

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21232 of 2014

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1. Ram Pravesh Rai , son of Late Jagadish Rai, Lecturer, Department of Zoology
 2. Bechu Prasad Singh, son of Late Ram Devi Singh, Lecturer, Department of Political Science
 3. Shio Prasanna Singh son of Late Bishwanath Singh, Lecturer, Department of Philosophy
 4. Ram Yatan Singh, son of Late Badri Singh, Lecturer, Department of Geography
 5. Bikrama Singh, son of late Baijnath Singh, Lecturer, Department of Mathematics
 6. Kanhaiya Rai, son of Late Kundan Rai, Lecturer, Department of Economics
 7. Sri Bhagwan Singh, son of Late Dharamraj Singh, Lecturer, Department of Hindi
 8. Hriday Narain Singh, son of Late Jagropan Singh, Lecturer, Department of Political Science
 9. Rambharat Singh, son of Ram Sihasan Singh, Lecturer, Department of History
 10. Nagendra Kuma, retired on end of August 2014, son of Gorakh Prasad Kashyam, Lecturer, Department of Commerce
 11. Raj Kumar Prasad, son of Late Dukhi Prasad, Lecturer, Department of Commerce
 12. Surya Bansh Singh, son of Late Ram Janam Singh, Lecturer, Department of Sociology
 13. Haribansh Singh, son of Late Ram Pati Singh, Lecturer, Department of Economics
 14. Birendra Prasad Singh, son of Ram Chandra Singh, Lecturer, Department of History
 15. Muni Ram Singh, son of Late Bhagirathi Singh, Lecturer, Department of Philosophy
 16. S.M.Sahabuddin, son of Late S.M.Sayeaduddin, Lecturer, Department of Urdu
 17. Kedar Nath Singh, son of Late Sahjanand Singh, Lecturer, Department of Hindi
 18. Arun Kumar Sinha, retired on end of November 2013, son of Late Baldeo Prasad Sinha, Lecturer, Department of Geography

All in Shershab College, Sasaram, P.S. Town, District Rohtas at Sasaram

.... Petitioner/s

Versus

1. The State of Bihar through the Director (Higher Education) Bihar, Patna
2. The Director (Higher Education), Bihar, Patna
3. The Veer Kunwar Singh University, Ara through its Registrar
4. The Vice Chancellor, Veer Kunwar Singh University, Ara
5. The Registrar, Veer Kunwar Singh University, Ara

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh
Mr Sushil Kumar Singh
For the Respondent/s : Mr. R.S.Singh, AC to AAG 15
For the University : Mr Sarva Deo Singh

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL ORDER

4 23-06-2015

The whole issue now boils down to one primary question whether the State of Bihar could alter the date of absorption of the petitioners on the ground that the posts in question were sanctioned by the State with effect from 1.2.1988. This is communication which was made with the Registrar of Veer Kunwar Singh University on 25.9.2014 contained in Annexure- 13 series and based on the same, a notification dated 10.11.2014 as well as notification dated 15.11.2014 came to be issued by the Registrar of the University. Annexure- 13 series, therefore, is under challenge.

Short facts are that these petitioners came to be regularized on the basis of the recommendation of the Justice Agrawal Commission duly approved by the Hon'ble Supreme Court in the case *State of Bihar & Ors. V. Bihar Rajya MSESKK Mahasangh & Ors., reported in 2005 (1) PLJR 464.*

Stand of the counsel for the petitioners is that a Bench of this Court in the case of *Manju Chaudhary v. B.N.Mandal University & others, reported in 2012 (3) PLJR 773*, held as under in paragraph 7 :



“7. In support of this contention, the counsel, representing Respondent No. 5 has placed reliance on different decisions of Supreme Court. In these Judgments, there is specific finding that issue decided by the Apex Court and the finding recorded by the Supreme Court, neither can be reopened, altered or scrutinized by any forum, including the High Court. Considering the finding recorded in these judgments, the status of sanctioned as well as recommended post mentioned in Justice Agrawal Commission's Report relying upon which the Supreme Court has passed judgment reported in 2005 (1) PLJR 464 (State of Bihar & Ors. Versus Bihar Rajya M.S.E.S.K.K.) can not be changed, modified or interpreted, in any other manner, than it has been recorded in Justice Agrawal Commission's Report and relied upon by the Apex Court. Annexure- IA of Justice Agrawal Commission's Report relates to sanctioned post of Teachers in different Colleges. In K. B. Jha College, Katihar, as per Annexure- IA in the Department of Zoology one post was sanctioned on May 23rd, 1981 and second post was sanctioned on November, 28, 1984, as such number of sanctioned post in the Department of Zoology are two. Annexure- IIA of Justice Agrawal Commission's Report relates to posts recommended by the University up to



the cut off date, pending consideration before the State Government. In this list, so far K. B. Jha College, Katihar is concerned, in the Department of Zoology, one post was recommended on April 28, 1986 and that was pending for consideration before the State Government. Justice Agrawal Commission's Report makes it clear that there were two sanctioned posts in the Department of Zoology and one recommended post. The judgment of the Apex Court in para 68 and 73, is very specific that all controversies raised by the parties with regard to the sanctioned, recommended posts, have been rejected and the final decision with regard to sanctioned and recommended post can be made only on the basis of the Justice Agrawal Commission's Report. No correction can be made, subsequent to the judgment of the Apex Court, except for making correction in the name or some typing errors. No other correction as such is permissible, and position of sanctioned / recommended posts will remain same as per Apex Court Judgment, based on Justice Agrawal Commission's Report. ”

Similar view has also been taken by yet another Bench in CWJC No.3017 of 2006, which was the case of Babu Saheb Jha & others vs. the State of Bihar & others. Paragraph 19 of the judgment is reproduced herein below for ready reference:



“19. Thus, in the considered opinion of this Court the University, therefore, cannot change the date of eligibility for absorption as recorded in the report o Justice S.C.Agrawal Commission which has to be necessarily be the date of absorption of teachers in terms of section 4(1) (14) of the Act as no other date now can be inserted in view of detailed enquiry made in the recommendation of Justice S.C.Agrawal Commission for each and every teaching personnel of this college and other colleges. Any decision of the University contrary to the recommendation of Justice Agrawal Commission in fact will be in violation of the directions of the Apex Court in the case of Sikshak Awam Shikshetar Karmachari Kalyan Mahasangha (supra). This Court, therefore, has no hesitation in holding that impugned order fixing the date of absorption of the petitioners with effect from 10.12.1984 is absolutely untenable both on facts and in law as also contrary to the directions of the Apex Court. The petitioners therefore, would be entitled for their absorption in the university service from respective dates of eligibility as recommended in the report o Justice Agrawal Commission i.e. with effect from 29.1.1980, 8.11.1979, 15.12.1979 and 22.8.1980 respectively.”

In view of the above, the stand of the State that the services of these petitioners can only be recognized from the date of sanction of the post may not be an accepted position in law because it is not open to the State to change their date of absorption or their appointment, which was provided for by Justice Agrawal Commission under the pretext of non-availability of post or sanction of the same with effect from 1.2.1988.

Writ application is allowed. Annexure- 13 series are quashed.

(Ajay Kumar Tripathi, J)

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