

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14793 of 2017

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Noor Alam Khan Son of Md. Taleeb Khan Resident of Millat Colony, Teen Kothiya, P.S. Mithanpura, District- Muzaffarpur, Presently the Secretary, Islamia Degree College, Shahpur, Kanti , District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Bihar, Patna
2. The Principal Secretary, Education Department, Bihar, Patna.
3. The Chancellor of Universities, Bihar, Raj Bhawan, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13743 of 2018

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1. Minority Educational Institution Federation of Bihar, Haroon Nagar, Sector 1, Phulwari Sharif, Patna through its Secretary namely Zafar Ahmad Ghani.
 2. Zafar Ahmad Ghani, Son of Late M.N.A. Ghani, Secretary, Minority Educational Institutional Federation of Bihar Haroon Nagar, Sector 1, Phulwari Sharif, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Chief Secretary, Government of Bihar, Patna.
3. Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 14793 of 2017)

For the Petitioner/s : Mr. Abhinav Srivastava, Advocate

For the Respondent/s : Mr. P.K.Shahi, AG

(In Civil Writ Jurisdiction Case No. 13743 of 2018)

For the Petitioner/s : Mr. Binodanand Mishra, Advocate

For the Respondent/s : Mr. P.K.Shahi, AG

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT**

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 23-08-2023

1. Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The challenge in both the writ applications is to section 4(5) of the Bihar State Universities (Amendment) Act, 2013 by which section 57A of the Bihar State Universities Act, 1976 was substituted and to declare that it is ultra vires the Constitution of India in so far as the same affects the rights of minority educational institutions as enshrined under Article 30(1) of the Constitution of India.

3. Both the writ applications having been filed for similar reliefs are being taken up together and decided by this common order.

4. The petitioner in CWJC no.14793 of 2017 is the Secretary of Islamia Degree College, Shahpur, Kanti, District Muzaffarpur, an affiliated college under the B.R. Ambedkar Bihar University, Muzaffarpur and also a recognized minority educational institution. So far as the petitioner no.1 in CWJC no.13743 of 2018 is concerned, the same is a registered



Association of minority educational institutions and the petitioner no.2 therein happens to be the Secretary of the said Association.

5. Section 57 of the Bihar State Universities Act, 1976 (hereinafter referred to as 'the Act') provides for appointment to the post of Teachers in Universities and their constituent colleges. Section 57A provides for procedure of selection to be prescribed by the Statute for appointment of Teachers in such affiliated colleges which are not governed by the State Government or not funded by the Universities. The selection is to be processed by the Selection Committee constituted by the University under section 57B of the Act.

6. The Bihar State Universities (Amendment) Act, 2013 ('Amendment Act, 2013' in short) published in the Bihar Gazette (Extraordinary) on 14.8.2013, by clause (4) thereof provided that section 57A of the Act shall be substituted by the following which is extracted herein below:

“57 A-Procedure of selection to be prescribed by the statute.- (1) Subject to the provisions of this Act and Statutes made thereunder, for appointment of teachers in such affiliated Colleges, which are not governed by the State Government or not funded by the Universities, the applications from the candidate fulfilling the qualifications prescribed under clause (iii) of sub-section (1) of section 57 of this Act shall be invited by the Governing Body of the College concerned. The selection shall be processed by the Selection Committee



constituted by the University under the provisions contained in section 57B of this Act.

(2) In making recommendations on the basis of interview of the candidates holding the above mentioned qualifications the rules or reservation shall be adhered by the Selection Committee.

(3) The recommendation made by the Selection Committee shall remain valid for one year from the date of the recommendation. Within six months from the date of recommendation of the Selection Committee; the College administration shall process the appointment/promotion in order of preference laid down by the Selection Committee.

(4) With regard to the appointment, promotion, dismissal, discharge, removal from service and termination of service or demotion of teachers in affiliated Colleges, the action shall be taken in the manner prescribed after making consultation with the above mentioned Selection Committee.

(5) The appointments, promotions, dismissal, removal and termination of service of teachers in the minority colleges affiliated on the basis of religion and language may be made and disciplinary action against them shall be taken by the governing body of those colleges with with the approval of the Selection Committee constituted by the University;

Provided that, where the order concerned is limited to only ensure, withholding increment, against a teacher or his/her suspension till the investigation of charges, in such cases the consultation with the Selection Committee shall not be necessary."

7. By clause (5) of the said Amendment Act, 2013, section 57B of the Act which deals with constitution of Selection Committee was substituted by the following:

"57B. Constitution of Selection Committee.

(1) The Selection Committee for appointment to the posts of Assistant Professor, Principal in affiliated colleges shall be constituted by the University as follows:-

(i) The Chairman of the governing body of the college or the person nominated by the governing body, who



being one of its members, shall be the Chairman of the Selection Committee.

(ii) Principal of the College.

(iii) Head of the department of the faculty concerned in the College.

(iv) Three experts, not below the rank of professor and two out of them should be experts of the subject, shall be nominated by the Vice-chancellor of the concerned University. In case of such colleges, which have been notified/declared as minority educational institution, three persons nominated on behalf of the Chairman of the College who shall be from the list of five persons preferably from the minority community and who have been recommended by the Vice-Chancellor of the University concerned from the panel of experts proposed by the Academic Council of the University concerned and three persons out of them should be subject experts.

(v) The Governing body of the College may nominate two such subject experts who are not connected with that college and those persons have been recommended by the Vice-Chancellor out of the panel of Subject Experts approved by the Academic Council of the University Concerned.

(vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories is the applicant, to be nominated by the Vice-Chancellor; if any of the above members of the selection committee do not belong to that category.

(vii) presence of five members of the Selection Committee, which shall include three subject experts, shall form the quorum for the meeting or the Selection Committee.”

8. Mr. Abhinav Srivastava, learned counsel appearing for the petitioner submits that Article 30(1) of the Constitution of India provides that all minorities, whether based on religion



or language, shall have the right to establish and administer educational institutions of their choice. By introducing the newly substituted section 57A by the Amending Act of 2013, sub-section (5) thereof provides that the governing body of those minority colleges will require the approval of the Selection Committee constituted by the University. In effect, the same is an interference with the right of administration and management of the minority educational institutions and is in violation of Article 30(1) of the Constitution. In support of his contention, learned counsel relies on the judgment of this Court in the case of '*The Governing Body of Karim City College and Others vs. The State of Bihar and Others [1984 PLJR 86 (DB)]*' wherein this Court quashed the proviso to section 57A(1) as ultra vires being violative of Article 30 of the Constitution.

9. Learned counsel appearing for the respondents submitted that there is no substance in the submissions made by learned counsel for the petitioner nor is the judgment relied upon of any consequence in the facts of the instant case. It is submitted that so far as the judgment in the case of **Karim City College (supra)** is concerned, the same related to the governing bodies of the affiliated minority colleges requiring approval of the College Service Commission while the amendment under



challenge herein relates to the decision of the governing body of minority colleges requiring approval of the Selection Committee constituted by the University, composition whereof would show that the same primarily comprises of the college authorities itself and is not an outside authority/body.

10. Having heard learned counsel for the parties and having perused the material on record, it would be relevant to point out that by the Bihar State Universities (Amendment) Act, 2007, section 57A was substituted and a new section 57B was added to the Act by the following:

“57A-(1) Subject to the provisions of the Act and the Statute made thereunder, appointment of teachers of affiliated colleges not maintained by the State Government, shall be made by the management of the college concerned by constituting a selection committee consisting of following members, namely:-

(1) One member to be nominated by the Vice Chancellor who will be the Chairman of the Selection Committee.

(ii) 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 of the College out of which one member should belong to scheduled caste/scheduled tribes.

(ii) Two members to be nominated by the management of the College.

(iv) Principal of the college.

(2)- (i) Quorum for meeting of the selection committee - Five members of the selection committee which shall include at least two experts shall form a quorum for meeting of the selection committee.



(ii) The selection committee shall prepare a merit list for appointment of teachers from amongst the eligible candidates and make recommendation for their appointment to the management of the college according to merit in conformity with the reservation roster, prepared by it in accordance with the law relating to reservation in appointment in force in the state.

6. Addition of a new section 57 B in the Bihar Act 23, 1976 -The following new section 57 B shall be added after section 57 A of the Bihar State Universities Act, 1976 (Bihar Act 23, 1976):-

"57 B- Procedure of selection to be prescribed by the Statute-

Notwithstanding anything contained in any provision of this Act, Rule, Statute, Ordinance, or any other law for the time being in force, the Selection Committee constituted under section 57 and 57A of this Act shall be bound by the procedure of selection to be prescribed by Statute to be framed by the University in accordance with procedure prescribed under the Act."

11. From perusal of the above, it would transpire that section 57A(1) dealt with appointment of Teachers of affiliated colleges not maintained by the State Government by a Selection Committee, section 57A(2) dealt with the quorum of the Selection Committee and the manner in which it has to make its recommendation. The newly added section 57B (by the Amendment Act, 2007) provided that the Selection Committee constituted shall be bound by the procedure of selection prescribed by the Statute to be framed by the University.



12. By the Amendment Act, 2013, both sections 57A and 57B were amended. So far as the constitution of Selection Committee (section 57B) is concerned, it is not in dispute that it consists of the Chairman of the governing body of the college, the Principal of the college and the Head of Department of the faculty in the college. Besides, it also consists of nominees of the Chairman, the Governing Body as also that of the Vice-Chancellor. It may be stated here itself that after amendment though the constitution of the Selection Committee is predominantly of persons from the college, however, the respondents have introduced a number of persons through nominations.

13. Section 57A of the Act deals with the procedure of selection to be prescribed by the Statute. Sub-section (4) thereof requires that the appointment, promotion, dismissal, discharge, removal from service and termination of service or demotion of teachers in affiliated colleges shall be taken in the manner prescribed after consultation with the Selection Committee. Sub-section (5) which deals with minority colleges provides that disciplinary action shall be taken against the teachers by the governing body of those colleges with the approval of a Selection Committee. While sub-section (4) talks



about the decisions being taken in respect of the Teachers of the affiliated colleges after 'consultation', sub-section (5) talks about the decisions being taken after 'approval' of the Selection Committee, which also has been reconstituted as per the amended sec 57B.

14. This Court in the case of **Karim City College (supra)** was considering the constitutional validity of the first proviso to section 57A(1) of the Bihar State Universities Act, 1976. While section 57A(1) dealt with the appointment of teachers of affiliated colleges not maintained by the State Government, first proviso thereof provided that the governing bodies of affiliated minority colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary action against them with the approval of the College Service Commission. Taking note of the judgments of the Hon'ble Supreme Court in Re: The Kerala Education Bill, 1957 (AIR 1958 SC 956), The Ahmedabad St. Xaviers College Society & Anr. Etc. vs. State of Gujarat & Anr. (AIR 1974 SC 1389) and The All Saints High School etc. etc. vs. The Govt. of Andhra Pradesh and others etc. etc. (AIR 1980 SC 1042), the Division Bench of this Court referring to the judgment in the case of The All Saints High School observed



that the induction of the outside authority ie the College Service Commission over the head of the institution and making its decision final and binding on the institution was an interference which could not be upheld. It was held that the first proviso to section 57A(1) is ultra vires being violative of Article 30 of the Constitution.

15. As seen above, though the constitution of the Selection Committee is predominantly of persons from college itself, nevertheless by introducing as many as six nominated persons in the Selection Committee (under the newly amended section 57B) and further by making the decision of the Governing Body of the minority colleges subject to the approval of the said Selection Committee, in the opinion of the Court, the same infringes with the rights of the minorities (as provided under Art 30) to establish and administer educational institutions of their choice. It may also be noted here that while section 57A(4) which deals with the teachers in affiliated colleges talks about 'consultation' with the Selection Committee, section 57A(5) which deals with the teachers in the minority colleges talks about actions being taken in their case by the governing body with the 'approval' of the Selection Committee. In the opinion of the Court, by use of the word 'approval' in sec



57A(5) the intention could not have been to violate the constitutional provision as contained in Art 30, but it would be an effective consultation as contemplated under sec 57A(4). Thus in the opinion of this Court the word ‘approval’ will have to be read down accordingly.

16. The rule of reading down a provision of the Act is a rule of harmonious construction used in order to save such provision from being declared unconstitutional. As to under what circumstances the rule of reading down may be applied was considered by the Hon’ble Supreme Court in its judgment in the case of **Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and others (AIR 1991 SC 101)** wherein it held as follows:

“228. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which



the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the Court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires an extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

17. As seen above, by the reconstitution of the Selection Committee consisting of as many as six nominated persons and further by making the decision of the governing body of the minority colleges subject to the approval of the said Selection Committee, in the opinion of the Court, the same infringes with the rights of the minorities to establish and administer educational institutions of their choice as provided under Art 30 of the Constitution. Thus the words 'with the approval of the Selection Committee', as occurring in sub-sec (5) is read down as 'in consultation with the Selection Committee'.

18. In view of the facts and circumstances stated herein above, section 57A(5) of the Act having been read down



as stated above, the same is held to be in consonance with Article 30 of the Constitution and is constitutionally valid.

19. The writ applications stand disposed of.

(Partha Sarthy, J)

I agree.
K. Vinod Chandran, CJ

(K. Vinod Chandran, CJ)

Saurabh/-

AFR/NAFR	AFR
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