per Section 9 of the 'Universities Act' the Hon'ble Chancellor is the head of the University and sub-section 4 of Section 9 prescribes that the Chancellor may, by order in writing annul any proceeding or order of the University which is not in conformity with this Act,



Statutes, Ordinance or the Regulation for which adequate reason is lacking. In my opinion, the Chancellor being the head of the University shall be in a better position to appreciate the eligibility criteria/terms of the advertisement for appointment of Reader on a Traditional subject of Dharma Shastra including the equivalent criteria. Accordingly, I feel it expedient to direct the petitioners to challenge the impugned order of appointment of Respondent No.7 dated 02.03.2009 on the post of Reader in the subject of Dharma Shastra at Kameshwar Singh Darbhanga Sanskrit University, Darbhanga, before the Hon'ble Chancellor.

19. If any appeal/challenge is made by the petitioner before the Hon'ble Chancellor, the Hon'ble Chancellor is requested to dispose the same in accordance with law by a reasoned order after giving opportunity of hearing to all concerned including Respondent No.7 within a period of four months from the date of filing of the appeal.

20. With the above direction and observations, this writ application stands disposed of.

(Anil Kumar Sinha, J)

Md.Perwez Alam

AFR/NAFR	AFR
CAV DATE	18.04.2023
Uploading Date	16.05.2023
Transmission Date	

