

Birendra Ram Vs. State of Bihar and Ors

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Court : Jharkhand

Decided On : Dec-18-2014

Appellant : Birendra Ram

Respondent : State of Bihar and Ors

Judgement :

-1- IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 5021 of 2002 --- Birendra Ram --- --- --- Petitioner Versus 1. The State of Bihar 2. The State of Jharkhand 3. The President, Governing Body, Koyalanchal, Sanjay Gandhi Memorial College (K.S.G.M.), Nirsa, Dhanbad 4. The Secretary Governing Body, K.S.G.M. College, Nirsa, Dhanbad 5. The Principal of K.S.G.M. College, Nirsa, Dhanbad 6. Vinoba Bhave University, Hazaribagh 7. Sri Mohuddin Ansari 8. Sri Birendra Behari --- Respondents --- CORAM: The Honble Mr. Justice Aparesh Kumar Singh --- For the Petitioner : -Mr. Mahesh Tiwary, Adv. For the State of Jharkhand : - JC to SC-II For the State of Bihar : - Mr. Binit Chandra, JC to GA (Bihar) For the Respondent no. 6 :- Mrs. I. Sen, Choudhary, Adv. For the Respondent no. 7 :- Mr. A. K. Sahani, Adv. For the Respondent no. 8 :- Mr. Suraj Kumar, Adv. --- 21/18.12.2014 Supplementary affidavit has been filed by the petitioner as per which personal service of notice has been effected upon the respondent nos. 4 and 5. Therefore, service of notice upon the said respondents is again complete. Heard learned counsel for the parties. The grievances of the petitioner are as follows:- (i) to forthwith appoint him on the 2 nd post of Lecturer in the department of commerce at K.S.G.M. College Nirsa, Dhanbad in view of the

recommendation of the Bihar College Service Commission, Annexure-4 dated 02.05.1997 whereunder he has been recommended as 1 st candidate for the 2nd post out of 3 posts against whom recommendations were made. (ii) to direct the respondents to immediately allow the petitioner to resume his duties in the college. (iii) to terminate the services of respondent nos. 7 and 8, who have been appointed in the same subject of commerce against 2nd and 3rd posts though the petitioner was recommended as 1st candidate for the 2nd post while the respondent no. 7 was recommended as 2nd candidate for the 2nd post and 1st candidate for the 3rd post while the respondent no. 8 was recommended as 2nd candidate for the 3rd post. Prayer has also been made to impose cost upon the respondents as they have not acted upon the recommendation of the Commission.

-2- The petitioner is said to have been appointed by the order issued by the Principal of the College on 01.12.1997, Annexure- 6 in the said college on the recommendation of the Commission after he had submitted all relevant papers on being asked earlier through Annexure-5 dated 28.11.1997. Learned counsel for the petitioner has submitted that on recommendation of the Commission, the petitioner is bound to be appointed against the 2nd post in the subject of commerce where he was recommended as 1st candidate. It is submitted that though he has been appointed vide Annexure-6 but the respondents have arbitrarily prevented him from discharging his duty since 2001 whereafter he has approached this Court after having made representation vide Annexure-8. It is submitted that law on this subject is well settled that governing body has no discretion in the matter of appointment where the recommendation has been made by the Commission. The respondent nos. 7 and 8 have appeared. Learned counsels for the respondent nos. 7 and 8 submit that the Governing Body of the college took a conscious decision to appointment the respondent no. 7 in the said college, who was 2nd candidate recommended for the 2nd post vide minutes dated 27.09.1997. The Governing Body found that the respondent no. 7 is already working in the said college and the financial condition of the college is not good. Hence the appointment of teacher from out side the college will put more financial liability. The Governing Body also held that the respondent no. 8 is also working in the college and he is being appointed against the sanctioned post in the commerce department. This decision has been brought on record as Annexure-

R/9/A to the counter affidavit of the respondent no. 8 (after renumbering of the respondents, the earlier respondent no. 9 has become the respondent no. 8 now). Learned counsel has also referred to the communication of the Secretary of the Governing Body of the College dated 20.10.1997 to the Registrar, Vinoba Bhave University, Hazaribagh for seeking confirmation of the services of teachers in the subject of commerce including the name of the respondent nos. 7 and 8. The services of the respondent nos. 7 and 8 including Rajendra Kumar, who was appointed against the 1st post in the subject of commerce in the same college, has been approved vide Annexure-R/9/C, dated 10.06.1998 issued by -3- the Registrar of the Vinoba Bhave University. The respondent no. 7 has also annexed the letter of appointment which shows that he was working since 1984 in the said college. Learned counsel for the respondent has also submitted that the contention of the petitioner is not correct that the Governing Body has no role to play after the recommendation is made. He has referred to the communication at Annexure-3, dated 2.5.1997, of the Commission made in favour of the petitioner itself which clearly stipulates that the Governing Body of the College may appoint any one of the recommended candidates on a particular post which is to be approved by the University. It is submitted that none of the orders i.e. the Governing Body's decision to appoint these respondents and the decision of the University to approve such appointment have been challenged by the petitioner. Therefore, the appointment of these respondents not being under challenge in the writ petition, the prayer made herein is itself misconceived. Learned counsel for the respondent- University has relied upon the provisions of the Jharkhand State Universities Act, 2000 which is an adaptation of predecessor Act i.e. The Bihar State Universities Act, 1976 under which such appointments were made earlier. Reference has been made to Section 57A of the Act which deals with appointment of Teachers of affiliated Colleges not maintained by the State Government, as per which such appointments are to be made by the Governing Body on the recommendation of the Jharkhand Public Service Commission, which was earlier done by the Bihar College Service Commission. It is submitted that as per the provision of Section 57A, the decision of the Governing Body is to be approved by the University. These orders/ decision of the Governing Body and the subsequent approval by the University is not challenged. By referring to the counter affidavit of

the Governing Body of the College, learned counsel for the respondent- University submitted that the reason for not appointing the petitioner as a Lecturer in the subject of Commerce has also been indicated therein . It is stated that the respondent- Governing Body through their affidavit have stated that the petitioner had joined the services of the College but since he was highly irresponsible, irregular and regular -4- absentee, the Governing Body in its meeting on 26.9.1997 decided to appoint respondent no. 7 and 8 for the post of Lecturer which have also been approved by the University. It is submitted that because of his callous behaviour and unexplained absenteeism as also habit of taking classes occasionally, Governing Body of the College was left with no option save and except to appoint the private respondents. It is further submitted in their counter affidavit at para 12 that the petitioner was never prevented from taking regular classes rather he was never sincere in taking regular classes. It is further stated that the petitioner was allowed to join on the condition that no financial liability shall rest upon the college and that he would engage classes without any salary on honorarium basis. However, because of the irregular attendance of the petitioner his name was struck off. Therefore, according to learned counsel for the University, the petitioner is not entitled to the relief prayed for herein. I have heard counsel for the parties at some length and gone through the relevant materials on record. On the one hand there is a recommendation of the Bihar College Service Commission vide Annexure-4 to the writ petition dated 2.5.1997 which indicates that petitioner was recommended as first candidate for the second post and at the same time there is a letter of the Commission at Annexure-3 of the same date in favour of the petitioner which states that it is the Governing Body of the College which has to take a decision to appoint any one of the recommended candidates which appointment is to be subject to the approval of the University. The petitioner has argued that the Governing Body has no discretion in the matter and it has to appoint the candidates recommended by the Commission. The provisions of Section 57A of the Act are material for coming to the conclusion on the aforesaid issue and they are being quoted herein below:- 57A. (1) Appointment of teacher of affiliated Colleges not maintained by the State Government shall be made by the Governing body on the recommendation of the College Service Commission. Dismissal, termination, removal, retirement from service or demotion in rank of

teacher of such colleges shall be done by the Governing Body in consultation with the College Service Commission in the manner prescribed by the Statutes: 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 : Provided further that the advice of the College Service -5- Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed. [Provided that the Governing Bodies of affiliated minority college's based on religion and language shall appoint, dismiss, remove or terminate the services of teacher's or take disciplinary action against them with the approval of the Selection Committee of the University. (2) Recommendation for the appointment of teachers of Colleges shall be made in accordance with the following provisions :- (a) College Service Commission shall give its consent/recommendation for the appointment, dismissal or termination etc. of teacher of affiliated Colleges till the date of their being made constituent colleges. Its consent/ recommendation shall be deemed valid only till that date. (b) If an affiliated college becomes a constituent college of a University by the time the recommendation of the College Service Commission is received, the Syndicate shall take action in accordance with sub-section (4) of section 57 of the said Act, as if the recommendation has been made by the Commission. (c) For the purpose of absorbing the services of the teacher of the affiliated colleges, who were appointed by the governing body of the college against the sanctioned posts before the establishment of the College Service Commission and whose services have been approved by the University as also the services of such teachers who were appointed by the governing body on the recommendation of the University Service Commission (Dissolved College Service Commission) as the case may be, approval of the Bihar State University (Constituent Colleges) Service Commission shall be necessary, and such teachers shall be absorbed in the University Service from the date of making the College constituent and their seniority shall be determined according to the rules prescribed in the Statutes. A mere perusal of the aforesaid provision would show that the appointment of Teachers of the affiliated College not maintained by the State Government shall be

made by the Governing Body of the College on the recommendation of the Jharkhand Public Service Commission, which should be read as Bihar College Service Commission for the purpose of the present case. It further appears from Sub Section 2 thereof that the decision of the Governing Body is to be approved by the University as well. Therefore, the contention of the petitioner that there is no role of the Governing Body is neither borne out in the recommendation letter at Annexure-2 of the Commission nor appears from the reading of the provision of Section 57A. However, petitioner had a right of consideration to be appointed as he was recommended as first candidate for the second post. The Governing Body which was to take decision on that, came to a conclusion based upon consideration of the case of the candidates including the private respondents that the respondent no. 7 had been working in the College since long and therefore he should be appointed. Similar was the decision in respect of respondent no.8 for the third post for which he was -6- recommended as second candidate. Such decision of the Governing Body was also approved by the University as would appear from the reading of Annexure-R/9C through letter dated 10.6.1998 communicated by the Registrar of the University to the Secretary of the College. These decisions which squarely affected the petitioner were brought on record by the respondent no.8 through his counter affidavit filed on 17.10.2003 itself but have not been challenged in the writ petition. It further appears that the respondent- Governing Body in their counter affidavit have taken a plea that the petitioner was irregular in attending classes and had shown habitual absenteeism in undertaking the responsibility of the Lecturer. This might have been the reason for the Governing Body to take a decision to appoint respondent no. 7 and 8 against the second and third post in the subject of Commerce. However, the decisions of the Governing Body and the University, which they were legally authorized to take in terms of the provisions of Universities Act have not been challenged by the petitioner. The averments made by the Governing Body in their counter affidavit also do not seem to have been rebutted by the petitioner by filing any rejoinder. It further appears that the letter of appointment at Annexure-6 dated 1.12.1997 was not issued by the Governing Body of the College or its Secretary and appears to be issued by the Principal of College not backed by any decision of the Governing Body. Therefore, it cannot be said that the Governing Body had

taken any decision to appoint the petitioner as such for the post of Lecturer at the relevant point of time in the background of annexures R/9/A/B/C. Considering all these aspects of the matter, petitioner has failed to make out a case for any interference in the writ petition, which is accordingly, dismissed. (Aparesh Kumar Singh, J) Kamlesh/mohanti

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