

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7404 of 2019

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1. Radha Raman Roy Son of Late Yugal Bihari Yadav, Resident of Mohalla-Dariapur Gola (Dhobi Gali), P.S.- Kadamkuan, Dist.- Patna.
 2. Bharat Kumar Son of Late Bipin Bihari Lal, Resident of Balughat, P.S. Sultanganj, District- Patna.
 3. Quaisar Alam, Son of Md. Quasim Resident of House No. 35, Road No.6. Nagmatia Colony, P.S. Sadar Gaya Dist.- Gaya.

... .. Petitioner/s

Versus

1. The Chancellor of Bihar, Raj Bhawan, Patna.
2. The Vice Chancellor of Patna University, Patna.
3. The Registrar of Patna University, Patna.
4. The Principal, Patna Law College, Patna University, Patna.
5. The State of Bihar through its Principal Secretary, Human Resources Dept. (Higher Education), New Secretariat, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Dr. Harendra Nath Ojha, Advocate Mr. Jitendra Kumar Singh, Advocate
For Respondent No. 1	:	Mr. Janardan Prasad Singh, Sr. Advocate Mr. Rajiv Ranjan Kumar Pandey, Advocate
For the State	:	Mr. Vinay Kumar Mishra, AAG-15 Mr. Priyadarshi Matri Sharan, A.C. to AAG-15

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-07-2024

The petitioners, practicing Advocates of this Court, assail the Statute ‘Prescribing qualification and procedure for selection of teachers in Law for the Universities of Bihar imparting Law Education’, as produced at Annexure-17 brought out by the Hon’ble Chancellor.



2. The contention raised is that it does not comply with the directions in Annexure-11 judgment of a Division Bench of this Court and runs contrary to the prescription made for Part-Time Teachers by the Bar Council of India Rules and the University Grants Commission.

3. The petitioners argue that the Division Bench directed the University to reconsider the issue of qualifications for Part-Time Lecturers in view of the judgment of the Hon'ble Supreme Court of India in *Bar Council of India v. Board of Management, Dayanand College of Law & Ors.; (2007) 2 SCC 202* to bring it in consonance with the Bar Council of India Rules.

4. It is pointed out from the Bar Council of India Rules that the prescription made for Part-Time Lecturers is a minimum 10 year's experience as an Advocate. The instant Rules provide for 15 year's experience, which is not in consonance with the Rules. It is also pointed out from the advertisement, produced as Annexure-18 that there are 14 sanctioned posts of Part Time Assistant Professors, to which appointments are made for short duration; which is also the stipulation in the impugned Statute. When there are sanctioned posts, appointment should be made regularly to such Part-Time



vacancies and this is also stated to be the requirement in the Statutes for 'Appointment of Part Time Teachers' approved by the Hon'ble Chancellor vide Letter No. BSU-8/2005-1614 G.S. (1) dated 29.06.2005.

5. Learned counsel for the University seeks to support the Statute.

6. Reliance placed on Annexure-2 by the petitioners wherein Full-Time Teachers of Law should ordinarily be holders of a Master's degree in Law and Part-Time Teachers should have a minimum practice of 5 years at the Bar is no more applicable. Annexure-2 is of the year 1975 and as of now the Bar Council Rules provides otherwise. The issue was agitated by the very same petitioners along with some others before a learned Single Judge. The learned Single Judge in Annexure-10 judgment examined the manner in which Law Teachers were appointed, both permanently and as Part-Time Lecturers. The learned Single Judge approved the same on the reasoning that the students have to be imparted training in both academics and practical knowledge; the practicing Advocates being better equipped to impart practical knowledge. The Statute which was challenged therein provided for appointment of Lecturers in Law Colleges based on the qualification prescribed by Bar



Council of India and All India Council for Technical Education.

7. The contention raised on behalf of the Hon'ble Chancellor was that Universities were obliged to comply with The UGC Regulations since the State of Bihar had accepted the UGC package relating to salary and other conditions of teaching and non-teaching staff of the University. The decision in ***Dayanand College of Law*** (supra) was specifically noticed, wherein the Apex Court held that though Bar Council of India may not exercise direct control over legal education; in the same sense as entrusted to the Universities, still it retains adequate power to control the courses of studies in law, the powers of inspection, the powers of recognition of degrees and the powers to deny enrolment to students for a course of study in law, unless the University is recognized by the Bar Council of India. It was held that while framing the Statutes, it was necessary that the requirements of the Advocates Act and the rules of the Bar Council of India are adhered to. It was hence, there was a direction to make the Statutes in consonance with the rules of the Bar Council. A Division Bench rejected the appeal, as seen from Annexure-11.

8. The direction, as we discern from the decisions are to make the rules in consonance with the Bar Council of India



Rules.

9. The Bar Council of India Rules under Schedule-III stipulates the “*Minimum Infrastructural Facilities required in a Center of Legal Education for permission to run law courses with affiliation from an Indian University.*” Clause-17 of Schedule-III provides that there shall be sufficient number of Full-Time faculty members in each Centre of Legal Education to teach each subject at all points of time for running courses; who can be supported by Part-Time or visiting faculty. Hence, the core faculty is the Full-Time faculty members for whom a Master’s Degree in Law and to some posts, even a Ph.D. degree is stipulated as per the Statute. The petitioners do not have any objection to that but only are concerned with the Part-Time faculty which even as per the Bar Council of India Rules, only supports the Full-Time faculty members; who are the core faculty.

10. The minimum qualification needed for the faculty is available in Clause 20 of Schedule-III, which is as below:-

“20. Minimum qualification needed for the Faculty: Full-time faculty members including the Principal of the Centre of Legal Education shall be holders of a Master’s degree or as prescribed by UGC or other such standard setting bodies. However faculty for teaching clinical program may be appointed from the retired judicial officers or from the Bar, a



person with professional experience for a minimum period of 10 years. Visiting faculty from the Bar, bench or academy shall have a minimum experience of 10 years."

(Emphasis by us with the underlining)

11. The stipulation of 10 year's asserted by the petitioners is from the above stipulation. We have to immediately notice that what is provided in the Bar Council of India Rules is only that a minimum of 10 years should be stipulated for an Advocate, to be appointed as a Part-Time faculty, as distinguished from a Full-Time faculty who has to have a Master's degree and for some posts, a Ph.D. qualification too. Furthermore, it is trite that the apex body which controls the standard of education in a professional course, while prescribing standards, prescribes the minimum standards required, which cannot at all be diluted. However, any University could provide a higher standard which would only enhance the quality of education imparted in the colleges affiliated to that University. In the present case, the Statute provides for a 15 year's experience by Paragraph 4.5 in dealing with Assistant Professors Part-Time in Law. We find absolutely no reason to fault with the same.

12. The next contention is on such persons selected being entitled to be appointed permanently in the sanctioned



posts. Reliance is placed on the Statutes dated 29.06.2005, which is extracted hereunder:-

“The minimum qualification for appointment of part-time teachers should be the same as that of regular teachers and the mode of selection for appointment shall be the same as that for the recruitment of regular teachers. However, such teachers may also be appointed by the Vice Chancellor on the recommendation of duly constituted selection committee, for a period not exceeding six months or till the end of the academic session, whichever is earlier. The part-time teachers should be appointed only in exceptional circumstances when it is appropriate to the requirements of the institution in terms of subject to be taught or work load. They can be appointed on a contract appointment if only for a short period or as permanent half-time/proportionate time employees against half/proportionate salary of the scale (and should include proportionate increments, dearness allowance and any other permissible benefits). Such permanent part-time teachers will also be entitled to the scheme of Career Advancement from Lecturer to Senior Scale Lecturer, Selection Grade Lecturer/Reader and Professor. However, they will be entitled to half/proportionate increments, dearness allowance and any other permissible benefits.”
(Emphasis by underlining as argued by the petitioners)

13. The above extract indicates that the minimum qualification for Part-Time Teachers should be the same as that of regular Teachers. However, the Vice Chancellor is conferred with the power to appoint persons on the recommendation of duly constituted Selection Committee, for a period not exceeding six months or till the end of the academic session,



whichever is earlier. It is also stipulated that Part-Time Teachers should be appointed only in exceptional circumstances when there is requirement. The emphasis laid by the petitioners is on the underlined portion in the above extract.

14. Only the permanent Part-Time Teachers are entitled to the scheme of career advancement, as enabled to the Full-Time Teachers. In this context, we cannot but notice that this does not enable all Part-Time Teachers to be appointed as permanent Teachers. The Statute itself specifically speaks of permanent Part-Time Teachers being appointed, with the same minimum qualification as the regular Teachers; hence, with a Master's degree and in certain cases with a Ph.D qualification. However, the other Part-Time Teachers appointed, in this case, taking cue from the Bar Council of India Rules, is of Advocates who have a Graduate qualification in Law, enrolled at the Bar and having 15 year's experience. These Part-Time Teachers do not have the similar qualification as the Full-Time Teachers and in that circumstance, there cannot be any appointment as permanent Part-Time Teachers.

15. Furthermore, the appointment of Advocates as Part-Time Teachers is only to support the regular faculty and ensure practical knowledge being imparted to the students,



which appointment can be made, even as per the Statute of 29.06.2005, only for a period not exceeding six months or till the end of the session, whichever is earlier.

16. The mere fact that 14 posts were sanctioned as against Part-Time Assistant Professors would not result in their appointment being made permanently. Even for a Part-Time post, sanction is required since payment of salary is by the sanctioning authority; the Government. As provided in the Statutes and the Bar Council of India Rules, the prescription in the advertisement is for empanelment for the purpose of service for a short period. We find absolutely no reason to interfere with the Statutes and we approve the same.

17. The writ petition would stand dismissed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

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CAV DATE	
Uploading Date	12.07.2024
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