

PETITIONER:
DR. (SUSHRI) RAJNI BALA AGRAWAL,

Vs.

RESPONDENT:
LALIT NARAIN MITHILA UNIVERSITY DARBHANGA (BIHAR) & ORS.

DATE OF JUDGMENT: 27/01/1999

BENCH:
Sujata V. Manohar, G.B.Pattanaik

JUDGMENT:

Mrs. Sujata V. Manohar, J.

This is an appeal from a judgment and order of the Full Bench of the Patna High Court dated 18.12.1991.

A private college then known as Mahila Mahavidalaya, Madhubani, was established on 1.8.1971. On 1.9.1971 the appellant was appointed as a Lecturer in the Department of Hindi on a temporary basis for a period of six months by the Secretary of the Governing Body of the College. Pursuant to her appointment the appellant joined the college on 1.9.1971. In June, 1977 the Governing Body of the said College advertised for the post of a lady Principal. Pursuant to the advertisement the appellant applied for the post of Principal. She was interviewed along with three other candidates and was found suitable. On 11.7.1977 the appellant was appointed as a Principal of the said college on a temporary basis.

By a notification dated 6.10.1982 the Bihar Intermediate Education Board granted recognition to the said college for teaching upto intermediate level. The notification, inter alia, created one post of Principal without any financial burden. The college itself was required to bear the expenses to be incurred, inter alia, against the said post. Concurrence of the Bihar College Service Commission, Patna, however, was required. The notification also stated that in the college, teaching of degree level should not be arranged. The approval was granted with effect from 1.6.1981. According to the appellant she continued as the Principal of the said college after it was recognised upto intermediate level. No concurrence, however, of the Bihar College Service Commission, Patna, was obtained for her occupying the said post.

On 3.10.1985 with the concurrence of the State Government the said college was granted temporary affiliation to the respondent-Lalit Narain Mithila University, for teaching upto B.A. (Pass) level. The affiliation was granted for the academic sessions 1985-86. On 19.8.1986, pursuant to a decision taken by the Government of Bihar, Department of Education, 36 affiliated colleges of the State including the said college, were taken over and

placed under the management and control of the respondent-Lalit Narain Mithila University. Under Section 4 (14) of the Bihar State Universities Act, 1976, the said university was also directed to take charge of the assets and liabilities of these colleges by entering into an agreement with the Governing Body of the concerned college. The requisite resolution of the Governing Body of the said women's college agreeing to the said college being taken over by the university was accordingly passed. In respect of creation of the posts in the said colleges and absorption of the services of the existing teachers, the resolution of the Government stated that a decision would be taken by the State Government after the report of a committee constituted by the State Government for inspecting the said colleges was received. Until a final decision was taken by the State Government, the teaching and non-teaching staff appointed in the said college was to continue as such. Thereafter, an inspection report dated 23.2.1987 was received in respect of some of the colleges including the said women's college. In the inspection report, while dealing with the said women's college, the post of Principal was shown as vacant and the appellant was described as Lecturer in Hindi Department and in-charge Principal.

After the said 36 colleges including the present women's college were made constituent units of the university, a request was made by the university to the Bihar College Service Commission for the selection of the Principals of the colleges. The Commission, after due advertisement, and after considering the applications received and interviewing the candidates, recommended a panel of 33 names for appointment as Principals of the constituent units under the Lalit Narain Mithila University. The appellant did not apply for being considered for the post of Principal and hence she was not interviewed along with the other applicants. Thereafter, on 16.4.1988 respondent No. 4 was posted as Principal of the said women's college. The appellant thereupon filed a writ petition in the Patna High Court being Writ Petition No.2884 of 1988. This writ petition has been ultimately decided against the appellant by the impugned judgment and order under which her claim for being declared as the Principal of the said college has been rejected.

From the letters of appointment produced by the appellant it can be seen that on 1st of September, 1971, the appellant was appointed as a Lecturer in Hindi in the said college which was then a private college on a temporary basis for six months. She was selected by the Governing Body. There is no mention of concurrence by the University Service Commission. Possibly, this was not required as the college was private, and not affiliated to any university. Thereafter on 11.7.1977 she was appointed Principal of the said college on a temporary basis by the Governing Body. At this time also the college was a private college. The relevant report of the inspection committee also describes the status of the appellant as "In-charge Principal" and her substantive post as in the Department of Hindi. The post of Principal is shown as 'vacant'. The question is whether the appellant is entitled to be appointed as Principal of the college on the college getting affiliated to the Lalit Narain Mithila University on 3.10.1985 or whether she was eligible for such appointment when the said college became a constituent college of the university.

In order to decide whether the appellant was eligible for being appointed as Principal with effect from 3.10.1985, it is necessary to look at some provisions of the Bihar State Universities Act, 1976 (which governs the Lalit Narain Mithila University) and the Statutes framed thereunder. Section 2(c) of the said Act defines "affiliated College" to mean "educational institution having received privileges of the University according to the provisions of this Act and University Statutes relating thereto". Section 2(f) defines "Mahavidyalaya or College" to mean "an institution affiliated under the privileges of this Act or maintained or controlled by the University or institution maintained by the State Government, in which, instruction is given, subject to the provision contained in clause (16) of section 4, to the students of the University of graduate standard under conditions prescribed in the Statutes." We are not concerned with the proviso to that sub-section. Under Section 2(i) "Constituent College" means a teaching institution maintained or controlled by the University. Section 36 of the said Act provides for the framing of Statutes. Under the Statutes so framed relating to the mode of appointment, pay-scale and qualifications for the posts of teachers of the university which came into effect on 22.7.1977, the qualifications for the appointment of a Principal of a degree college are laid down. The qualifications, inter alia, require not less than twelve years' teaching experience at least as a Lecturer in the degree college/university department. Looking to the definition of "college" in the said Act, teaching experience has to be in an affiliated college. The affiliated college must also be a degree college. Under Section 2(s) a "lecturer" is defined to mean a teacher of a college or the University possessing such qualifications as may be prescribed by the Statutes. Therefore, the experience of teaching as a lecturer must be as a lecturer in an affiliated degree college which also, in turn, implies possession of qualifications required under the Statutes of a lecturer in a degree college. On 3.10.1985 the appellant did not have twelve years' teaching experience in a degree college. With effect from 1.6.1981, the said college was granted affiliation only upto intermediate level. Therefore, the experience of the appellant of teaching in the said college cannot be counted for the purpose of considering her for the post of Principal. It was only on 3.10.1985 that the college was granted affiliation upto graduate level. Moreover, the appointment of the appellant was as a lecturer in a private college which was not affiliated to the University and the basis of such appointment and the qualifications which were required by the said private college at the material time are not on record. Therefore, her experience of teaching as a lecturer in a private college cannot be considered as of the kind prescribed under the Statutes read with the said Act. On 16th of April, 1988, therefore, when respondent No.4 was appointed as Principal of the said college, the appellant did not have the requisite twelve years' teaching experience as a Lecturer in a degree college which would qualify her for the post of Principal.

Before the High Court, reliance also seems to have been placed on earlier Statutes which were in force until they were replaced by the said Statutes framed under the Bihar State Universities Act of 1976. Under the earlier Statutes, the post of Principal in a degree college required at least ten years' teaching experience in a college, of

which at least seven years must be in a degree college or five years as a Principal of an intermediate college. Even under the earlier qualifications, the appellant was not eligible. She did not have five years of experience as Principal of an intermediate college on 3.10.1985 when the affiliation was granted to the said college as a degree college. She also did not have seven years' experience of teaching in an affiliated degree college. Since these Statutes were replaced by the Statutes of 22.7.1977 at the material time, we need not examine the earlier Statutes further.

The appellant contended that her teaching experience as temporary Hindi Lecturer and as temporary Principal right from 1.9.1971 should be counted for the purpose of her appointment as Principal. The Statutes, however, which specify experience in a degree college or university department, have been framed under the Bihar State Universities Act, 1976 under which a "college" has been defined under Section 2(f) as an affiliated college and an "affiliated college" has been defined as an educational institution which has received privileges of the University according to the provisions of the Act and the Statutes. A private unaffiliated college, therefore, does not come within the definition of a college as defined under the Bihar State Universities Act, 1976. The High Court has, therefore, rightly held that the appellant was not eligible for being appointed as Principal of an affiliated degree college. We also find it difficult to treat the appellant's teaching experience from September, 1971 to October, 1985 as a qualifying experience for the purpose of the post of a Principal of a degree college. The Statutes require teaching experience of twelve years as a lecturer in a degree college. It is not at all clear from the material on record that the said college was a degree college from 1971 to 1985. In fact, when by notification of 6.10.1982, affiliation was granted to the said college upto intermediate level, it was expressly provided that teaching of degree level should not be arranged in the said college. Secondly the appointment of the appellant initially as a lecturer was also on a temporary basis and her subsequent appointment as Principal was also on a temporary basis. Looking to all the facts and circumstances the High Court has rightly come to the conclusion that the appellant was not eligible for being appointed as Principal of the said college.

The appellant also contended before the High Court that by the time the writ petition was decided in December 1991, she had acquired the requisite experience. The Division Bench has rightly rejected this contention. From the date of affiliation of the said college as a degree college, namely, 3.10.1985, the appellant had not completed either seven or twelve years of teaching in a degree college upto December, 1991.

The appellant relied upon a decision of this Court in State of Orissa & Anr. v. N.N.Swamy & Ors. ([1977] 2 SCC 508) where, in the case of a private institution which was taken over by the Government, the Court said that the previous teaching experience of Readers should be considered for their being appointed in the Government institute. Their previous experience was not taken into account only because they drew a lower pay. Since lower pay had no nexus to the purpose, the Court directed the teaching experience

as Reader prior to the take-over of the institution by the Government, to be taken into account. The present case is not comparable to the said case. The Statutes of the Bihar State Universities Act, 1976 clearly prescribe the qualifications required of a Principal of an affiliated college. The terms used in the statute are defined in the Act itself; and it is by reason of the provisions of the Statutes which are applicable in the present case that the appellant does not qualify for appointment as Principal.

The appeal is, therefore, dismissed. There will, however, be no order as to costs.

JUDIS