

A

THE STATE OF BIHAR AND ORS.

v.

SYED ASAD RAZA AND ORS.

APRIL 4, 1997

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Bihar State Universities Act, 1976 :*

C *Section 35—Scope of—Minority Institution—Bihar State—Maulana Azad College Ranchi—Agreement entered into by minority institution on December 15, 1972—Stipulation that no new posts shall be created in the college without prior permission of Vice-Chancellor—Subsequently 1976 Act came into force—Contention that agreement was relevant before the 1976 Act came into force—Acceptance of—After the Act has come into force the agreement no longer subsists—After coming into force of the Act for the creation of a post in a minority institution for the appointment thereof, prior approval of the University Vice-Chancellor or the State Government, is not a pre-condition—Respondent held entitled to the payment of grand-in-aid.*

D

*Constitution of India, 1950 : Article 30.*

E

*Minority Institution—Grand-in-aid—Entitlement to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3003 of 1997.

F

From the Judgment and Order dated 2.5.96 of the Patna High Court in L.P.A. No. 17 of 1996.

B.B. Singh for the Appellants.

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S.B. Upadhyay, Brij K. Mishra, Ms. Shabana Tarannum and Ejaz Maqbool for the Respondent.

The following Order of the Court was delivered :

Leave granted.

H

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. 17/1996. A

The admitted facts are that Maulana Azad College, Ranchi established in 1970 is a minority institution; minority status is given by the State Government. Pursuant to an agreement dated December 15, 1972, it was agreed that no new posts shall be created in the College without obtaining prior permission of the Vice-Chancellor. Two posts were created by the Governing 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 Universities Act, 1976 has stepped in and states that : B C

"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, D

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

(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. F

(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 the pay scale attached to such post or sanction any new allowance. G

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. H

A            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 candidate possessing the prescribed qualification."

B            A 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, exceptions 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 C  
 C            (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 a 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 entitled to the payment of the grant-in-aid. By operation of D  
 D            clause (1) of Article 30, all minorities, whether based on religion or language, shall have the right to establish an educational institutions of their own choice. Under clause (2) of Article 30, the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, E  
 E            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 regulations as may be available under law to regulate the recruitment of service administration, use of fund etc. The F  
 F            contention of Shri B.B. Singh, leaned 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, G  
 G            the statute operates in the field so long as no regulations 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.

T.N.A.

Appeal dismissed.