

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10240 of 2014

Dr. Ram Uday Sharma Son of Late Mohan Sharma Resident of Village-
Panduki, P.O- Munjhara, P.S- Goh, District- Aurangabad

... .. Petitioner/s

Versus

1. Kameshwar Singh Darbhanga Sanskrit University , Kameshwar Nagar, Darbhanga through its Registrar
2. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
4. The State of Bihar, through the Principal Secretary, Department of Education, Government of Bihar,
5. The Principal Secretary Higher Education, Department of Education, Government of Bihar, Patna.
6. The Director Higher Education, Department of Education, Government of Bihar, Patna.
7. Sri Vasudev Sanskrit College, Akbarpur Arwal, Patna through its Principal.
8. The Governing Body of Sri Vasudev Sanskrit College, Akbarpur Arwal, Patna through its Secretary.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar
For the Respondent/s : Mr. Kumar Alok SC-7
For the University: Mr. Deepak Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
Date : 01-08-2024

1. The petitioner has filed the present writ application for a direction to the State respondents to pay the current as well as arrears of salary to the petitioner.

2. The petitioner filed I.A. No. 6691 of 2018 challenging



the notification as contained in Memo No. 852 dated 02.06.2018 issued by the Registrar communicating the decision of the Syndicate to the petitioner and others.

3. Learned counsel for the petitioner submits that the petitioner was appointed on the vacant sanctioned post in Sri Vasudev Sanskrit College, Akbarpur (Arwal), Patna (hereinafter referred to as the “College”) by the Governing Body. The College in question is affiliated to Kameshwar Singh Darbhanga Sanskrit University (hereinafter referred to as the “University”).

4. An advertisement was published in the daily newspaper dated 02.01.2013 by the Governing Body of the concerned College whereby applications were invited from the eligible candidates for appointment on various posts of teaching and non-teaching employees including one post of Assistant Professor (General) in the subject of Literature on the approved pay scale of the University and on the qualification as prescribed by the UGC.

5. The petitioner submitted his application form and the Selection Committee was duly constituted by the Vice Chancellor. The interview for selection was held by the Selection Committee on 28.01.2023. Pursuant thereto, the petitioner participated in the interview with all educational



certificates in original. The Selection Committee was duly constituted under Section 57 of the Bihar State University Act, 1976 (hereinafter referred to as the “1976 Act”). After interview, the Selection Committee recommended the name of the petitioner for appointment on the post of Assistant Professor (Literature) on 28.01.2013 and the petitioner submitted his joining on 01.02.2013 and started working thereafter.

6. The College in question was established in the year 1974-1975 and the Government sanctioned the posts in various colleges including the College of the petitioner and also allocated budget for the colleges having two posts of Lecturer which would be evident from Annexure- 9 Series. Altogether ten posts were sanctioned for the College in question of teaching employees including the post of Principal for which the State Government provided salary.

7. The petitioner has been appointed on the vacant sanctioned post of Literature (Sahitya) as per the terms of the advertisement. After his appointment, the petitioner started discharging his duties and continued to discharge the same till the approval of appointment of the petitioner has been refused by the Syndicate of the University by the impugned order dated 2nd June, 2018 on the ground that petitioner was appointed on



the second reserved post.

8. Learned counsel submits that ground is non est inasmuch as from perusal of the advertisement itself the post was advertised as general category post. In earlier years, two posts of literature were being filled up by general category candidates and after retirement of the incumbent on the post namely Rameshwardhari Singh an advertisement was published and the petitioner was duly appointed after following the procedure for appointment. Even the State Government has regularly been providing salary of both posts under General Category and as such the ground of rejection of approval by the Syndicate is wholly arbitrary and erroneous.

9. Learned counsel further argued that as per the scheme of the 1976 Act the affiliated colleges are governed by the Governing Body and Sections 57, 57A, 57 B of the 1976 Act.

10. Section 59 of the 1976 Act prescribes the provision for relation of the affiliated colleges with the University and says that relation of the affiliated colleges with the University shall be governed by the statutes to be made in that behalf and such statutes shall provide in particular for the exercise by the University of the following powers in respect of the colleges affiliated to the University:-

“(1) to lay down minimum educational qualifications



for the different classes of teachers and tutorial staff employed by such colleges;

(2) to approve the action taken by the governing bodies of such colleges in regard to creation of posts of teachers, their appointments, dismissal, discharge, removal from service, termination of service and determination of term of post and to approve the deputation of teachers to the Intermediate College delinked from the affiliated College

11. Learned counsel submits that no statute has yet been framed by the Hon'ble Chancellor of the Universities as per Section 59 of the 1976 Act for exercise of power by the University with regard to appointment in the affiliated college. Section 59 is an enabling provision and cannot be exercised by the University without having framed the statute as provided therein.

12. Accordingly, submission is that rejection of approval of appointment by the Syndicate/University is without jurisdiction and *de hors* the law. The petitioner has worked up to the year 2018 and thereafter he was not allowed to mark his attendance.

13. On the contrary, learned counsel for the State as well as the respondent / University argued that the petitioner was appointed on the second post meant for reserved category as such, the University in exercise of its power has rightly refused



to grant approval of appointment of the petitioner. The University in terms of Section 59 of the 1976 Act has rightly rejected the approval of appointment of the petitioner and accordingly the petitioner was not paid his salary for the period claimed by him. The petitioner's appointment was not done as per statutory provisions and rules.

14. Having heard learned counsel for the parties and upon perusal of the materials on record it appears that the College in question run by the Governing Body advertised one post under General Category in the year 2013 for appointment as Assistant Professor in Literature (Sahitya). The petitioner applied pursuant to the advertisement. The Selection Committee was duly constituted as per Section 57-B of the 1976 Act and statute. The Selection Committee interviewed the petitioner and others and recommended the name of the petitioner as the first candidate for appointment as Assistant Professor.

15. The joining of the petitioner was allowed on 01.02.2013 and the petitioner started discharging his duties as Assistant Professor and thereafter worked up to 02.06.2018 i.e. till the date the approval of appointment of the petitioner was rejected by the Syndicate. Upon perusal of Section 59 of the 1976 Act it is evident that the 1976 Act did not prescribe any mode of



approval by the University in the appointment made by the affiliated colleges pursuant to the recommendation of the Selection Committee. The statute framed in this regard under Section 59 of the 1976 Act has not been placed on record by the parties. However, this is specific stand of the petitioner that no statute has been framed by the Hon'ble Chancellor for exercise of power by the University under Section 59 of the 1976 Act.

16. As per Section 57B of the 1976 Act the Selection Committee constituted by the University has the power to recommend the candidates for appointment. It is not disputed that the Selection Committee has been constituted by the University for appointment on the post of Lecturer advertised by the Governing Body of the College. It is not the case of the respondents that the petitioner was ineligible for appointment and / or the procedures prescribed for appointment was not followed. The only contention of the respondents is that the post on which the petitioner was appointed was a second post under reserved category. The respondents have failed to bring on record any document to show that the post advertised for appointment as Assistant Professor was reserved post. On the contrary, advertisement shows that the post advertised for appointment was one post of general category.



17. The contemporaneous documents i.e. sanction of budget 2009-2010 produced by the petitioner as Annexure – 9 Series show that the posts were sanctioned by the State Government and budget was allocated for different colleges running under the University including the College of the petitioner were general category post.

18. Accordingly, the contention of the University as well as the State Government that the post was a reserved category post cannot be accepted and is hereby rejected.

19. This Court finds that rejection of the approval of the petitioner's appointment by the University / Syndicate is unwarranted and amounts to exceeding the statutory power prescribed under the 1976 Act.

20. Considering the discussions held hereinabove on the conspectus of facts and law, this Court is of the opinion that rejection of approval of the petitioner's appointment by the Syndicate is not sustainable and is accordingly set aside. The impugned notification dated 02.06.2018 in relation to the petitioner is also set aside.

21. The respondent – University is directed to forward the bills for payment of arrears of salary of the petitioner from the date of appointment till the date he actually worked to the



respondent authority of the State within two months.

22. The State authorities in turn are directed to make payment of arrears of salary to the petitioner within a period of one month from the date of receipt of bills from the University.

23. With the aforesaid observation and direction, the application is disposed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	08-08-2024
Transmission Date	NA

