

State of Bihar and Others Vs. Syed Asad Raza and Others

State of Bihar and Others Vs. Syed Asad Raza and Others

SooperKanoon Citation : sooperkanoon.com/662649

Court : Supreme Court of India

Decided On : Apr-04-1997

Reported in : AIR1997SC2425; JT1997(5)SC97; (1997)IILLJ786SC; 1997(3)SCALE723; (1997)11SCC442; [1997]3SCR658

Judge : K. Ramaswamy and; G.B. Pattanaik, JJ.

Acts : Bihar State Universities Act, 1976 - Sections 35

Appeal No. : Civil Appeal No. 3003 of 1997

Appellant : State of Bihar and Others

Respondent : Syed Asad Raza and Others

Advocate for Pet/Ap. : B.B. Singh, Adv

Prior history : From the Judgment and Order dated 02.05.96 of the Patna High Court in L.P.A. No.17 of 1996

Judgement :

Leave granted.

Substitution allowed.

This appeal by special leave is from the judgment of the Patna High Court. Ranchi Bench, made on may 2, 1996 in LPA No. 14/1996.

The admitted facts are that Maulana Azad college, Ranchi established in 1970 is a minority institution; Pursuant to an agreement dated December 15, 1972, it was agreed that on new posts shall be created in the college without obtaining prior permission of the Vice-Chancellor. Two posts were created by the Government Body on September 7, 1975. One, Anup Narain Singh and one Pandey Janardhan Prasad were appointed on April 8, 1976. Pandey Janardhan Prasad ceased to work from February 10, 1979. Thereafter, the first respondent, Syed Asad Raza came to be appointed on July 1, 1979. The question is whether the prior sanction from Vice Chancellor for the post to which syed Asad Raza came to be appointed is a pre-condition? Section 35 of the Bihar state University Act, 1976 has stepped in and states that:

'35 (1) No post for appointment shall be created without the prior sanction of the state Government. Notwithstanding anything contained in this Act, no University or any college affiliated to such a

University, except such College,

(a) as is established, maintained or governed by the state Government; or

(b) as is established by a religious or linguistic minority;

(i) After the commencement of this Act. no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the state Government.

(ii) Shall either increase the pay or allowance attached to any post, or sanction any new allowance;

Provided that the state Government may, by an order, revise that pay 2scale attached to such post or sanction any new allowance.

2. Notwithstanding anything contained in this Act., no college other than one mentioned in clause (a) and (b) of sub-section (1) , shall, after the commencement of this Act, appoint any person on any post without the prior approval of the state Government.

Provided that the approval of the state Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months by a candidates possessing the prescribed qualification."

The reading of the above clearly indicate that after coming into force of the Bihar state Universities Act, 1976 w.e.f. May 16, 1976, it is enjoined that for appointment of a teacher prior approval of the state Government is necessary. However, exception have been engrafted in respect of (a) the institution run by the state Government and (b) institution established by a religious or linguistic minority. Even the non-obstante clause in sub-section (2) also makes exceptions to the clauses (a) and (b) of sub-section (1) of Section 35 of the Act. Thus, it could be seen that for the creation of a post in minority institution for the appointment thereof, prior approval of the University Vice-Chancellor or the state Government, is not a pre-condition. The question, therefore, is: whether such an appointee, first respondent is to the payment of the grant-in-aid. By operation of clause (1) of Article 30, all minorities, whether based on religion or language, shall have the right to establish an educational institution of their own choice. Under clause (2) of Article 30, the state shall not, in granting aid to educational institution, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Thus, It could be seen that on establishment of an educational institution by the minority, the competent authority is bound to sanction grant-in-aid subject to such regulation as may be available under law to regulations as may be available under law to regulate the recruitment of service administration, use of fund etc. The contention of Shri B.B. Singh, learned counsel for the appellant, is that pursuant to the agreement dated December 15, 1972 it is necessary to obtain the prior approval of the Vice- Chancellor. This agreement was relevant before the Bihar state Universities Act, 1976 came into force. After the Act has come into force, the agreement no longer subsists. Thus, the statute operates in the field so long as no regulation have been made. By statutory operation, the respondent is entitled to the payment of the grant-in-aid. The appeal is, accordingly, dismissed. No costs.