

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19620 of 2014

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1. Dr. Bimal Prasad Singh Son of Late Rajendra Prasad Singh Resident of mohalla-Mritunjay Chatterjee Lane, Road No.6D, P.S-Gardanibagh, District-Patna at present working as Professor & Head, P.G. Deptt. of Political Science, A.N.College, Patna
 2. Dr. Arjun Sharma Son of Late Basudeo Sharma Resident of 10, West Anandpuri, Boring Road, P.S-S.K.Puri, Patna, at present working as Assistant Professor and Head, Deptt.of Political Science, S.M.D.College, Punpun, District-Patna.
 3. Dr. Shyamal Kishor Son of Dr.Sheo Kumar Sharma Resident of Saketpuri, Bazar Samiti, Rajendranagar, Patna, at present working as Associate Professor & Head, Deptt.of Philosophy, T.P.S.College, Patna
 4. Dr. Deepak Kumar Son of Late Kedarnath Brahmachari Resident of 204, Shiv Apartment, Opposite Gayatri Mandir, Lohiya Nagar, Kankarbagh, P.S-Kankarbagh, Patna, at present working as Associate Professor & Head, Deptt.of Sanskrit, Maharaja College, Ara.
 5. Dr. Ghanshyam Son of Basistha Narayan Rai Resident of 303, Parsoni Apartment, Ashiana Nagar Road, P.S-Rajeev Nagar, Distt-Patna, at present working as Associate Professor, B.I.T. Sindri.
 6. Dr. Achyuta Nanda Singh Son of Sri Jai Krishna Pd. Singh Resident of 103, Pratima Mansion, Behind Mamta Apartment, Shivpuri, P.S-Sastrinagar, District-Patna, at present working as Professor Deptt.of Physics, J.P.University, Chapra.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education department, Government of Bihar new Secretariat, Patna.
2. The Chancellor, Universities of Bihar, Raj Bhawan, Patna.
3. The Director, Higher Education, Education department, Government of Bihar new Secretariat, Patna.
4. The Magadh University through the Registrar, Magadh University, Bodh Gaya.
5. The Vice -Chancellor-cum-Chairman of selection committee, Magadh University, Bodh Gaya.
6. The Registrar, Magadh University, Bodh Gaya.
7. Dr. Sudhir Kumar Mishra Son of not known P.G. Deptt. of Chemistry, J.P.University, Chapra
8. Dr. Parween Kumar Son of not known Deptt.of Geography, B.D.College, Patna
9. Dr.(Smt.)Sheela Singh Wife of not known Deptt.of Geology, Kishori Sinha Mahila College, Aurangabad
10. Dr.Ved Prakash Chaturvedi Son of not known Deptt.of English, College of Commerce, Patna
11. Dr. Shashi Pratap Singh Son of not known Deptt.of Political Science, A.N.College, Patna
12. Dr. Indrajeet Prasad Roy Son of not known Deptt.of Commerce, Rajendra College, Chapra
13. Dr.(Smt.)Rekha Kumari Wife of not known Kishor Sinha Mahila College, Aurangabad
14. Dr.Upendra Prasad Singh Son of not known Deptt. of English, H.D.Jain College, Ara.
15. Dr. Dinesh Prasad Sinha Son of not known Deptt.of Political Science, Magadh

University, Bodh Gaya

16. Dr.Arun Kumar Rajak Son of not known Deptt.of Botany, Gaya College, Gaya

17. Dr.(Smt.)Poonam Wife of not known Deptt. Of Economics, College of Commerce, Patna

18. Dr. Dalbir Singh Son of not known Prof. Incharge ,S.G.G.S,College, Patna city, Patna

19. Dr.Usha Sinha Wife of not known Prof.in.Charge,Ganga Devi College, Kankarbagh,Patna.

20. Dr.Krishna Nandan Prasad Singh through The Registrar, Magadh University,Bodh Gaya.

21. Dr.Brajesh Rai,Deptt.of Hindi, A.M.College, Gaya.

22. Dr.(Prof.)Arun Kumar, Ex Vice-Chancellor, Magadh University. Resident of House No.405,Road No.4, Nehru Nagar, Near H.P.Gas Godown, West Boring Canal Road ,P.S-Nehru Nagar,Patna,Distt-Patna.

23. Dr.D.K.Yadav Son of not known The Registrar, Magadh University, Bodh Gaya.

24. The Additional Director General, Vigilance, State of Bihar, Patna

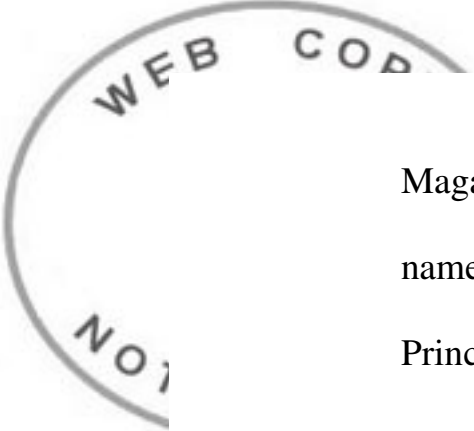
.... Respondent/s

Appearance :

(In CWJC No. 19620 of 2014)

For the Petitioner/s :	Dr Krishna Nandan Singh, Sr. Advocate Mr. Navin Prasad Singh Mr Narayan Singh Mr Angad Kunwar
For the State :	Mr. Maninder Kishore Singh, SC 6 Mr Sanjay Mandal, AC to SC 6
For the University :	Mr Girijesh Kumar Mr Vipin Kumar Mr Nirmal Kumar Singh
For the Vigilance :	Mr Arvind Kumar
For Respondent No.2 :	Mr Rajendra Kumar Giri
For Respondent No.8 and 15 :	Mr Vinod Kumar Kanth, Sr. Advocate Mr Yugal Kishore, Sr. Advocate Mr Virendra Prasad
For Respondent Nos.9 12 and 14 :	Mr Rajendra Narayan, Sr. Advocate Mr Rabi Bhushan Prasad -1
For Respondent No.13:	Mr Rajendra Narayan, Sr. Advocate Dr Raj Kumar Singh
For Respondent Nos.15 and 16 :	Mr Tej Bahadur Singh, Sr. Advocate Mr Yogendra Kumar Ms Shashi Priya Pathak
For Respondent No.7 :	Mr Subodh Kumar Jha Mr Rabi Bhushan Prasad-1
For Respondent No.18 :	Mr Siddhartha Prasad
For Respondent No.17 :	Mr Siya Ram Sahi Mr Mrigendra Kumar
For Respondent No.21 :	Mr Amaresh Kumar Singh Mr Sushil Kumar Rai

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
CAV JUDGMENT
Date: 10.12-2015



By virtue of notification issued by the Registrar, Magadh University, Bodh Gaya dated 16.1.2013 (Annexure-8) the names of persons indicated therein have been appointed as Principals of constituent colleges under Magadh University.

2. The petitioners, who are teachers working under the University under various capacity, have a grievance since the entire selection process as well as the selection is vitiated from the very threshold of advertisement.

3. It is the case of the petitioners that the selection so made of the persons, who are respondents, reeks of nepotism, favoritism and arbitrariness. The exercise has been done by hoodwinking the law, if not dragging even the Hon'ble Supreme Court in the controversy. Name of Apex Court was used in the advertisement with the object of warding off any scrutiny of the action under challenge including judicial kind.

4. A rather detailed hearing was carried out and after perusing the materials on records, this Court is constrained to observe from an old saying that a leopard never changes its spot nor do white-collared criminals, who are masquerading as 'educationists' in the Magadh University.

5. The facts and materials, which will be dealt with in the subsequent part of the order, shall speak for itself.

6. The Court also expresses its anguish on the facts that thrice appointment of Principals have been made in the Magadh University and every time the Court has had to come down very heavily. This certifies the position that the people at the helms of affairs have had no respect for law and they were hell-bent on doing what they wanted to do and achieve what they wanted to achieve without caring for law or the Courts.

7. In addition to Annexure-8, the petitioners also want quashing of Annexure- 10, dated 6.3.2013 by which three other persons have also been appointed against future vacancies. Even this notification, therefore, is under challenge.

8. Over and above the two Annexures above, the communication issued from the Governor's Secretariat under the signature of the Principal Secretary to His Excellency dated 21.10.2014 (Annexure- 21) has also been challenged and its quashing is sought in the present writ application.

9. At the very outset, the learned senior counsel representing the petitioners draws the attention of this Court to Annexure- 1, which is recruitment notice dated 4.5.2012 and was supposedly published in a local newspaper 'Hindustan' on 8.5.2012.

10. The advertisement fixed the cut-off date as 20.5.2012 i.e. to give an opening or a window of only 12 days to apply to the candidates.

11. The Court also would like to quote a part of the advertisement which reads as under:

“In the light of legal advice from Additional Solicitor General of Hon’ble Supreme Court of India and in the light of judgment of Hon’ble Supreme Court of India,, applications are invited from eligible candidates for the vacant sanctioned posts of Principals under Magadh University Service in the prescribed format. The application must be accompanied with a crossed DD of Rs.2000/- (For SC/ST Rs.1000/-) only in favour of Registrar, Magadh University, Bodhgaya payable at Bodhgaya. Application must reach to the office of the Registrar, Magadh University, Bodhgaya or before 20.5.2012 by registered post only.”

12. Learned senior counsel for the petitioners argues that the very foundation of the advertisement is a fraud and an effort has been made to ward off, if not scare, persons away from any kind of close scrutiny to the background under which the said recruitment of 12 Principals was shown to be made.

13. The accepted position on behalf of the University and the private respondents is that there was no judgment of the



Hon'ble Supreme Court based on which the advertisement contained in Annexure- 1 was issued. So far as the advice of the Additional Solicitor General is concerned that advice had been given with regard to yet another appointment earlier made by the same personas in which not only the Hon'ble High Court quashed those appointments but even the Hon'ble Apex Court upheld the decision of the learned Single Judge. The decision of the learned Single Judge is the case of *Dr Bimal Prasad Singh vs. State of Bihar, reported in 2011 (1) PLJR 1134.*

14. The argument is that if the foundation of the advertisement itself is based on this kind of misleading and fraudulent misrepresentation then it can be well gauged as to what the intent and object behind such selection was.

15. Further argument with regard to the advertisement in question is that the advertisement has not been issued even otherwise in accordance with the statute dated 30.6.2008.

16. The advertisement was a localized advertisement and not in any National newspaper to give widest of publicity for every eligible person to apply and participate. The advertisement was also issued against the State Government moratorium at the relevant time on the issue of roster clearance. The advertisement was without approval of the Hon'ble Chancellor. In support of the

above contentions, heavy reliance is placed on the case of Dr Bimal Prasad Singh (supra) where learned Single Judge after dealing with various statutory and legal requirements has laid down as to the manner in which the process of selection for appointment on the post of Principal is supposed to be initiated.

17. Court's attention was drawn to paragraph 15 of Dr Bimal Prasad Singh's case and what the learned Single Judge had to say in paragraph 15:

“ 15. One important aspect of the matter needs to be clarified separately. As noticed above the Selection Committee constituted by legislation as per the new Section 57 of the Bihar State Universities Act, 1976 has stepped into the shoes of Bihar State (Constituent) Colleges Service Commission which in turn was to function as a Commission for the University services on the lines of the State Public Service Commission contemplated under Article 320 of the Constitution. Thus, the newly created Selection Committee is to perform statutory functions in respect of appointments to be made in University on the lines of the Commission. This function of the Selection Committee is independent and not under control of the University, or any other authority under the law. Therefore, the moment vacancies of the post of teachers and officers of the University are identified and notified, the same has to be treated by the Selection Committee as requisition and then it is required to initiate the process for filling up of those



vacancies, by getting advertisement published on all India basis inviting applications from all eligible candidates for their consideration, inconformity with the spirit of Articles 14 and 16 of the Constitution. The moment an advertisement is published, and till the final merit list is prepared, and final recommendation is made by the Selection Committee to the University, the University officials, particularly the Vice Chancellor of the University, has no individual role to play in the process, though he may be ex-officio Chairman of the Committee. All decisions, at all stages, in the process of such selection, has to be of the Committee itself and any delegation of power by the Committee to the Vice Chancellor, if at all made, may only amount to abdicating its constitutional functions by the Committee. In the process of selection the Committee is required to receive applications, scrutinize the same, hold tests or evaluations, hold interview, prepare a final combined merit list of all candidates finally found eligible for appointment, prepare the panel of general category candidates in the light of the vacancies notified for recommendation of their appointment, prepare panels of candidates of each reserved category from the merit list for recommendation of their names for their appointment under the reserved categories and prepare waiting list of candidates of different categories, if required. The petitioners have pointed out defects and errors committed by the Committee in the process of selection and preparation of the final panel in this case and apparent anomaly in award of



marks in interview to the candidates. Therefore, onus lay on the respondents to satisfy this Court that at each and every stage the Committee had taken steps for final recommendation of the names to the University for appointments strictly as required in law, and no errors, mistakes or lapses were committed by it. In view of the Constitutional mandate under Articles 14 and 16, the correctness of the procedure adopted and the steps taken by the Selection Committee had to be established by the respondents themselves.”

If what has been opined by learned Single Judge as to the manner in which the Selection Committee was required to be constituted and function, then the same has not been adhered to even in the present case. Selection and appointments made in violation of the laid down law makes it illegal and deserves to be set aside.

18. The Court also gave a very detailed guidelines in para 19 :

“19. In the circumstances, this Court has no option but to quash the entire selection process held by the respondents pursuant to the advertisement, as contained in Annexure-1, and the subsequent steps taken by the respondents including the preparation of panel and appointment of the respondents as regular principals of the respective constituent colleges and direct the respondents to initiate a fresh process of selection of candidates for appointment on the vacant post of principals of the constituent colleges in the

University on regular basis. Accordingly this Court does that and directs the Selection Committee to proceed afresh in the following manner:-

(A) (i) The advertisement for filling up post of principals of constituent colleges under the University must be published within one month from today.

(ii) The advertisement must include all the sanctioned vacant posts of principals of the constituent colleges of the University as available on the date of advertisement which shall also include the posts held by the respondents.

(iii) It shall be mentioned in the advertisement that as per the Statute, the panel, finally prepared and published by the Selection Committee, shall be valid for one year.

(iv) It may be also mentioned in the advertisement that the vacancies which may accrue during the period of the validity of the panel may be filled up from the panel of respective category for which the vacancy may be earmarked.

(v) The details of the categories of any anticipated vacancy likely to arise during the period of validity of the panel shall also be mentioned in the advertisement.

(vi) It shall also be mentioned in the advertisement that after preparing the panel of general category candidates from combined merit list, separate panel of reserved category candidates, as per the reservation policy of the Government, by applying the roster to the 44 posts of principals of the 44 constituent colleges of the University, shall also be

prepared and finalized, even though the vacancies of particular category may not have already become available on the date of advertisement. Therefore candidates of all the categories shall be invited to apply for inclusion of their names in the respective panels, although vacancies of the particular category may not be already available.

(vii) In the advertisement an exhaustive list of standard/recognized journals, for the purposes of assessment of marks under the head of publication/research papers, shall be given, which the Selection Committee intends to take into consideration in the matter.

(viii) The Selection committee may also prescribe a self assessment chart for candidates to assess their marks themselves, under the head of academic achievement and publication, in terms of Clause 13 of the Statute dated 30.6.2008, and may require the candidates to submit the same along with their application forms, with other details and supporting documents, for consideration by the Selection Committee. The candidates may also be required to submit an affidavit that their publication or research papers are not a part of either their M.Phil or Ph.D thesis.

(B) The Selection Committee shall allow a reasonable time to the applicants to submit their application forms. The same shall be scrutinized, in the light of the self assessment chart, if submitted, and a detail final chart of marks allotted to each applicant under the head of academic achievements and under the head of publication/research shall be

prepared and signed by all the members of the Selection Committee and shall be put on the web-site of the University for the knowledge of the applicants and a reasonable time shall be allowed for the individual applicants to get the marks allotted cross checked in their presence, if they so desire.

(C) Thereafter the date of interview shall be fixed and notified on the web-site of the University as well as in the manner prescribed, for the knowledge of the respective candidates for their appearance on the dates fixed for respective candidates.

(D) For the purposes of transparency and to ward off any public suspicion of nepotism and extraneous consideration weighing with the Selection Committee, the interview of all the candidates shall be video-recorded in full and the marks shall be awarded to the candidates by the members of the Selection Committee then and there. A notice shall be put on the notice board on the date of interview that, if requested in writing, any individual candidate shall be supplied with the information with regard to average of the total marks awarded to him in interview in writing and on the same day he is interviewed, which shall be supplied the same day upon such request. The C.D. of video recording, in original, shall be preserved till the validity of the panel, or till the final conclusion of any dispute, in connection with the selection process, which ever may be later.

(E) On completion of the interview, a consolidated merit list of all the candidates shall be prepared within two weeks of the last date of



interview and shall be signed by all the members of the Selection Committee and put on website of the University. Within further two weeks thereafter, panel of general category candidates, as well as of reserved categories shall be prepared and forwarded to the University, under the signature of all the members of the Selection Committee, for proceeding with issue of appointment letters.

(F) The entire process must be completed with issue of appointment letters by the University within six months from today.

(G) The Selection Committee may include such other stipulation in the advertisement and may take such other step in the selection process as it may deem fit and proper for the purpose of transparency of the process and to instill confidence in the candidates in respect of fairness in action on their part.

(H) The Selection Committee shall be at liberty to approach this Court if they find any difficulty in implementing any of the directions, as issued by this Court above, for necessary modification or further direction.

(I) The respondents may notify the Selection Committee in accordance with law for the purpose, by nominating new members as per its constitution, if necessary, to start the process of selection after advertisement.”

19. It is the case of the petitioners that the entire present exercise has been done in gross disregard to the High



Court's directive by cocking a snook at it. There is substance in the submission as the facts do support it. The constitution of the Selection Committee has been attacked on many grounds. Large number of irregularities has been committed by the erstwhile Vice Chancellor, namely, Mr Arun Kumar. Experts were picked up by the Vice Chancellor without approval of the Academic Council. The senior most head of the Department or the senior most Principal under the University was required to be part of the Committee but such requirement was blatantly ignored and a rank junior, namely, Srikant Sharma was included in the committee, who seems to be favorite of Prof. Arun Kumar, the then Vice Chancellor because his name also figured in other controversies with regard to other appointments which included the challenge made in the case of Dr Bimal Prasad Singh(supra) as well as yet another appointment, which was struck down by the High Court by a learned Single Judge, which was the case of Dr. Arun Kumar Sinha and another vs. State of Bihar and others i.e. CWJC No.9167 of 2012, decided on 12.9.2014.

20. Another omission pointed out at the bar on behalf of the petitioners is that there was no Government nominee on the Selection Committee and no effort was also made to have one. Mere sham kind of effort was made but there was no serious desire

to have a nominee.

21. Some other irregularities committed on behalf of the Selection Committee have also been pointed out by the counsel on behalf of the petitioners. The Vice Chancellor abstains in the morning session/ meeting of the Committee on the ground that his Samdhin (co-sister) was a candidate, but he participated in the second half when the final deliberation for selection and recommendation was done where the said candidate was also a beneficiary.

22. The statutory requirement of the Selection Committee to supervise the entire process of selection i.e. from the advertisement till final recommendation was not done by the Committee. In fact, the Committee was not kept in the loop and their participation on need base and very selectively was allowed.

23. The advertisement contained in Annexure- 1 in fact, was issued even prior to the constitution of the Committee. The Selection Committee in fact did not even carry out the scrutiny of the applications and tabulation of the candidates. This exercise was done by what is known as Promotion Cell directly under the control of the Vice Chancellor. This also indicates a mindset as to how the selection process was sought to be controlled and manipulated to a particular goal.



24. No combined merit list was published. Only the final list of recommendations under various categories was issued. There is some jugglery even in the recommendations which are evident from the record. The appointment letters were backdated for the reason that the Vice Chancellor was under notice and he was racing against time as he would have been removed any day as the judgment of the Hon'ble Apex Court was awaited on the issue of appointment of Vice Chancellors in various Universities and he was only holding the post temporarily as a stopgap arrangement. The decision of the Hon'ble Apex Court came on 18.3.2013, by virtue of which the officiating Vice Chancellor, namely, Mr Arun Kumar was stopped from functioning. Even the so-called recommendation of the Selection Committee was not adhered to. The Vice Chancellor changed the sequence in the final notification.

25. Another glaring fact pointed out from Annexure- 8 dated 16.1.2013 is that the said notification granted 60 days time to join but the joining was required to be accepted only if the candidate had the necessary no objection certificate and joining letters. What is of significance is that no letter of appointment was produced by any candidate at the time of joining nor the same has been produced even during the course of hearing as it is not in existence, a fact no longer in dispute. In fact, a closer scrutiny of the document would

show that the no objection certificate or the relieving certificates were backdated or non existent.

26. Another fact pointed out is that the recommendation or appointment on the post of Principals was supposed to be approved by the Syndicate. The meeting of the Syndicate held on 18.2.2013 did not have in its agenda the question of approval of the recommendation for such appointments. Subsequently a document has been created but it seems to have been done later to cover up the illegality.

27. While this exercise was going on and such blatant and glaring, if not daring, acts were being committed in matter of selection and appointments of Principals, complaints were received even at the level of the Hon'ble Chancellor. An enquiry was ordered first by the Divisional Commission- cum- officiating Vice Chancellor into the issue since the previous Vice Chancellor, Mr Arun Kumar, ceased to be a Vice Chancellor after the order of the Hon'ble Supreme Court, rendered on 18.3.2013. The detailed report of the Divisional Commissioner is Annexure- 16 to the writ application. This enquiry was held in response to the letter of the Hon'ble Chancellor dated 30.4.2013. A reading of the said report of the Divisional Commissioner, in fact, supports most of the submissions made at the bar with regard to the manner in which



such selection of Principals had been made. In fact, some more glaring instances have been pointed out in the said report. The finding in the report was that a detailed enquiry either by Vigilance or a Specialized Committee is surely required to establish the guilt of such persons, who were so blatant in their conduct.

28. Another fact of significance is that the subsequently appointed Vice Chancellor's opinion was also sought by Hon'ble Chancellor. He responded vide letter dated 12.8.2013 addressed to the Principal Secretary of the Hon'ble Chancellor. The said report is Annexure- 17 to the writ application. This report also corroborates the previous findings of the Divisional Commissioner. Not only this, it also points out some more irregularities in the manner in which the entire selection of Principals had been made. He also sought direction as to what was required to be done with regard to the fate of the selected candidates.

29. With so many inputs and materials pouring into the Chancellor's Secretariat, the Joint Secretary to the Governor's Secretariat, Bihar issued a notification dated 14.8.2013. The Hon'ble Chancellor was prima facie satisfied that an enquiry was required to be conducted on the issue of appointment of Principals in Magadh University, by the then Vice Chancellor, therefore, under the exercise of power conferred upon him under Section 9 of the

Bihar State Universities Act, 1976, he requested Sri B.B.Lal, IAS (Retd.) to inquire into the irregularities on the issue of appointment of Principals.

30. On the basis of the said notification, Sri B.B.Lal conducted a very very detailed enquiry and a voluminous report was presented before the Hon'ble Chancellor. Part of the report is on record as Annexure- 19. This report was presented on 16.11.2013. Obviously, perusal and analysis of the report took time and thereafter the Hon'ble Chancellor was pleased to direct issuance of a letter dated 18.3.2014 (Annexure- 20). The Hon'ble Chancellor stopped all the Principals from performing their duty since their appointment was stayed and they were ordered to be reverted back to their parent organization till appropriate show causes and response was received and a final decision was taken on the issue.

31. Learned senior counsel representing the petitioners thereafter submits that on a begotten kind of advice given to His Excellency, an order dated 21.10.2014 (Annexure- 21) was issued. Strangely, the previous order dated 18.3.2014 i.e. Annexure- 20 was withdrawn. The submission of the learned senior counsel representing the petitioners is that the so- called legal advice given to the Hon'ble chancellor was a blatantly wrong legal advice, obviously managed by the vested interest to overcome the rigors of



Annexure-20. To support such an argument, he relied on a decision of the Hon'ble Apex Court rendered in the case of ***Hitendra Singh v. P.D. Krishi Vidyapeeth, reported in (2014) 8 SCC 369***. This decision was rendered by the Hon'ble Apex Court on 4th April, 2014. This decision is of significance because the provisions, which were dealt with by the Hon'ble Apex Court are para materia to Section 9 of the Bihar State Universities Act, 1976. The detailed opinion of the Hon'ble Apex Court which is of significance to this case emerges from reading of paragraphs 18,19, 20, 21, 22 and 23, which run as under:

“18. Section 11 reads as under:

“11: Chancellor to cause inspection and inquiry on various matters:

(1) The Chancellor shall have the right to cause an inspection to be made, by such person or persons or body of persons, as he may direct, of any University, its buildings, farms, laboratories, libraries, museums, workshops and equipment of any college, institution or hostel maintained, administered or recognised by the University and of the teaching and other work conducted by or on behalf of the University or under its auspices of and of the conduct of examinations or other functions of the University, and to cause an inquiry to be made in like manner regarding any matter connected with the administration or finances of the University.

(2) The Chancellor shall, in every case, give due

notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative, who all have the right to be present and to be heard at the inspection or inquiry.

(3) After an inspection or inquiry has been caused to be made, the Chancellor may address the Vice-Chancellor on the result of such inspection or inquiry and the Vice-Chancellor shall communicate to the Executive Council the views of the Chancellor and call upon the Executive Council to communicate to the Chancellor through him its opinion thereon within such time as may have been specified by the Chancellor. If the Executive Council communicates, its opinion within the specified time limit, after taking into consideration that opinion, or where the Executive Council fails to communicate its opinion in time, after the specified time limit is over, the Chancellor may proceed and advise the Executive Council upon the action to be taken by it, a fix a time-limit for taking such action.

(4) The Executive Council shall, within the time limit so fixed, report to the Chancellor through the Vice-Chancellor the action which has been taken or is proposed to be taken on the advice tendered by him.

(5) The Chancellor may, where action has not been taken by the Executive Council to his satisfaction within in the time limit fixed, and after considering any explanation furnished or representation made by the Executive Council, issue such direction, as the Chancellor may think fit, and the Executive Council and other authority concerned shall comply with such

directions.

(6) Notwithstanding anything contained in the preceding sub-section if at any time the Chancellor is of the opinion that in any matter the affairs of the University are not managed in furtherance of the objects of the University or in accordance with the provisions of this Act and the statutes and Regulation or that special measures are desirable to maintain the standards of University teaching, examinations, research, extension education, administration or finances, the Chancellor may indicate to the Executive Council through the Vice-Chancellor any matter in regard to which he desires an explanation and call upon the Executive Council to offer such explanation within such time as may be specified by him. If the Executive Council fails to offer any explanation within the time specified or offers an explanation which, in the opinion of the Chancellor is not satisfactory, the Chancellor may issue such directions as appear to him to be necessary, and the Executive Council and other authority concerned shall comply with such directions.

(7) The Executive Council shall furnish such information relating to the administration and finances of the University as the Chancellor may from time to time require.

(8) The Executive Council shall furnish to the State Government such returns or other information with respect to the property or activities of the University as the State Government may from time to time require“.
(emphasis supplied)

19. A careful reading of the above would leave no



manner of doubt that the Chancellor is vested with the power to cause an inspection to be made by such person or persons as he may direct of any University, its building, farms, laboratories, libraries etc. or of hostels administered and recognised by the University or of the teaching or other workshops conducted on behalf of the University or any conduct of examinations or other functions of the University. The inspection so directed is, however, distinct from the inquiry which the Chancellor may direct regarding any matter connected with the administration or finance of the University. The expression 'administration or finance' of the University is in our opinion, wide enough to include an inquiry into any matter that falls under Section 6(x) (supra). (emphasis mine) If creation of teaching, research and education posts required by the University is one of the functions of the University and if appointment of suitable persons against such posts is also one of such functions, there is no reason why the power of the Chancellor to direct an inquiry under Section 11(1) should not extend to any process leading to such appointments. The term 'administration of the University' appearing in sub-Section 1 of Section 11 would, in our opinion, include every such activity as is relatable to the functions of the University, under Section 6. Selection of persons suitable for appointment and appointments of such persons would logically fall within the expression "administration of the University" within the meaning of Section 11(1) of the Act. We have, therefore, no hesitation in holding that the inquiry

directed by the Chancellor into the illegalities and irregularities of the selection process culminating in the appointment of Senior and Junior Research Assistants was legally permissible. The power vested in the Chancellor under Section 11 to direct an inspection or an inquiry into matters referred to in the said provision is very broad and vests the Chancellor with the authority to direct an inspection or an inquiry whenever warranted in the facts and circumstances in a given case.

20. We may also refer to Section 15 of the Act whereunder the Governor of Maharashtra is ex-officio Head of each of the Universities who shall, when present, preside at any convocation of the University. Section 15 reads:

15. Chancellor (1) The Governor of Maharashtra, shall be the Chancellor of each of the Universities.

(2) The Chancellor shall, by virtue of his office, be the head of the University and shall, when present, preside at any convocation of the University.

(3) The Chancellor may call for his information any papers relating to the administration of the affairs of the University and such requisition shall be complied with by the University.

(4) Every proposal to confer any honorary degree shall be subject to confirmation by the Chancellor.

(5) The Chancellor may, by order in writing, annul any proceeding of any officer or authority of the University, which is not in conformity with this Act, the Statutes or the Regulations, or which is prejudicial to the interest of the University:

Provided that, before making any such order, he

shall call upon the officer or authority to show cause why such an order should not be made, and if any cause is shown within the time specified by him in this behalf, he shall consider the same.

(6) The Chancellor shall exercise such other powers and perform such other duties as are laid down by this Act.” (emphasis supplied)

21. A plain reading of the above shows that apart from being the ex officio Head of the University, the statute specifically confers upon the Chancellor the power to call for his information any paper relating to the administration of the affairs of the University and upon such request the University is bound to comply with the same. Sub-section (5) vests the chancellor with the power to annul any proceeding of any officer or authority if the same is not in conformity with the provisions of the Act, the statutes or the Regulations or which is prejudicial to the interest of the University. A conjoint reading of Sections 11 and 15, in our opinion, leaves no manner of doubt that the Chancellor exercises ample powers in regard to the affairs of the University and in particular in regard to the affairs of the administration of the University. The power to direct an inquiry into any matter concerning the administration of the University is only one of the facets of power vested in the Chancellor. The exercise of any such power is not subject to any limitation or impediment understandably because the power is vested in a high constitutional functionary who is expected to exercise the same only when such exercise becomes necessary



to correct aberrations and streamline administration so as to maintain the purity of the procedures and process undertaken by the University in all spheres dealt with by it. The power to direct an inquiry is meant to kick-start corrective and remedial measures and steps needed to improve the functioning of the University as much as to correct any illegal or improper activity in the smooth running of the administration of the University. As a father figure holding a high constitutional office, the Chancellor is to be the guiding spirit for the Universities to follow a path of rectitude in every matter whether it concerns the administration or the finances of the University or touches the teaching and other activities that are undertaken by it. The legislature, it is obvious, has considered the conferment of such powers to be essential to prevent indiscipline, root out corruption, prevent chaos or deadlock in the administration of the University or any office or establishment under it that may tend to shake its credibility among those who deal with the institution. (emphasis mine)

22. The Chancellor had, in the case at hand, directed an inquiry into the illegalities and irregularities in the selection and appointment process in the light of widespread resentment against the same as is evident from the fact that three writ petitions had been filed in the High Court challenging the selection and the appointment process. Two of the writ petitions had been disposed of as noticed earlier no sooner Justice Dhabe Committee was constituted by the Chancellor for holding a detailed inquiry into the allegations. The petitioners were not only aware of the fact about



the pending writ proceedings but also about the constitution of Justice Dhabe Committee. As a matter of fact with the disposal of Writ Petitions No.4771 of 2006 and 905 of 2006 the petitioner had known that Justice Dhabe Committee will eventually determine whether or not their selection and appointment was proper. Justice Dhabe Committee had even issued notices to the petitioners who had in turn responded to the same. The constitution of Justice Dhabe Committee was, despite all this, never questioned by the petitioners. On the contrary the petitioners merrily participated in the proceedings and took a chance to obtain a favourable verdict from it. Having failed to do so, they turned around to challenge not only the findings recorded by the Committee but even the authority of the Chancellor to set up such a Committee. While the findings recorded by the Inquiry Committee could be assailed, the challenge to the setting up of the Committee was clearly untenable not only because there was no merit in that contention but also because having taken a chance to obtain a favourable verdict the petitioners could not turn around to assail the constitution of the Committee itself. Question 1 is accordingly answered in the negative. (emphasis mine)

Reg. Question (ii)

23. The petitioners had unsuccessfully challenged Justice Dhabe Committee Report before the High Court on the ground that principles of natural justice had not been complied with by the Committee. The High Court has noted and in our opinion rightly so that Justice Dhabe Committee had issued notices to



each one of the petitioners asking for their explanation which the petitioners had submitted. The High Court noted that the inquiry proceedings before Justice Dhabe had continued for nearly three years during which period the petitioners had made no grievance either before the Committee or before any other forum regarding non-compliance with the principles of natural justice. There is nothing on record to suggest that any point relevant to the controversy was not considered by Justice Dhabe Committee or that there was any impediment in their offering an effective defence before the Committee. The petitioners had on the contrary candidly admitted in the writ petition itself that upon receipt of notices from the Committee they had appeared and filed their respective affidavits before the Committee. Some of the petitioners had even furnished some additional information which was summoned from them. The Committee had, it is evident, associated the petitioners with the proceedings by inviting them to appear and participate in the same, heard the petitioners and considered their version. There is neither an allegation nor any material to suggest that there was any reluctance or refusal on the part of the Committee to entertain any material which the petitioner intended to place in their defence or to summon any record from any other quarter relevant to the questions being examined by the Committee.

24. The argument that the petitioners did not know as to what the complaint against them was has been rejected by the High Court and quite rightly so. Once the petitioners were informed about the setting up of



the Committee and invited to participate in the same and once they had appeared before the Committee and filed their affidavits it is difficult to appreciate the argument that the petitioners did so without knowing as to why was the Committee set up and what was the inquiry all about. Assuming that any of the petitioners did not fully comprehend the nature of allegations being inquired into by the Committee or the purpose of the inquiry nothing prevented the petitioners from taking suitable steps at the appropriate stage assuming that they were so naïve as to simply appear before the Committee without being aware of the purpose for which they were invited. They could indeed approach the Committee to secure the relevant information to fully acquaint themselves about the on-going process and the nature of the defences that was open to them.

25. Having remained content with their participation in the inquiry proceedings for nearly three years and having made no grievance at all against the procedure adopted by the Committee in dealing with the subject till the writ petitions challenging the termination orders were filed, we see no merit in the specious contention that principles of natural justice were violated by the Committee especially when no prejudice is demonstrably caused to the petitioners on account of the procedure which the Committee followed in concluding the enquiry proceedings. Question No.2 is also in that view answered in the negative.”



The above mentioned decision of the Hon'ble Apex Court renders a decisive opinion with regard to power of the Hon'ble chancellor which he can exercise in such circumstances and it has been held to be paramount. Obviously the legal opinion given to the Hon'ble Chancellor, which formed the basis for issuance of Annexure- 21 was in the teeth of Hon'ble Apex Court's pronouncement. The legal advice which led to withdrawal of the previous order of stay of the appointments contained in Annexure- 20 dated 18.3.2014, was an illegal advice which compelled the Hon'ble Chancellor to withdraw his otherwise correct opinion reflected in Annexure- 20. The decision of the Hon'ble Apex Court rendered in the case of Hitendra Singh (supra) does make Annexure- 21 vulnerable and is fit to be quashed. The constitution of Shri B.B.Lal Committee was a legally justified decision of the Hon'ble Chancellor. If it is so the report of Shri B.B.Lal is also a valid report on which action as per Annexure- 20 was well occasioned. It can also be relied upon and is a valid document.

32. Another letter of communication is of significance which has been placed before this Court, is a letter of the present Vice Chancellor of the Magadh University dated 17.6.2014, which has been annexed as Annexure- 22 to the supplementary affidavit of the petitioners and is addressed to the Principal Secretary to the



Chancellor. The present Vice Chancellor also was of the opinion that looking at the large scale irregularities as well as impropriety with regard to the conduct of the then Vice Chancellor, Mr Arun Kumar, a proper vigilance enquiry was required. The B.B. Lal Committee having found gross violations with supporting evidence and materials needed to fix responsibility not only on the then Vice Chancellor but such persons involved in the machination.

33. Another submission of the petitioners is of significance. On 5.5.2012, the then Vice Chancellor wrote a letter to the Hon'ble Chancellor seeking permission to initiate the process of advertisement and selection. The Hon'ble Chancellor responds on 26.5.2012 allowing such an exercise, which was received by the Vice Chancellor on 29.5.2012 but before all this on 4.5.2012 itself, the advertisement contained in Annexure- 1 was already issued by the University. In other words, the approval of the Hon'ble Chancellor was a sham exercise done as an afterthought by the then Vice Chancellor. This aspect of the matter is also evident from reading of Annexure- 32, which is volume 2 of the B.B.Lal Report, which would be evident from findings emerging from page 476 to 477. It is a serious omission on the part of the then Vice Chancellor in this regard as he was playing games even with the High office of Chancellor.



34. Vide Annexure- 2, the so-called Selection Committee was constituted on 3.9.2012 but by that time many an exercise had already been done without the participation of the Selection Committee, therefore, as per the law laid down in the decision of Dr Bimal Prasad Singh (supra), especially paragraph 15, the entire process stands vitiated.

35. Another serious omission or violation of law is that the Selection Committee was not constituted from the recommendation made by the Academic Council. Clause 7 of the Statute lays down as to how a Selection Committee is to be constituted. What is of significance is that no meeting of the Academic Council was held prior to 3.9.2012 then how come the so-called Selection Committee was constituted on 3.9.2012. In fact, it is evident from the material on page 255-256 of the writ application that the meeting of the Academic Council was held on 24.9.2012 to approve the panel. The learned senior counsel for the petitioners also points out that one Dr Dalbir Singh, who happened to be a member of the Academic Council, who participated in approving the names of the experts, subsequently becomes an appointee himself under so- called minority quota, which does not exist and is another controversy raised against his selection.

36. Same is the position with regard to the meeting of

the Syndicate held on 26.6.2012. In that meeting one Dr Usha Sinha participated for approval of panel of experts, subsequently she herself became an appointee.

37. One Prof Sona J. Minz was shown to be one of the experts and was part of the Selection Committee sent his regret. Thereafter, one Narendra Kumar replaced him but by what exercise and decision is not evident or clear from the entire records and pleadings. With regard to inclusion of one Srikant Sharma, who is not the senior most Principal or the HOD but seems to be the favorite because his inclusion has also been commented upon in a previous proceeding and decision of a learned Single Judge in the case of Dr Arun Kumar Sinha, which is CWJC No.9167 of 2012. The Court would like to reproduce what the learned Single Judge had to say about Srikant Sharma :

“81. One of the point that has been taken by the petitioner constitution of Selection Committee is also bad on the ground that as per Section 57(1)(5) of the University Act one of the member should be head of department of the discipline concerned and Clause 7(i)(b) of the Statute provides that senior most head of the Department/senior most Principal of constituent college of concerned University in the rank of University Professor should be one of the member of the Selection Committee.

82. In the present case objection has been raised that Srikant Sharma who was nominated by the Vice-



Chancellor as member of the Selection Committee was /is not the senior most Principal or the head of the department as there were/are large number of Principals who were/are senior to him but ignoring the seniority Srikant Sharma was nominated on account of his nearness with Dr Arun Kumar, Vice-Chancellor. As counsel for the petitioner submits that Dr. S.N. Singh, Dr. Asha Singh, Principal of Arvind Mahila College, Patna, Dr. Haridwar Singh, Principal of A.N. College, Patna, Dr. Madan Murari, Principal of A.N.S. College, Barh, Dr. Baban Singh, Principal of T.P.S. College, Patna and Dr. Vishundeo Vidyarthi are senior to Sri Kant Sharma but a very much junior person was nominated as member of the Selection Committee. The University has not disputed the seniority of Principal claimed by the petitioner but has furnished explanation for selection of Srikant Sharma by filing Annexure S/8 from which it appears that Registrar vide letter/note sheet dated 4.7.2011 has informed the Vice-Chancellor that Dr. S.N. Singh is the senior most Principal but charges from Raj Bhawan are pending against him. Mrs. Asha Singh has taken leave to go outside and Dr. Haridwar Singh showed his inability to participate in the Selection Committee due to his preoccupied engagement in NAAC team and that was the reason, as Sri Kant Sharma had given his consent, request was made to consider him to be nominated as one of the expert of Selection Committee but the said note sheet Annexure S/8 has conspicuously failed to explain why other persons, namely, Dr. Madan Murari, Principal of A.N.S. College, Barh, Dr.

Baban Singh, Principal of T.P.S. College, Patna and Dr. Vishundeo Vidyarthi were not nominated though from record it is apparent, Dr. Madan Murari was appointed in the year 1988, Dr. Baban Singh and Vishundeo Vidyarthi were appointed on 21.4.1994 whereas Sri Kant Sharma was made Principal with effect from 25.4.1994 vide letter no.859/GIA dated 13.12.1997 (Annexure-17).

83. *In view of preposition of law the Selection Committee was to be constituted in the manner prescribed in terms of statutory provisions and on that manner alone. There should not have been deviation from the manner prescribed under the University Act and Statute. There is no explanation from the side of the University or have not brought any material to suggest as to why names of other persons above him were ignored. This Court is of the view that Srikant Sharma being not senior most Principal was wrongly nominated as member of Selection Committee and this Court comes to a conclusion that instead of appointing Srikant Sharma any senior most person above him should have been nominated. On this ground alone constitution of Selection Committee is not in consonance with the provisions of the University Act and Statute framed therein.* (emphasis mine)

38. To sum up, therefore, the constitution of the Selection Committee was per se illegal, manipulated and prepared by the then Vice Chancellor with the object of selecting people

whose names were predetermined and the sham of an exercise was carried out.

39. There is also material to show that the Selection Committee met for the first time on 21.12.2012, which is on the date of the interview. If this is so, then the Selection Committee met only with the object of putting its seal of approval to the already identified beneficiaries.

40. Even if for the sake of argument it is said that the Selection Committee did the final selection, they did not provide any merit list. They made recommendations category-wise which smacks of some kind of a fixed match and had been unheard of. The sanctity of the recommendation made by the Selection Committee also was not maintained by the Vice Chancellor. Annexure- 8 at page 77 would reflect that this recommendation was also tampered with by the Vice Chancellor and positions altered.

41. It is also one of those cases that no joining letter surfaced till date and based on the notification itself joining of the appointed candidates were accepted, who did not even bother to produce any no objection certificate or relieving letter. Their joining was accepted and subsequently they were permitted to obtain ante dated NOC or relieving letter. In fact, two candidates continued to work as teachers in their respective colleges for a month or so after



their joining was accepted on the post of Principals. In other words, their joining was ante dated which itself creates doubt as to when and how such joining was allowed or made. This also to some extent supports the allegation that the notification is backdated, if not the joining. Therefore, no appointment letters came to be issued for such position ever.

42. At page 258 of the writ application, the name of Narendra Kumar was shown as one of the Members of the Selection Committee but surprisingly yet another list of Selection Committee surfaced at page 735, which is Annexure- H to the counter affidavit of respondent no.11 in which his name is missing, yet he has been shown to have participated in the selection process as would be evident from the notification contained at page 68.

43. All these facts and glaring omissions and violations have been dealt with in detail in B.B.Lal Committee's report, which cannot be ignored or wished away and is valid document.

44. Another aspect which has been pointed out before this Court on the basis of decision rendered by the Hon'ble Supreme Court in the case of *Rakhi Ray v. High Court of Delhi*, reported in **2010 (2) SCC 637**, especially paragraph 7, 8 and 24 that the Selection Committee cannot make recommendations for future

vacancies. The notification Annexure- 10 also under challenge would show that certain names have been recommended against future vacancies, which also is a serious infirmity in the so- called selection. Paragraphs 7, 8 and 24 of the said judgment are quoted herein below:

“7. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated from and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, is not permissible in law.

8. In Surinder Singh v. State of Punjab this Court held as under: (SCC pg.494 paras 14 & 16)

“ 14.9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only



for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointments, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service. 16.Exercise of such power has to be tested on the touch-stone of reasonableness....It is not a matter of course that the authority can fill up more posts than advertised." (Emphasis added)

24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment."

45. In fact, this kind of illegality was considered even

in the case of **Dr. Bimal Prasad Singh** (supra) because learned Single Judge has occasion to notice as under :-

“13. It is settled law that terms of advertisement for appointment are determining factors for scope and limitation of consideration of candidates for appointment. In the case of Suvidya Yadav (supra), relied upon by learned counsel for the respondents, the advertisement specifically contained a stipulation that the number of posts advertised were subject to variations. The judgments of the Apex Court in the case of Prem Singh (supra) and Benny T.D. (supra), relied upon by other learned counsels for the respondents, are also of no help to the respondents as, in very clear terms, it has been held therein that vacancies becoming available after final recommendation of the selection body could not be filled up from the names so recommended. The respondent University has admitted in its counter affidavit that the vacancies, which were filled up beyond the vacancies notified in the advertisement, had become available after the panel was prepared and appointments were made by Annexure-5. It is true that the Statute makes a panel, notified by the Selection Committee, valid for one year. But that validity is only for the purposes of appointments in case of non-joining, unless it is clearly mentioned in the advertisement itself that the panel prepared on the basis of the advertisement shall be valid for a future period and for anticipated vacancies. It is settled law that a selection process comes to an end after a panel is finally published and recommended



to the appointing authority for appointments therefrom against the vacancies advertised. Clearly no post falling vacant subsequent to the same could be filled up from the said panel as neither the post was under consideration in the process of selection nor was it intended and notified at the initial stage itself, by making a stipulation in the advertisement itself for knowledge to all the applicants that the vacancy position may increase, by the same being available even subsequent to the selection process coming to an end. It is true that under certain circumstances, the vacancies arising after advertisement, and prior to the selection process coming to an end, have been allowed by the Courts to be filled up pursuant to that very selection process. But the vacancies, which were not available even on the date of final publication of the panel, have not been allowed by the Courts to be filled up from that panel. The reliance of the respondents in this respect on the stipulation made in the advertisement, to the effect that the University had the right to change/cancel the advertisement, is misconceived. Any change in the advertisement was necessarily to be notified to the candidates through a corrigendum issued and published in the same newspaper in which the original advertisement was published. The change, by no stretch of imagination, could be a private affair at the level of the University, without making it known to the candidates and the applicants.”

46. Affidavit on behalf of Magadh University accepts the position emerging from the B.B.Lal report. Paragraph 15 of the counter affidavit of the University clearly accepts that position. In other words, the selection and appointment of the private respondents is a farce and a nullity.

47. Learned senior counsel representing respondent no.11 put up a valiant fight to defeat the present writ application. At the out set he submits that since most of these reports are ex parte they cannot be looked into. The B.B. Lal report also cannot be used as materials against the respondents in view of the communication and letter of the Hon'ble Chancellor contained in Annexure- 21. There is no requirement for an all India publication of the advertisement inviting applications. The fact that there was a paper publication is enough. No approval of the Chancellor was needed for the advertisement.

48. A position is also taken on behalf of the said respondent that the Selection Committee had to be constituted and reconstituted because certain infirmities were noticed in the first selection. There is a denial that there is no government nominee. A justification is also given for nominating Srikant Sharma as one of the members etc. etc.

49. Similar supporting kind of submissions has also



been made on behalf of respondents no.9, 12, 13 and 14. Submission was also made on behalf of respondents no.7, 8, 10, 15, 16 and 18. On behalf of respondents 9, 12, 13 and 14, a plea was taken that the writ application cannot be maintained if the petitioners participated and failed. Unfortunately, for these respondents such a plea was taken even in the case of Dr Bimal Prasad Singh (supra) and rejected by learned Single Judge.

50. A brave attempt was also made by urging that appointed respondents had approached the High Court when they were not being paid their salary by filing CWJC no.18355 of 2013. A copy of this order dated 22.4.2013 is Annexure- R 14/D, page 667 of the writ. In view of the said decision, it is the stand of the counsel for such respondents that the present writ application is barred by constructive res judicata.

51. It is a fallacious kind of submission because reading of the said order itself would indicate that the decision was limited to payment of salary alone and no comment has been made on the correctness or otherwise of such a selection. The Court is fortified in its opinion in view of what the learned Single Judge has said, which is as under :

“ The petitioners however do not want anything more at this stage except their payment of salary for the period they have remained stationed in Magadh

University after leaving their earlier post.”

52. On the question of merit list the stand taken on behalf of the respondents is that if there is a combined select list, it can be safely inferred that there was a merit list. Unfortunately, there is none and even Sri B.B.Lal has taken note of this position in his report.

53. Another submission is that a settled position cannot be unsettled. by the unsuccessful candidates before this Court and in this regard counsels have tried to rely on certain decisions but unfortunately in the given facts and what has already been held in previous litigations such a plea cannot bar the Court from looking into the controversy when whole selection smacks of nepotism, arbitrariness and gross violation of statutory, if not judicial directions and pronouncements.

54. A high sounding submission was made on behalf of respondents no.8 and 15 that if Section 9 and 57 are read then the Selection Committee has been given the same status as the Public Service Commission, therefore, their decision is immune from any kind of scrutiny by the Hon'ble Chancellor.

55. The submission of the learned senior counsel is fallacious in view of what the Hon'ble Supreme Court has already held in the case of ***Hitendra Singh*** (supra).



56. With so many illegalities, if not fraud, which has been played in the very initiation of the advertisement till the final selection with overbearing evidence and materials of wrong doing and daredevilry practiced by then Vice Chancellor, Mr Arun Kumar, coupled with the fact that on two occasions even previously the High Court has come down heavily on selections made in similar, if not identical manner, which is the case of Dr Bimal Prasad Singh (supra) as well as Dr Arun Kumar Sinha, which is CWJC No.9167 of 2012, this Court, therefore, cannot view the matter lightly. The Courts have commented on the people involved in such gross abuse of power and on manner of selection making on the post of Principals but it has had no effect on such persons. They have taken the judicial orders very casually and continued to do what they wanted as if they are above law.

57. The audacity of the then Vice Chancellor emerges from the fact that he used the office of the Additional Solicitor General as well as the name of Hon'ble Supreme Court to put up a façade from any questioning of the advertisement or the selection. This was done deliberately to scare away one and all who may have raised questions on the need for issuance of such advertisement in the very first place and the existence of vacancies.

58. The Court is of the opinion that this was

deliberately done by the then Vice Chancellor because time was running out against him and he wanted to make a kill before his imminent departure which was necessitated by the decision of the Hon'ble Apex Court dated 18.3.2013.

59. It was because of loaded materials on record and concurrent findings of wrong doing by the then Vice Chancellor as well as those in cahoots in such illegal acts that this Court directed a Vigilance enquiry. Vigilance enquiry in the given facts and case like this was the need of the hour. There are glaring instances of criminality committed. The overbearing evidence and materials gathered and compiled by various functionaries indicate so. It is another thing that a Division Bench has for the time being passed an order of restrain against the vigilance enquiry, as an interim measure since the merit of the matter was still to be decided.

60. This Court, therefore, believes that in a matter like this if the vigilance enquiry is not allowed to be completed and the devils are not brought to book injustice would be done to the system and the institutions. If such deviants are allowed to take law in their hands and play with the system to their advantage it will send a wrong signal and embolden others to emulate them. Even a challenge has been thrown to the High Court as the judgments mentioned above have been totally disregarded.

61. Before parting the Court is tempted to quote para 18 of Dr. Bimal Prasad Singh's case (supra) –

“18. It cannot be disputed that transparency and accountability are call of the day. Every public functionary must act responsibly, fairly, objectively and with maximum possible transparency, in consonance with the spirit of the Constitution and statutory provisions. In the matter of public employment, to conform with the requirements of Articles 14 and 16, the selection process must be flawless, open and objective, giving equal opportunity and equality in the matters of consideration to all eligible candidates. In case fairness of a selection process is called in question in a court of law, it is the authority concerned which has to establish its actions as strictly satisfying the test of Articles 14 and 16. Any infraction in the same, leading to breach of the Constitutional mandate, is bound to lead to invalidity of the entire selection process. It is not the question of consideration of the individual candidates and the comparative rights between two individuals. It is the question of inspiring confidence of the people in the process adopted, by making it transparent to the maximum and flawless. In this case the respondents and particularly the Selection Committee constituted as per the substituted Section 57 of the Bihar State Universities Act, 1976 have failed to do so.”

62. In the totality of the discussions and the materials, which are loaded against the appointments and selection made, this

Court is left with no option but to quash Annexure-8 dated 16.1.2013, Annexure- 10 dated 6.3.2013 as well as Annexure- 21 dated 21.10.2014.

63. The respondents, who have been selected and appointed on the post of Principals, shall cease and desist from performing their duty as Principals of the respective colleges where they are posted, forthwith. The Vice Chancellor of the University is directed to ensure that they do not continue to perform duty as Principals from today.

64. The writ application, therefore, stands allowed in terms of the above.

65. Let a copy of this judgment be forwarded to the Hon'ble Chancellor of Universities of Bihar for his knowledge and for remedial measures to improve the working of the Universities and to identify the black sheep.

(Ajay Kumar Tripathi, J)

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