

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22400 of 2013

Dr. Shaukat Ali Khan Son Of Late Shri Md. Hanif Khan Resident Of M.M. Colony, Siwan, P.S.- Siwan Town And District- Siwan

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resource Development Department, Bihar, Patna
3. Special Secretary, Department Of Higher Education, Bihar, Patna
4. The Director, Higher Education, Government Of Bihar, Patna
5. J.P. University, Chapra Through Its Registrar
6. The Vice Chancellor, J.P. University, Chapra
7. Registrar, J.P. University, Chapra
8. Secretary, Zakia Afaque Islamia College, Siwan
9. Principal, Zakia Afaque Islamia College, Siwan
10. Dr. Abdul Wasim Khan Son Of Abdul Rashid Khan R/O Vill.- Gurdanhan, P.O. P.S. Manjhi, District Saran

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7292 of 2014

Dr. Abdul Washim Khan Son of Abdul Rashid Khan R/o Village- Gurdahan, Khurd, P.O and P.S- Manjhi, District Saran, Presently working as the post of Lecturer in the department of History of Z.A. Islamia College, Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Department, Govt. of Bihar, New Secretariat, Bailey Road,
3. The Director of Higher Education, Govt. of Bihar, New Secretariat, Bailey Road, Patna.
4. The Vice- Chandellor, Jai Prakash University, Chapra.
5. The Registrar, Jai Prakash University, Chapra.
6. The Secretary, Governing Body of Z.A. Islamia College, Siwan.
7. The Principal of Z. A. Islamia College, Siwan

... .. Respondent/s

Appearance :



(In Civil Writ Jurisdiction Case No. 22400 of 2013)

For the Petitioner/s : Mr. Binodanand Mishra

For the University : Mr. Chandan Kumar

Mr. Bindhyachal Rai

For the College : Mr. Abhinav Srivastava

For respondent no. 10 : Mr. Siyaram Sahi

(In Civil Writ Jurisdiction Case No. 7292 of 2014)

For the Petitioner/s : Mr. Md. Anisur Rahman

Mr. Jai Prakash Singh

For the State : Mr. Raghwanand, GA 11

For the University : Mr. Chandan Kumar

Mr. Bindhyachal Rai

For the College : Mr. Abhinav Srivastava

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 25-10-2024

Both these writ applications, having common question of facts and law, were heard together by this Court.

2. For the sake of convenience, Dr. Shaukat Ali Khan, the petitioner of CWJC No. 22400 of 2013, is mentioned herein below as 'the petitioner' and Dr. Abdul Wasim Khan, the petitioner of CWJC No. 7292 of 2014 and respondent no. 10 of CWJC No. 22400 of 2013, is mentioned herein below as 'the respondent no. 10'.

3. The prayer of the petitioner is for quashing the order, as contained in Memo No.1624, dated 04.09.2013, issued under the signature of the Principal Secretary, Education Department, Government of Bihar, whereby he has refused to pass necessary orders for payment of salary of the petitioner, which is in defiance of the report of the three-men committee constituted by this Court.



The petitioner has further prayed for a direction to the respondent authorities to make payment of salary, current as well as arrears, and other benefits, with interest at the rate of 18 per cent per annum to the petitioner on the unpaid amount of arrears of salary to the petitioner.

4. The prayer of respondent no. 10 is for issuance of a writ directing the respondents to pay the arrears of salary from the date of his joining, i.e. with effect from 24.04.1990 as well as current salary and also for awarding compensation for mental torture and harassment due to financial loss incurred to him.

5. The brief facts involved in these writ applications is that Z. A. Islamia College, Siwan, (herein after referred to as 'the College') is a recognized minority educational institution within the meaning of Article 30 (1) of Constitution of India and is also a deficit grant college, permanently affiliated to the Jai Prakash University, Chapra (herein after referred to as 'the University').

6. The Petitioner was initially appointed as Lecturer on temporary basis in the subject of History on 04.04.1988. The petitioner's initial appointment was without any advertisement. Thereafter, an advertisement was published in the Urdu daily 'Qaumi Tanzeem', Patna Edition, on 31.08.1988, inviting applications for appointment of Lecturers in different subjects,



including History. In the said advertisement, it was stated that teachers working on the temporary basis/post may also apply.

7. Pursuant to the aforesaid advertisement, the petitioner, having requisite qualification, applied for appointment as Lecturer in History, following which the interview was held on 10.09.1988 in which five candidates, including the petitioner, appeared and the selection committee, after interview, recommended the name of the petitioner. Accordingly, the Governing Body of the College, vide resolution no. 4, dated 20.09.1988, regularized the services of the petitioner on permanent basis with effect from 04.04.1988, i.e. from the date of initial appointment.

8. At this juncture, it would be pertinent to mention that the respondent no. 10 was appointed on the post of Lecturer in the subject of History, vide order, dated 24.04.1990, pursuant to the advertisement, dated 13.12.1989, published in the newspaper, The Times of India.

9. The Secretary of the Governing Body of the College, vide letter, dated 13.12.1990, requested the Bihar College Service Commission (herein after referred to as 'the Commission') for granting concurrence to the services of the petitioner and others, following which, the Commission issued letter, dated 02.09.1994, calling in total 52 Lecturers working in the said College for the



interview in order to grant approval to their permanent appointment. In the said letter, it was specifically mentioned that the petitioner was to be interviewed against the 5th post of Lecturer in the subject of History; whereas, the respondent no.10 was to be interviewed against the 7th post.

10. Thereafter, the Commission, vide letter, dated 31.03.1995, sent its concurrence, in which it had given concurrence to the respondent no. 10 against the 6th post of Lecturer in History, but the name of the petitioner was altogether omitted. Upon this, the Governing Body of the College brought this fact to the notice of the Commission requesting therein to rectify the mistake.

11. Thereafter, the Commission, vide Memo No. 7155, dated 06.05.1995, granted approval to the permanent appointment of the petitioner against the 6th post and, accordingly, vide Memo No. 7158, dated 08.05.1995, partial modification was done to the letter, dated 31.03.1995, by which the petitioner was given concurrence on the 6th post of Lecturer in the subject of History and the respondent no. 10 was pushed down to 7th post on the basis of date of their initial appointment.

12. The Governing Body of the College, in its meeting held on 02.01.2005, decided to shift the services of petitioner



working against the 6th post to 5th post of Lecturer with effect from 01.05.2004 on account of vacancy which arose due to the retirement of Sri D. D. Sharma, the then Head of Department of History, on 30.04.2004, which was subsequently approved by the State Government, vide letter dated 10.03.2006. The State Government issued order for payment of salary to the petitioner.

13. In the light of the aforesaid, the respondent no. 10 challenged the order, dated 10.03.2006, before this Court, in CWJC No. 5712 of 2006, passed by the Director, Human Resources Development Department, by which the petitioner was adjusted against the 5th post in the Department of History.

14. It is relevant to mention here that the deficit grant was allowed to the said College in the subject of History up to the 5th post.

15. The main controversy in the writ application is entitlement/claim of the parties to be shifted/adjusted on the 5th post entitling them for payment of salary on the post of deficit grant allowed up to the 5th post by the State Government.

16. A co-ordinate Bench of this Court, vide order, dated 09.09.2011, quashed the impugned order insofar as it related to the petitioner and constituted a three-men committee, comprising of the Director, Higher Education, the Registrar of the University and



the Secretary of the Governing Body of the College. Since the Commission was disbanded as on the date of the order, this Court constituted the said three-men committee for taking a decision. This Court further observed that the Committee will enquire into all the relevant records and will also afford opportunity of hearing to the petitioner and respondent no. 10, and will submit its report to the Vice Chancellor of the University, who, in turn, with his recommendation, will submit it to the Principal Secretary, Human Resources Development Department, for enabling the State Government to take a decision for payment of salary either in favour of the petitioner or in favour of the respondent no. 10 or in favour of none.

17. The three-men committee submitted its report on 12.03.2013 and arrived at the findings that the petitioner has been appointed on the post of Lecturer in History on the basis of advertisement and interview, before respondent no. 10 and has continuously been working from the date of his initial appointment. The respondent no. 10 was appointed on the post of Lecturer in History on 24.04.1990, i.e. after the appointment of the petitioner, and the respondent no. 10 has continuously been absent from the College between 1998 and 2006. There is lack of continuity in his service before 09.09.2009.



18. In light of the report of the three-men committee, the Vice Chancellor of the University submitted his recommendation to the Principal Secretary on 15.04.2013, wherein neither the name of the petitioner nor the respondent no. 10 was recommended by the Vice Chancellor, following which, the Joint Secretary, Education Department, after seeking approval from the Principal Secretary, vide Memo No. 1044, dated 07.06.2013, rejected the claim of the petitioner as well as the respondent no. 10 for payment of salary.

19. A contempt application was filed before this Court, bearing MJC No. 4003 of 2012, and vide order, dated 03.07.2013, both, the Vice Chancellor of the University and the Principal Secretary, Human Resources Development Department, were directed to pass necessary orders in order to ensure that the direction given by this Court in CWJC No. 5712 of 2006 is complied in its letter and spirit.

20. In compliance of the aforesaid order, the Vice Chancellor of the University submitted his recommendation on 16.07.2013, to the Principal Secretary, Education Department, stating therein that since this Court, in paragraph no. 14 of the judgment, dated 09.09.2011, passed in CWJC No. 5712 of 2006, has quashed the impugned order, dated 10.03.2006, by which the



petitioner was adjusted against the 5th post in the Department of History in the College, and the order, dated 06.05.1995, has also been quashed, by which the Commission has concurred/approved the appointment of the petitioner against the 6th post and the order, dated 08.05.1995, by which the Commission has pushed the respondent no.10 by approving his appointment from 6th to 7th post, the appointment of respondent no.10 only remains valid, legal and in accordance with Section 57 A of the Bihar State University Act, 1976, as such, the Vice Chancellor of the University recommends for payment of salary in favour of respondent no.10.

21. After the aforesaid recommendation, the Department, vide letter, dated 10.08.2013, directed the three-men committee to review the report in light of the recommendation received from the Vice Chancellor of the University. Thereafter, a meeting of the three-men committee was again convened on 22.08.2013 and the committee reiterated the findings arrived at in its report, dated 12.03.2013.

22. Thereafter, the Principal Secretary, Education Department, passed the impugned order, dated 04.09.2013, by which the claim of the petitioner has been rejected on the ground that the Secretary, whose signature is shown in his appointment



letter, dated 04.04.1988, was not the secretary at the relevant time; the petitioner was not possessing requisite qualification at the time of his appointment as per the Statute, dated 09.09.1988, by which the minimum qualification was fixed at least 55 per cent marks in the subject and, therefore, there is possibility that the appointment of the petitioner might have been ante-dated due to lack of minimum eligibility qualification of the petitioner.

23. Learned Counsel for the petitioner argued that the petitioner was validly appointed on 04.04.1988 by the Governing Body of the College pursuant to the advertisement and interview held for appointment on 20.09.1988. Since then the petitioner is continuously working in the College. At the time of advertisement published on 31.08.1988, the requisite qualification, as per the Statute, was a second class master's degree, which the petitioner was possessing, having 54.2 per cent marks. The minimum qualification for appointment, having at least 55 per cent marks, was fixed subsequently as per the Statute, dated 09.09.1988, i.e. after the date of publication of the advertisement for appointment of the petitioner.

24. He further argued that the three-men committee rightly concluded that the petitioner was appointed on the basis of advertisement and interview much prior to respondent no. 10, who



was appointed on 24.04.1990 and also that there is break in the services of respondent no.10, prior to 09.09.2009 and among the two, it is the petitioner who is the rightful claimant. He further submits that M. N. Ahmad Ghani was the Secretary of the Governing Body of the College at the relevant point of time when the petitioner was appointed in the College.

25. In order to support his submission, learned Counsel relied on paragraphs 6 and 35 of a Division Bench decision of this Court, in the case of **Mohd. Abbas @ Hassan Abbas and Another v. A.G.M. Trust and Others**, reported in **1990 BLJR 1229**.

26. He further argued that this Court, in its order, dated 09.09.2011, never authorized the Vice Chancellor of the University or the Principal Secretary, Human Resource Development Department, to sit over the report submitted by the three-men committee or to take a contrary view; rather, the Vice Chancellor of the University and the State Government were directed to give effect to the report and to act in accordance with the report.

27. Learned Counsel further argued that the impugned order passed by the Principal Secretary, Education Department, is based on conjectures and surmises and is contrary to the statutory provisions and the petitioner was not given any opportunity of



hearing on the points of difference with the report of three-men committee which adversely affected the right of the petitioner.

28. Learned Counsel for the petitioner, in support of his argument, has relied upon the decisions in the cases of **The State of Bihar and Others v. Syed Asad Raza and Others (AIR 1997 SC 2425)**, **Board of Secondary Education and Teachers Training v. Jt. Director of Public Instructions, Sagar**, reported in **(1998) 8 SCC 555**, **Milli Trust v. State of Bihar and Others**, reported in **2016 SCC Online Pat 5242**, **Governing Body of Karim City College v. State of Bihar**, reported in **1984 PLJR 86** and **State of Kerala etc v. Very Rev. Mother Provincial, etc**, reported in **(1970) 2 SCC 417**, for the proposition that in the case of Minority Educational Institutions, established under Article 30 (1) of Constitution of India, any external interference in the Right to Management must be free of control.

29. On the other hand, learned Counsel for the respondent no. 10 argued that the appointment of petitioner is not valid as the appointment letter issued to the petitioner was under the signature of M. N. Ahmad Ghani and at the time of appointment of the petitioner, he was not the Secretary of the Governing Body of the College.



30. This Court has constituted the three-men committee and the Vice Chancellor of the University recommended the case of the respondent no. 10 for payment of salary. The order passed in CWJC No. 5712 of 2006 has been affirmed in LPA No. 1703 of 2011.

31. He further submits that the petitioner was working in Baba Bhutnath College, Gopalganj, till 1994, which would be evident from letter, dated 06.11.2007 issued by Bihar Intermediate Education Council and, as such, the submission of the petitioner that he was validly appointed as Lecturer in History in the College is not correct.

32. He next argued that on the other hand, the respondent no. 10 was duly appointed on 24.04.1990 and from that date, he is continuously working in the College without any break and furthermore the Commission has given the approval of the appointment of respondent no. 10. The findings arrived at by the three-men committee is not in consonance with the directions issued by this Court, in CWJC no. 5712 of 2016, and the committee has failed to consider the relevant records and documents submitted before it. He further submits that at the time of appointment of the petitioner, the petitioner was not having the requisite marks in the master's degree of 55 per cent in the subject.



33. Learned Counsel for the State submits that the three-men committee, constituted by this Court, has neither recommended the name of petitioner nor the name of respondent no. 10. Md. M. N. Ahmad Ghani, who issued the appointment letter to the petitioner, was not the Secretary of the Governing Body of the College and, therefore, the petitioner was appointed by incompetent authority. The minimum eligibility qualification for appointment of Lecturer was amended by the Statute, dated 09.09.1988, which prescribes minimum qualification required for appointment to the post of Lecturer shall be Master's Degree in relevant subject with at least 55 per cent marks and the petitioner was possessing only 54.2 % marks and, therefore, the petitioner was not eligible to be appointed as Lecturer on 20.09.1988 and his services was regularized with retrospective date only with the purpose to give him undue advantage, which cannot sustained in the eyes of law.

34. Learned Counsel for the College supported the case of the petitioner and submits that that the three-men committee, in its report, dated 12.03.2013, categorically held that the petitioner was appointed prior to respondent no. 10 on the basis of advertisement and interview and while taking note of the various aspects of the matter, it was found by the committee that the



respondent no. 10 had remained absent from the services of the College for a considerably long period of time and there was also a considerable break in his services prior to 09.09.2009. He further submits that it was on the basis of detailed deliberations and examination of the various aspects of the matter by the committee that the aforesaid report, dated 12.03.2013 was submitted, which categorically held that the petitioner was entitled to be treated to be appointed/adjusted against the 5th post of Lecturer in History at the College and, accordingly, he was also found to be entitled for being paid his salary.

35. The reasons assigned by the Vice Chancellor of the University in the recommendation, dated 16.07.2013, by which he differed with the findings recorded by the three-men committee are completely misconceived, devoid of any merit and is clearly untenable in the eyes of law as the Vice Chancellor, while making the recommendation, has completely lost sight of the fact that the respondent no. 10 herein had not even continuously discharged duties pursuant to his appointment and there was breaks in his service also while working as Lecturer in the Department of History in the College and further that the petitioner had been appointed on the basis of selection, which includes advertisement and interview at the College prior to respondent no. 10. Ignoring



the said facts, which had direct bearing on the issues involved, the recommendation, dated 16.07.2013 was made by the Vice Chancellor of the University. The impugned order has been passed without jurisdiction inasmuch as the report of the three-men committee cannot be overridden by the Government.

36. Learned Counsel for the University argued that the Vice Chancellor of the University differing with the findings of the three-men committee sent his own report which is not in his domain and is contrary to the directions passed by this Court. He further submits that on the basis of the report submitted by the three-men committee, it is the petitioner who would be entitled for receiving salary against the 5th post.

37. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

38. Upon hearing the rival submissions of the parties and the relevant facts involved in this case, the only point which required determination is as to whether the petitioner is entitled to be considered for his shifting on the 5th post, entitling him for salary under the deficit grant from the State Government or the respondent no. 10 is entitled to receive salary under the deficit grant.



39. In order to arrive at the conclusion, it is necessary to deal with certain decisions relied upon by the petitioner on this issue.

40. In paragraph 3 of **Board of Secondary Education and Teachers Training** (supra), the Supreme Court has held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal. Any rules which take away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence, but in that process, the right of the management cannot be taken away even if the Government is giving hundred per cent grant.

41. In paragraph 41 of the **Milli Trust** (supra), a Division Bench of this Court has observed that in light of the above passages, in **TMA Pai** (supra), it transpires that the fundamental right under Article 30 (1), can be regulated for two reasons; firstly, to maintain and promote efficiency for imparting education and secondly, to check mala fide exercise of fundamental right under Article 30 (1) of the Constitution.



42. This Court, in the case of **Milli Trust** (supra), has held, in paragraph 49, as follows:-

“49. We must aptly refer to Para 50 of the decision in **TMA Pai** (supra), before we conclude as to the position of law, to be applicable in the case in hand. The right to establish and administer a minority educational institution is understood, as follows:-

“50. The right to establish and administer broadly comprises the following rights:

- (a) to admit students;
- (b) to set up a reasonable fee structure;
- (c) to constitute a governing body;
- (d) to appoint staff (teaching and non-teaching); and
- (e) to take action if there is dereliction of duty on the part of any employees.”

43. In paragraph 57 of **Milli Trust** (supra), the Division Bench has further held that the choice with a minority, under Article 30 (1) of the Constitution, includes the right to choose a governing body or managing council responsible to administer such institution within the meaning of Article 30 (1) of the Constitution. This is the right to choose the composition and structure of the governing body under Article 30 (1), and reasonable regulations to improve the standard of education and to prevent mala fide exercise of rights under Article 30 (1) of the



Constitution, can be imposed upon the decisions of, and, functioning of such governing body, but no interference can be permitted in the composition of the governing body. This is so because a minority educational institution loses its constitutional character as a minority educational institution, if the deciding power and control over the affairs of such institution is not with the minority concerned, or with the people of the choice of the minority concerned.

44. In the case of **Governing Body of Karim City College** (supra), a Division Bench of this Court, in paragraph 5, has observed that it is the inherent and fundamental right of the institution to deal with its employees or teachers and take necessary action against them. The induction of the outside authority over the head of the institution and making its decision final and binding on the institution was an interference which could not be upheld.

45. In the case of **Very Rev. Mother Provincial** (supra), in paragraph 9, it has been observed that Administration means “management of the affairs” of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interests of the community in general and the



institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed right.

46. In the case of **The Ahmedabad St. Xavier's College Society and Another v. State of Gujarat and Another**, reported in (1974) 1 SCC 717, by a 9-Judges Constitution Bench, the Supreme Court has said that autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day-to-day administration. The choice in the personnel of management is a part of the administration. The regulation made by the authority concerned should not impinge upon the right under Article 30 (1) of the Constitution of India. Balance has, therefore, to be kept between the two objectives, that of ensuring the standard or excellence of the institution and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations which embrace and reconcile the two objectives can be considered to be reasonable. A law which interferes with the minorities choice of a governing body or management council would be violative of the right guaranteed by Article 30 (1) of the



Constitution of India. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30 (1) of the Constitution. The fundamental right of a minority to administer educational institutions of its choice comprises within it the elementary right to conduct teaching, training and instruction in courses of studies in the institutions so established by teachers appointed by the minority. If this essential component of the right of administration is taken away from the minority and vested in the university, there can be no doubt that its right to administer the educational institution guaranteed under Article 30 (1) is taken away.

47. Now, coming back to the facts of the present case, the petitioner was duly appointed through the advertisement published by the Governing Body of the minority College and after going through the selection process/interview, duly conducted by the Selection Committee. In order to maintain the standard and excellence of the College, the teachers appointed by the Governing Body of the College were to have the concurrence from the Commission.



48. In the unamended Section 57 A of the Bihar State Universities Act, 1976, the governing bodies of affiliated .minority colleges based on religion and language shall appoint, dismiss and remove or terminate the services of the teachers or to take disciplinary action against them with the approval of the Commission. In the year 2013, Section 57A was substituted and as per Clause 5 of Section 57A, the appointments, promotions, dismissal, removal and termination of service of teachers in the minority colleges affiliated on the basis of religion and language may be made and disciplinary action against them shall be taken by the governing body of those colleges with the approval of the Selection Committee constituted by the University.

49. The dispute between the petitioner and the respondent no. 10 arose regarding their appointment and entitlement of salary under the deficit grant. A co-ordinate Bench of this Court referred the matter, with the consent of the parties, before the three-men committee constituted by it, consisting of the Director, Higher Education, the Registrar of the University and the Secretary of the Governing Body of the College. The three-men committee, after giving opportunity to all concerned submitted its report on 12.03.2013 with the finding that the petitioner has duly been appointed on the post of Lecturer in History on the basis of



advertisement and interview prior to the appointment of respondent no. 10. The finding arrived at by the committee was also to the effect that the petitioner continued to discharge his duties after his appointment without any break in service; whereas, the respondent no. 10 was continuously absent from the College between the period 1998 and 2006 and there is lack of continuity in his service before 09.09.2009.

50. The Vice Chancellor of the University and the Principal Secretary of the Education Department passed the impugned orders denying the claim of the petitioner mainly on the ground that the Secretary of the Governing Body of the College, namely, M. N. Ahmad Ghani, whose signature is shown in the appointment letter of the petitioner was not the Secretary of the Governing Body of the College at the relevant point of time and that the petitioner was not having the requisite qualification at the time of his appointment as per the Statute, dated 09.09.1988, by which the minimum marks in the subject has been fixed at having master's degree with at least 55 per cent in the subject.

51. Insofar as the ground for rejecting the claim of the petitioner that the person who signed the appointment letter of the petitioner was not the Secretary of the Governing Body of the College at the relevant point of time has been controverted by



learned Counsel for the petitioner, relying upon the decision of this Court, in the case of **Mohd. Abbas** (supra). In paragraph 35 of **Mohd. Abbas** (supra), this Court has held that Md. Ghani is the mutawalli and has not been removed from his office in accordance with law. The findings of the lower appellate court, dated 17.04.1982, through which the new managing committee, headed by Mr. Abdul Ghafoor was appointed, is illegal and without jurisdiction and similarly the Waqf Board has no power to appoint the Managing Committee for the College and Trust.

52. In other words, the managing committee, constituted by the Waqf Board was declared illegal and the said committee, constituted by the Waqf Board was permanently restrained from taking control of the property or of A.G.M. Trust and the College.

53. Thus, it is clear that the ground that M. N. Ahmad Ghani was not the Secretary of the Governing Body of the College at the time of appointment of the petitioner is based upon the fact, which is not in existence.

54. The second ground for rejection of the claim of the petitioner by the Principal Secretary, in his impugned order, is that the petitioner was not having the requisite qualification at the time of his appointment as lecturer in History in the College. This ground of rejection is also not valid inasmuch as the advertisement



for appointment of the petitioner was published on 31.08.1988; whereas the criteria for having minimum marks in the master's degree to be at least 55 per cent in the subject was made applicable as per the Statute, dated 09.09.1988, which came after the initiation of selection process of the petitioner and that shall not be made applicable for appointment and the previous criteria of 1983 shall be application in the facts of the case, in which the minimum qualification is that a candidate was required to have second class master's degree. The petitioner was possessing second class master's degree, having 54.2 per cent marks as on the date of advertisement. As such, this ground for rejection, taken in the impugned order, is also not valid and sustainable.

55. It is well settled that right to manage, run and control a minority educational qualification is a fundamental right guaranteed under Article 30 (1) of the Constitution of India. The fundamental right guaranteed under Article 30 (1) of the Constitution of India protects the interest of minority community from interference by the state, by imposing various forms of limitations on the exercise of power by the State.

56. The appointment of teachers in the minority College has been made subject to the concurrence by the Commission/ Selection Committee of the University and a Bench of this Court,



taking into consideration the fact that the Commission was disbanded or not functioning, referred the matter to the three-men committee constituted with the consent of the parties. The three-men committee examined all aspects of the matter, including the eligibility of the candidates for appointment as well as compliance of principles of Article 14 and 16 of the Constitution of India and came to the conclusion that the petitioner was appointed after following due process of selection, including the publication of the advertisement. Meaning thereby, as per the conclusion of the three-men committee, the petitioner's appointment was valid and was not mala fide.

57. It is also established that the petitioner was appointed in the year 1988 prior to the appointment of the respondent no. 10 in the year 1990. The petitioner having been appointed prior in time is having genuine right to be considered for shifting/adjustment on the 5th post, which is the deficit grant post. The respondent no. 10 was subsequently appointed and as per the findings of the three-men committee, he was absent from the College for a substantial period of time, as such, allowing the claim of respondent no. 10 over and above the claim of the petitioner on a flimsy ground will amount to travesty of justice.



58. The petitioner was found discharging his duties as lecturer in History continuously in the College; whereas the respondent no. 10 was found missing between 1998 and 2006. The three-men committee has also reiterated its recommendation when the committee was asked by the Principal Secretary to review its finding in the light of the recommendation received from the Vice Chancellor of the University.

59. Thus, in my opinion, the Commission, in its absence, was substituted by the three-men committee as per the orders of this Court and the three-men committee, after going into various aspects of the matter, including the qualification and the process of appointment, concluded in favour of the petitioner.

60. The Principal Secretary or the Vice Chancellor cannot act like an appellate authority on the report of the three-men committee once the appointment by the Governing Body of the College has been approved by the Commission as well as the three-men committee and cannot substitute their opinion over and above the finding arrived at by the three-men committee.

61. In the backdrop of the aforesaid discussion, on the facts as well as in law, I come to the conclusion that the impugned order, as contained in Memo No.1624, dated 04.09.2013, issued under the signature of the Principal Secretary, Education



Department, Government of Bihar, cannot survive and, accordingly, the same is set aside.

62. The respondent State and other respondents are directed to treat the petitioner working on the 5th post and to pay arrears of salary as well as current salary to him within a period of two months from the date of receipt/production of a copy of this order.

63. CWJC No. 22400 filed by the petitioner is allowed.

64. Since CWJC No. 22400 filed by the petitioner is allowed, CWJC No. 7292 of 2014 filed by respondent no. 10 is dismissed.

65. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	13-09-2024
Uploading Date	25-10-2024
Transmission Date	N/A

