

# **SUPREME COURT OF INDIA**

Naushad Anwar

Vs.

State of Bihar

C.A.No.4270 of 2014

(T.S.Thakur and Vikramajit Sen JJ.)

01.04.2014

## **JUDGMENT**

**T.S. THAKUR, J.**

1. Leave granted.
2. These appeals arise out of a common order dated 10th March, 2010 passed by the High Court of Judicature at Patna whereby CWJC No.17734 of 2009 filed by the appellants has been dismissed. The short question that arises for consideration is whether the appellants were eligible for appointment as librarians in the schools run by the local bodies in the State of Bihar and if so whether a mandamus could be issued directing the respondents to announce the result currently lying in a sealed cover. The factual backdrop in which the question arises may be summarised as under:
3. Apart from nearly one lac posts of teachers in primary schools, secondary schools and higher secondary schools run by Municipal Corporation, Municipal Councils, District Boards and Panchayats as many as 2596 vacancies of Librarians were advertised by the Government of Bihar in terms of a Notification dated 29th August, 2008. The time schedule stipulated in the notification required the selection process to be completed by 24th December, 2008. The selection process was to be undertaken by Selection Committees at the district levels, although the composition of such Committees and the norms and procedures governing the selection process were not

very clearly spelt out in the notification.

4. The appellants in these appeals also applied for appointment against posts of Librarians in response to the above notification. Their claim for such appointments was, however, turned down on the ground that they did not satisfy the conditions of eligibility prescribed for such appointments as they did not possess a Bachelor's Degree in Library Science from a recognised university. Aggrieved, the appellants filed Writ Petition No.17734 of 2009 before the High Court of Judicature at Patna which petition was dismissed by the High Court holding that the degrees in library science obtained by the appellants through Distance Education were not recognised. The Distance Education Council had, observed the High Court, in terms of its letter dated 2nd December, 2008 clearly stated that Alagappa University from where the appellants had obtained the said degrees was not recognised till 24th November, 2009 when the said University was granted recognition for the first time. The High Court was also of the view that the process of appointment and selection stood completed by January, 2009, i.e. long before Alagappa University was recognised. The High Court, therefore, saw no reason to permit the appellants to compete for appointment with other candidates. The High Court observed:

“From the aforesaid factual narration, the core question that emerges for consideration is whether the students, who have passed from Alagappa University through Distance Education, can be allowed to participate in the counselling. There is no shadow of doubt that the Alagappa University did not have the recognition from the distance Education Council at the time of examination. It obtained post facto recognition on 24.11.2009, that is, at a very belated stage.”

5. When the matter came up for hearing before this Court on 1st May, 2013, Mr. P.S. Patwalia, learned senior counsel appearing for the appellants argued that the reason given by the High Court for refusing relief to the appellants was unsustainable. He submitted that the process of selection had not been completed in January, 2009 as held by the High Court, but had continued till January, 2012. He contended that so long as the process of selection was on, the appellants' claim for consideration against the vacancies notified by the Government, could not be ignored or rejected by the State. Reliance in support of that submission was placed by Mr. Patwalia on certain documents filed by the appellants to show that the selection process had not concluded

in January 2009 as observed by the High Court but continued till as late as the year 2012. After hearing the matter at some length we had by our order dated 1st May, 2013 directed the State Government to file an appropriate affidavit answering the following queries:

“(1) What is the total number of appointments made in each District/unit so far, whether by the State or by the concerned authorities, against the posts of librarian.

(2) How many of such appointments had been made up to 24th December, 2008, the last date fixed for completing the process of selections, in terms of the advertisement notice.

(3) Under whose Orders was the date for completion of the selection process extended beyond 24th December, 2008 and in exercise of what authority. Copies of the order under which the date for completion of the selection process was extended shall be filed along with affidavit.

(4) When was the last counselling/verification of documents of the candidates, who applied for appointment in each district, conducted.

(5) What were the norms and procedure adopted by the concerned Selection Committees for evaluating the inter se merits of the candidates.

(6) In the case of candidates who had qualified from different universities within and outside Bihar, how was the performance of the candidates adjudged having regard to the fact that the academic standard for each university may have been different.

(7) What was the composition of the Selection Committee entrusted with the process of selection of the candidates.

(8) How many candidates were enlisted for appointment in each district on the basis of inter se merits of such candidates. A copy of the merit list for each such district be placed on record.

(9) Does the Government of Bihar have any norms or guidelines on the subject of recognition of academic qualifications awarded by universities within Bihar and those outside Bihar?

(10) In case the State of Bihar does not have any mechanism for recognition of such qualifications awarded to candidates from different universities, is there any direction, administrative or otherwise, that relies upon or accepts the recognition granted to such universities by Distance Education Council, New Delhi.

(11) Apart from Alagappa University from where the petitioners claim to have obtained their degree/qualification in library science, were any other candidates from other universities not recognised on the date of the said Notification considered for appointment by the concerned Selection Committees. If so, on what basis. In case there was any provisional recognition to such universities, the copies of such provisional recognition orders be placed on record.

(12) Is the process of selection incomplete in any district as on date and if so what are the number of vacancies that remain to be filled in such districts.

(13) Does the State propose to close or finalise the process of selection against the vacancies that were advertised in the year 2008. If so does it propose to issue a fresh notification inviting applications against the vacancies remaining unfilled having regard to the fact that a large number of candidates who were not eligible as on the date of the said Notification may have become eligible for consideration of appointment.

(14) Is there a library in each school where the post has been filled up or is sought to be filled up. If there is no library in existence has the State taken any steps and if not does the State propose to take steps to provide a library to the school concerned. If the answer be in the affirmative the timeframe within which it proposes to do so may be indicated.”

6. The respondents have pursuant to the above filed an affidavit answering the queries. Although some of the answers provided in the affidavit are not entirely satisfactory, we do not consider it necessary to look for further information in that regard as any

such attempt is bound to unnecessarily delay the disposal of these appeals further.

7. The selection process, it is common ground, was to be conducted in terms of the Bihar Zila Parishad Secondary and Higher Secondary Teachers (Appointment and Service Conditions), Rules, 2006 as amended by the amendment Rules of 2008. Rule 4(vii) (a) and (b) of said Rules as amended stipulates the following conditions of eligibility for appointment as a Librarian.

“4(vii) (a) Possesses Degree of Graduation with minimum 45 percent marks from any recognized university. For the scheduled castes/scheduled tribes/extremely backward class/backward class and disabled, (irelaxation of five percent would be made available in the minimum desired marks.

(b) Degree of Graduation in Library Science given by any university recognised by the Department of Education, State Government.”

8. Scrutiny of the applications received by the competent authorities appears to have revealed that several candidates had applied for appointment on the basis of degrees in library science obtained by Distance Education mode. Taking note of such candidatures, Secretary, Human Resources Development of the Government of Bihar notified that the degrees awarded by any university under the distance learning mode will be recognised only if the same are recognized and approved by the Distance Education Council of Indira Gandhi National Open University. Since the Distance Education Council had declined recognition to the degrees awarded by Algappa University the petitioners apprehended that they may not be considered for appointment against the available vacancies. CWJC No.18561 which was the first round of litigation between the parties was, therefore, filed by the petitioners and several others in the High Court of Judicature at Patna for a mandamus directing the respondents to consider them for appointment as librarian pursuant to the advertisement in question.

9. The respondents contested the petition aforementioned and asserted that academic qualifications awarded through distance education from any university established under the Act of the Parliament or institutions are deemed to be universities under Section 3 of the University Grants Commission Act, 1956 or institutions of National importance declared to be so under an Act of the Parliament shall stand automatically

recognised for the purposes of employment to posts and services under the Central Government provided such qualifications and universities are recognised by the Distance Education Council. It was further submitted that a notification was issued even by the Distance Education Council informing all concerned that Distance Education Council constituted under the Indira Gandhi national University Act, 1985 determines standards for distance education in the country and prescribes guidelines that are mandatory for all institutions and that institutions ought to obtain approval of the Distance Education Council before commencing any degree/diploma or any such course through distance education mode. The notification further informed the public at large that universities and institutions which offered a degree/diploma course through distance mode was misleading the public if they purported to claim that such degrees/diplomas or courses are recognised by the University Grants Commission. Such degrees could in terms of the notification be recognised only if the institutions had obtained approval of Distance Education Council under the Indira Gandhi National Open University Act, 1985. That requirement was according to the respondents not satisfied in the present case as the Distance Education Council had in terms of its letter dated 1st December, 2008 clearly stated that the B.L.I.S. Degree of Algappa University by distance education mode was not recognised by the Distance Education Council.

10. A Single Bench of the High Court of Patna before whom CWJC No.18561 came up for consideration held that since a degree in library science from a recognised university was the bare minimum requirement for appointment as a Librarian and since the degree obtained by the petitioners before it was not recognised by the Distance Education Council, the petitioners were not eligible for consideration or appointment against the available vacancies on the basis of any such qualification. The writ petition filed by the petitioners was, accordingly, dismissed.

11. Shortly after the dismissal of the above petition came another petition filed by Pramod Kumar and others (CWJA No.3995 of 2009 ; Pramod Kumar & Ors. v. The State of Bihar & Ors.) in which a Single Bench of the High Court of Patna passed an order on 1st April, 2009 directing the Distance Education Council to dispose of at an early date the prayer made by Algappa University for recognition. In CWJC No.6235 of 2009 filed by Prem Sudha Kumar and others another Single Bench of the High Court of Patna by an order dated 18th May, 2009 directed the State not to make any appointments based on a degree in distance education mode not recognised by the

Distance Education Council.

12. The above writ petitions were then followed by Writ Petition No.17734 of 2009 from which the present appeals arise in which the petitioners not only challenged the constitutional validity of Rule 4 (vii)(a) & (b) of the Bihar Municipality Secondary and Higher Secondary Teachers (Appointment and Service Condition) Rules, 2006 as amended in 2008 but also prayed for a direction against the respondents for consideration of their cases for appointment against the post of Librarian on the basis of their degree qualification from Algappa University, Karaikuddi, Tamil Nadu. The petitioners' case primarily was that the Indira Gandhi National Open University had by an order dated 24th November, 2009 granted ex post facto recognition to the programme offered by distance education mode by the Algappa University with effect from 1995 which implied that the degrees awarded to the petitioners were recognised qualifications making them eligible for appointment as Librarians. Challenge to the validity of the Rules was, however, given up by the petitioner before the High Court as is evident from its order dated 7th January, 2010. The limited question that fell for consideration before the High Court, therefore, was whether the degrees obtained by the petitioners from the Algappa University were recognised and whether the petitioners could be considered for appointment against the available vacancies on the basis of the said qualifications. The High Court dismissed the writ petitions on the ground that Algappa University did not have the requisite recognition from Distance Education Council "at the time of examination" and that post facto recognition belatedly granted on 24th February, 2009 did not entitle the petitioners to the consideration or appointments prayed for.

13. The short question that falls for our determination in the above backdrop, therefore, is whether the academic qualification acquired by the petitioners is recognized for the purposes of appointment as Librarians against the vacancies in question, having regard to the fact that the Distance Education Council of Indira Gandhi National Open University has granted ex post facto recognition to Algappa University from where the petitioners have secured their degrees in library science. The High Court has, as noticed above, taken the view that recognition by Distance Education Council was granted belatedly inasmuch as such recognition had come after the conclusion of the entire selection process hence was of no avail to the petitioners. There can indeed be no quarrel with the abstract proposition of law that any recognition granted after the conclusion of the selection process cannot possibly help

the candidates concerned who ought to satisfy the conditions of eligibility according to the relevant Rules on the date the applications are submitted and scrutinised to determine their eligibility. The difficulty, however, is that the relevant Rules, did not in the case at hand stipulate whether a degree in library science obtained by Distance Education mode will constitute a recognised qualification. All that Rule 4 (vii) (b) stipulated was that the candidates should have a degree in library science recognised by the Department of Education. The Department of Education has not by itself recognised any university or academic qualification awarded whether by regular or Distance Education mode. It was only when candidates who had secured degrees in Library Science by Distance Education mode applied for appointment that the Government issued a clarification that such degrees will be recognised provided the University awarding the same has been recognised by the Distance Education Council. There was in other words considerable confusion as to what would constitute a recognised qualification for purposes of appointment as Librarians. Such being the case, the normal rule that candidates must satisfy the conditions of eligibility on the date of the applications will have to be applied liberally so as to prevent injustice to candidates who possessed the requisite degree qualification but such qualification required recognition by another statutory authority which came during the selection process but was effective from a date earlier than the date on which the applications were made. The fact that the candidates were in the meantime allowed to participate in the selection process under Orders of the Court and their result kept in a sealed cover makes it so much easier for the Court to apply the relaxed standard for determination of the conditions of eligibility especially when the consideration of such candidates will in no way prejudice any other candidate already appointed or selected for appointment.

14. We may now examine whether the selection process had indeed been concluded before the recognition was granted by the Distance Education Council in the instant case. The version of the petitioners consistently has been that the selection process was not concluded as on the date the recognition order was passed by the Distance Education Council and even three years thereafter till the year 2012. Whether or not that was so, is what we intended to discover from the answers provided by respondents to the queries extracted in the earlier part of this order. In answer to query no.2 the respondents have on the affidavit of Secretary to Government, Education Department, Government of Bihar, stated that no appointments could be made till 24th December, 2008 the last date fixed for completing the process of selection in terms of

the advertisement notice. In answer to query no.3 the respondents have stated that appointment orders issued against the vacancies of Teachers and Librarians were not issued on account of certain allegations that forged and fabricated documents were being used to secure such appointments and also on account of instructions issued by the Government to the effect that degrees obtained by some of the candidates from universities like Hindi Vidyapeeth Deogarh were being used for claiming appointments. The affidavit goes on to state that in terms of instructions issued by the Government on 17th February, 2010 a fresh schedule for issuing appointment letters was published stipulating different dates for completion of the process by the Nagar Nigams, Nagar Prashids, Nagar Panchayats and Zila Parishads between 25th February, 2010 to 8th March, 2010. Since the process could not be completed yet another schedule was published for all the four local bodies mentioned above asking them to conclude the selection process on different dates between 10th May, 2010 to 20th May, 2010. Yet another schedule was notified for completion of the selection process by the State Government's letter dated 11th June, 2010 asking the local bodies concerned to complete the selection process on different dates between 5th July, 2010 to 15th July, 2010. That was not however, the end of the matter as the selection and appointment process could not be completed by the local bodies which led to the publication of yet another schedule stipulating dates for completion of the selection process between 10th August, 2010 to 13th August, 2010. As if that was also not enough, the entire selection process was in terms of a fresh schedule to be completed on different dates between 8th July, 2011 to 12th July, 2011 followed by yet another schedule stipulated by the Government in terms of its letter dated 18th October, 2011 that required the local bodies to complete the process of selection of appointments on different dates between 14th December, 2011 to 17th December, 2011. The process of re- scheduling the selection and appointments did not end there for by another letter dated 4th January, 2012 the Government re-scheduled the selection and appointment process to be completed between 23rd January, 2012 and 2nd February, 2012. The affidavit states that no satisfactory progress in the selection of the Librarians was made in certain districts despite re- scheduling orders passed by the Government with the result a final schedule for completion of the selection process was published asking the local bodies to complete the selection and appointment process on different dates between 15th June, 2012 to 25th June, 2012. In answer to query no.4 the Government have stated that the last counselling/verification of the documents of the selected candidates was undertaken pursuant to the above final schedule.

15. We are anguished by the very thought of the selection procedure dragging on for as long as four years between 2008 and 2012. Such inordinate delay and indolence is totally undesirable not only because it violates the fundamental rights of candidates who have qualified for appointment during the intervening period but also because it depicts a complete failure on the part of all concerned in regulating the selection and appointment process with a view to ensuring that the same is fair, objective and transparent. We cannot help saying that several questions have bothered us in regard to the selection process itself which leaves much to be desired but since there is no challenge to the selection or the appointments made pursuant thereto, we refrain from making any observation in regard to those aspects. All that we need say is that the selection and appointment of such a large number of employees under the local bodies ought to have been conducted in a more orderly fashion and more importantly the same should have been completed within the time frame stipulated for the purpose or such reasonable extension thereof as may have become absolutely inevitable. A selection process that lingers on for years can hardly measure up to the demands of objectivity, fairness and transparency especially when the method by which inter se merit of candidates was determined is neither stipulated in the Rules nor any guidelines issued for the Selection Committee to follow have been placed before us. Be that as it may, the question is whether the selection process stood completed before the Distance Education Council recognised Algappa University from where the petitioners have obtained their degrees. Our answer is clearly in the negative. On their own showing, the respondents had not concluded the selection process till as late as middle of 2012 i.e. more than two years after the recognition order was passed by the Distance Education Council in favour of Algappa University. Petitioners had, in the meantime, been allowed to participate in the interviews under the orders of this Court passed on 10th May, 2010. By our order dated 14th March, 2011 we had directed the respondents not to fill up 54 posts of Librarians relevant to petitioners in SLP Nos.10964 and 12527 of 2010 and SLP (C) No.17421 of 2010 and two posts to be kept vacant relevant to SLP (C) Nos. 23850 and 23852 of 2010. It is not in dispute that the petitioners have participated in the interview under the above orders and that requisite number of vacancies have also been reserved for their appointment in the event of their succeeding in the present case. It is also not in dispute that the result of the petitioners has been kept in sealed cover awaiting the ultimate outcome of the present appeals. In the circumstances, therefore, and keeping in view the fact that the validity of the post facto recognition granted by the Distance Education Council to Algappa University has not been assailed before us nor was the same under challenge

before the High Court, we see no reason why the petitioners in these petitions should not be allowed the benefit of such recognition which implies that they shall be treated as eligible for consideration and appointment against the available vacancies depending upon their inter se merit vis-a-vis other candidates competing for the same.

16. In the result we allow these appeals, set aside the order passed by the High Court and allow Writ Petition 17734 of 2000 with a direction to the respondents to consider the appellants for appointment against the available vacancies by treating them eligible for such appointment. Depending upon their inter se merit vis-a-vis other candidates who may be competing for the unfilled vacancies if any out of those advertised, the respondents shall issue the appointment orders to them if they are otherwise found to be fit and suitable for such appointment. The needful shall be done by the respondents expeditiously but not later than two months from the date of this order.

17. The parties are left to bear their own costs.