

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24241 of 2019

Dr. Nagendra Kumar Pandey S/o Sri Sudama Pandey Principal Incharge, Shri Chhatradhari Sanskrit College, Hathua, Gopalganj, Resident of Village-Imilia, P.s.- Majha Garh, Distt.- Gopalganj, at present resident of Majha House Hathua, P.s.- Hathua, Distt.- Gopalganj

... .. Petitioner/s

Versus

1. The Chancellor of the University Sate of Bihar, Rajbhawan, Patna
2. The Kameshwar Singh Darbhanga Sanskrit University through its Registrar, Kameshwar Nagar, Darbhanga
3. The Vice Chancellor Kameshwar Singh Darbhanga Sanskrit University Kameshwar Nagar, Darbhanga
4. The Registrar Kameshwar Singh Darbhanga Sanskrit University Kameshwar Nagar, Darbhanga
5. Shridhar Narayan Jha Assistant Professor, Department of Vyakaran, Shri Chhatradhari Sanskrit College, Hathua, Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Adv. Ms. Sushmita Kumari, Adv.
For the Respondent No. 1	:	Mr. Rana Vikram Singh, Adv.
For the Respondent No. 2 to 4	:	Mr. Deepak Kumar, Adv.
For the Respondent No. 5	:	Mr. Sanjeev Kumar Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 10-01-2023

1. The petitioner by way of this writ petition has assailed the order passed by the University dated 20th June 2019, whereby the University has directed to appoint the Respondent Dr. Shridhar Narayan Jha as the Principal In-charge of Shri Chhatradhari Sanskrit College, Hathua, Gopalganj and further directed the Principal In-charge to take steps of formation of the governing body.

2. The petitioner contends that he was handed over the charge of Principal of the college as the then Principal had proceeded on



medical leave with effect from 16.11.2017. Since he was already holding the charge of Principal, there was no occasion for the University to have passed a fresh order of appointing Respondent No. 5 as Principal In-charge.

3. Learned counsel has also taken this Court to the letter dated 04.01.2018 sent by the Secretary of the governing body to the Vice Chancellor, whereby the name of the petitioner was recommended for appointment as Principal In-charge of the college. An approval was sought from the University. Learned counsel submits that the University had no authority in law to itself appoint the Principal In-charge of the private aided affiliated college and the entire governance of the college wrests with the governing body of the institution. It is further submitted that the governing body had considered the comparative record of service of the Respondent No. 5 as well as one other teacher and had found the petitioner to be the most eligible candidate. In the teeth of the recommendations, the University could not have arbitrarily directed for appointing Respondent No. 5 as the Principal In-charge of the college.

4. Learned counsel has referred to statute **32 (2) (ii) of the Bihar Universities Act** to contend that the syndicate alone has the power to take a decision with respect to any difficulty which may arise in formation or filling up of any seat in the governing body of any admitted college for any reason whatsoever. He submits that as the Principal In-charge is member of the Governing body, the said provision will have an application to the present circumstances and the order passed by the Registrar is without jurisdiction as the appointment of the Principal In-charge can only be made by the syndicate.

5. Learned counsel has further relied on judgment reported in **1997 (1) P.L.J.R. 509 Braj Kishore Singh Vs. State of Bihar & Ors.** by the Full Bench to submit that the University does not have the power to make appointment in a private affiliated



college and referred to Para 10 of the Judgment.

“10. From bare perusal of the provisions it will appear that except Colleges which have been established and/or are maintained or governed by the State Government or Colleges which have been established by the religious or linguistic minority, other affiliated Colleges and the Universities are forbidden from creating teaching or non-teaching post, involving financial liabilities, and making any appointment without the prior approval of the State Government. Temporary appointment for period not exceeding six months can be made without the prior approval of the State Government against a teaching post provided the post is sanctioned and the candidate possesses the prescribed qualifications. The restraint envisaged by the section is thus two-fold – neither post can be created nor appointment can be made without the prior approval of the State Government. If a sanctioned post of teacher is available i.e. vacant, appointment can be made without the prior approval of the State Government but for a period not exceeding six months.”

6. Learned counsel therefore submitted that the order deserves to be quashed. The counsel further stated that the Respondent No. 5 was hand-in-gloves with the University and there was a planned method of appointing the Respondent No. 5 with the sole purpose to get governing body formed of the choice of the University. Learned counsel further alleged that the Respondent No. 5 who had been recommended by the University for being appointed as the Principal In-charge, was ineligible to hold the post of Principal as he was not having PhD.

7. Per contra, learned counsel appearing for the Respondent No.5 has taken this Court to the I.A. filed by him for seeking vacation of the interim order passed by this Court, whereby the order impugned was stayed. It has been submitted that the Respondent No. 5 was initially appointed in the year 1982 on temporary basis, whereafter he was selected by the Bihar



College Service Commission in 1991 who recommended his appointment and also granted continuity of service from 15.10.1982 on the post of Lecturer. So far as the petitioner is concerned, he was appointed on 05.01.2013 and was much junior to the petitioner. It is alleged that the appointment of petitioner itself was wrongful as the petitioner did not possess qualification of NET or PhD in terms of the **U.G.C Regulations of 2009** and after the coming into force of the U.G.C. Regulations, the Secretary could not have offered appointment to the petitioner.

8. Learned counsel has taken this Court to the provisions of the statute to submit that as per statute **32 (19) (1)**, the Professor In-charge of the college was to be nominated in absence of the Principal of an admitted college from the senior-most teacher available In-charge of the college during his absence. Thus, he submits that it is the senior-most teacher who was to be handed over the charge. However, when the charge was handed over to the petitioner, the Respondent No. 5 preferred an appeal before the Vice Chancellor of the University pointing out that the Respondent No. 5 was senior to the petitioner and that the petitioner did not possess the minimum qualification for holding the post of Lecturer of the Gazetted Professor in terms of the U.G.C. Rules whereafter the University asked the details from the college and passed the order impugned appointing the Respondent No. 5 as the Principal In-charge of the college.

9. Learned counsel submits that the decision to appoint and hand over the charge of the college to the petitioner was taken by the Secretary alone. Even the decision to continue the erstwhile Principal after he had attained superannuation was taken by the governing body which did not have the full quorum. Those who had already retired and had left the college were included in the quorum to take a decision to continue the



erstwhile Principal, whereafter the erstwhile Principal submitted his letter to be relieved on medical grounds and in a backdoor method adopted by the Secretary, the petitioner was handed over the charge although he was the junior-most teacher.

10. The University also has supported its order passed appointing the Respondent No. 5 as the Principal In-charge and pointed out that there was no Governing body existing after 2018 which is apparent from the admission of the Secretary himself while the petitioner be directed that the governing body of the institution was required to be formed. Therefore in terms of the provisions of the statute, the University directed for appointing the senior-most teacher as the Principal In-charge so that further steps be taken to constitute the Governing body.

11. I have considered the submission, the private aided college was receiving grant from the Government and was affiliated to the University as per the provisions of statute regarding governing body, it is apparent that the governing body is responsible for compliance with orders and directions of the University as per statute **32 (5) (F) & (G)** as laid down under :-

“5.(f) be responsible for compliance with orders and directions of the University.

(g) be responsible for the enforcement and observance of the laws and directions of the University.

“32. (2) (ii) If any difficulty arises in the formation or the filling up of any seat in the Governing Body of any admitted college for any reason what-so-ever, the Syndicate shall on its own initiative or on reference to it shall decide the issue. If anybody, however, is dissatisfied with the decision of the Syndicate, he shall have the right of appeal to the Chancellor within thirty days of the decision whose decision thereon shall be final and binding on the persons concerned.”

“32. 19 (i) The Principal of an admitted college, except of college owned and maintained by Government, shall, when leaving the station during the working days



either on duty or on leave, take from the Secretary or in his absence from the President of the Governing Body permission to leave the station, and shall nominate the senior most teacher available in-charge of the college during his absence.”

12. The governing body and the Secretary have a statutory duty to observe the laws and directions of the University. In other words, the University would have an overall supervisory control on an affiliated college and would also be entitled to nominate an ad-hoc governing body in terms of Section 60 of the Act.

13. As per the provisions of the statutes, the Principal is to be also appointed by the University after making regular selection. Thus, when the appointment of Principal is with the University, the appointing of Principal In-charge by the University cannot be said to be faulty or unjustified. Keeping in view the various provisions of the Universities Act as well as the statutes therein, this Court is of firm view that the University has the power to appoint an ad hoc Principal In-charge till a Principal is appointed. The order of appointing the Respondent No. 5 as a Principal In-charge, is therefore found to be justified and legal. The allegations levelled by the petitioner with regard to the Respondent No. 5 being in hand-in-glove with the University is also found to be far-fetched and wishful thinking of the petitioner. He has not been able to prove any such allegation. From the facts which have come on record, it is apparent that while the Respondent No. 5 has acquired PhD degree way back in 2003 and was also selected through Commission and has been working on the post since long, a junior-most person who was appointed in 2013 and is much junior to the Respondent No. 5 cannot claim posting as Principal In-charge.

14. The question whether the appointment of the petitioner is in accordance with the U.G.C. Regulation is not a subject matter of the present case and therefore this Court would not enter into



the said aspect and refuses to give its findings on that aspect.

15. Considering overall circumstances as above, this Court approves the order passed by the University dated 20th June 2019 and the Respondent No. 5 shall be allowed to continue on the post of Principal In-charge and act in accordance with the laws.

16. The interim order passed by the Court dated 13.02.2020 also stands vacated. The writ petition is accordingly dismissed.

17. No cost.

(Sanjeev Prakash Sharma, J)

sachin/-

AFR/NAFR	
CAV DATE	04.01.2023
Uploading Date	
Transmission Date	

