

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2291 of 2015

IN

Civil Writ Jurisdiction Case No. 19620 of 2014

- =====
1. Pravin Kumar, son of Late L.N. Karan, residence of Flat No.C-2, Onkar Apartment, Sheikhpura Bagicha, Police Station- Shastri Nagar, District- Patna.
 2. Dr. Dinesh Prasad Sinha, son of Late Ramdhani Singh, Department of Political Science, Magadh University, Bodh Gaya, resident of Mohalla- Chhotki Nawada, P.O.- R.S. Gaya, P.S.- Delha, District- Gaya.
 3. Dr. Shashi Pratap Shahi @ Shashi Pratap Singh, son of Late Narayan Prasad Shahi, Department of Political Science, A.N. College, Patna, resident of Flat No.402, Shahi Regency, Mahesh Nagar, P.S.- Patliputra, District- Patna-24.
 4. Dr. Ved Prakash Chaturvedi, son of Paras Nath Chaturvedi, Department of English, College of Commerce, Patna, resident of A-104, Manju Vatika, Gola Road, P.S.- Rupaspur, District- Patna-801503.
 5. Dr. (Smt) Poonam, wife of Sri Barun Kumar Sinha, Department of Economics, College of Commerce, Patna, resident of 124B, Road No.5A, Patliputra Colony, P.S.- Patliputra, District- Patna.

.... Respondents Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
 2. The Additional Director General, Vigilance, State of Bihar, Patna.
 3. The Chancellor, Universities of Bihar, Raj Bhawan, Patna.
 4. The Director, Higher Education Department, Government of Bihar, Patna, New Secretariat, Patna.
 5. The Magadh University, through its Registrar, Magadh University, Bodh Gaya.
 6. The Vice-Chancellor –cum- Chairman of Selection Committee, Magadh University, Bodh Gaya.
 7. The Registrar, Magadh University, Bodh Gaya.
- Respondent 1st Set.
8. Dr. Sudhir Kumar Mishra, son of not known, P.G. Department of Chemistry, J.P. University, Chapra.
 9. Dr. (Smt.) Sheela Singh, wife of not known, Department of Zoology, Kishori Sinha Mahila College, Aurangabad.
 10. Dr. Indrajit Prasad Roy, son of not known, Department of Commerce, Rajendra College, Chapra.
 11. Dr. (Smt.) Rekha Kumari, wife of not known, Kishori Sinha Mahila College, Aurangabad.
 12. Dr. Upendra Prasad Singh, son of not known, Department of English, H.D. Jain College, Ara.
 13. Dr. Arun Kumar Rajak, son of not known, Department of Botany, Gaya College, Gaya.
 14. Dr. Dalbir Singh, son of not known, Prof. in-Charge, S.G.G.S. College, Patna City.
 15. Dr. Usha Sinha, wife of not known, Prof. in-Charge, Ganga Devi College, Kankarbagh, Patna.
 16. Dr. Krishna Nandan Prasad Singh, through the Registrar, Magadh University, Gaya.
 17. Dr. Brajesh Rai, Department of Hindi, A.M. College, Gaya.
 18. 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, Police Station- Nehru Nagar, Patna.
 19. Dr. D.K. Yadav, son of not known, Registrar, Magadh University, Bodh Gaya.

.... Respondents/Respondents 2nd Set.

- 20.. Dr. Bimal Prasad Singh, son of Late Rajendra Prasad Singh, resident of Mohalla- Mritunjay Chatterjee Lane, Road No. 6D, Gardanibagh, District- Patna, presently working as Professor & Head of the Department of Political Science, A.N. College, Patna.
21. Dr. Arun Sharma, son of Late Basudeo Sharma, resident of West Anandpuri, Boring Road, Police Station- S.K. Puri, Patna at present working as Assistant Professor & Head of the Department of Political Science, S.M.D. College, Punpun, District- Patna.
22. Dr. Shyamal Kishore, son of Dr. Sheo Kumar Sharma, resident of Saketpuri, Bajar Samitee, Rajendra Nagar, Patna at present working as Associate Professor & Head of the Department of Philosophy, T.P.S. College, Patna.
23. Dr. Deepak Kumar, son of Late Kedar Nath Brahmachari, resident of 204, Shiv Apartment, Opposite Gayatri Mandir, Lohia Nagar, Kankarbagh, P.S.- Kankarbagh, Patna at present working as Associate Professor & Head of the Department of Sanskrit, Maharaja College, Ara.
24. Dr. Ghanshyam, son of Sri Basistha Narayan Rai, resident of 303, Parsoni Apartment, Ashiyana Nagar Road, Police Station- Rajeev Nagar, District- Patna at present working as Associate Professor, BIT, Sindri.
25. Achyuta Nand Singh, son of Sri Jai Krishna Prasad Singh, resident of 108, Pratima Mansion Behind Mamta Apartment, Sheopuri, Police Station- Shastri Nagar, District- Patna at present working as Professor, Department of Physics, J.P. University, Chapra.

....Petitioners Respondents 3rd Set.

With

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Letters Patent Appeal No. 2293 of 2015

IN

Civil Writ Jurisdiction Case No. 19620 of 2014

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Dalbir Singh, Son of S. Mangal Singh, Resident of C-44, Vrindavan Apartment, Malahi Pakri, Kankarbagh, District- Patna, Prof. Incharge, S.G.G.S. College, Patna City, Patna.

....Respondent Appellant/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.
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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. Department of Chemistry, J.P. University, Chapra.
8. Dr. Parween Kumar, son of not known, Department of Geography, B.D. College, Patna.
9. Dr. (Smt.) Sheela Singh, wife of not known, Department of Geology, Kishori Sinha Mahila College, Aurangabad.
10. Dr. Ved Prakash Chaturvedi, son of not known, Department of English, College of Commerce, Patna.
11. Dr. Shashi Pratap Singh, son of not known, Department of Political Science, A.N. College, Patna.
12. Dr. Indrajeet Prasad Roy, son of not known, Department of Commerce,

- Rajendra College, Chapra.
13. Dr. (Smt) Rekha Kumari, wife of not known, Kishori Sinha Mahila College, Aurangabad.
 14. Dr. Upendra Prasad Singh, son of not known, Department of English, H.D. Jain College, Ara.
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 23. The Additional Director General, Vigilance, State of Bihar, Patna.
-Respondents.....Respondents.
24. 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. Department of Political Science, A.N. College, Patna.
 25. 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, Department of Political Science, S.M.D. College, Punpun, District- Patna.
 26. Dr. Shyamal Kishor, son of Dr. Sheo Kumar Sharma, resident of Saketpuri, Bazar Samiti, Rajendranagar, Patna, at present working as Associate Professor & Head, Department of Philosophy, T.P.S. College, Patna.
 27. Dr. Deepak Kumar, son of Late Kadarnath Brahmachari, resident of 204, Shiv Apartment, Opposite Gayatri Mandir, Lohiya Nagar, Kankarbagh, P.S.- Kankarbagh, Patna at present working as Associate Professor & Head, Department of Sanskrit, Maharaja College, Ara.
 28. Dr. Ghanshyam, son of Basistha Narayan Rai, resident of 303, Parsoni Apartment, Ashiana Nagar Road, P.S.- Rajeev Nagar, District- Patna at present working as Associate Professor, B.I.T., Sindri.
 29. Dr. Achyuta Nanda Singh, son of Sri Jai Krishna Pd. Singh, resident of 103, Pratima Mansion, Behind Mamta Apartment, Shivpuri, P.S.- Shastrinagar, District- Patna, at present working as Professor, Department of Physics, J.P. University, Chapra.

.... Respondent/s

With

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Letters Patent Appeal No. 2290 of 2015
IN
Civil Writ Jurisdiction Case No. 19620 of 2014

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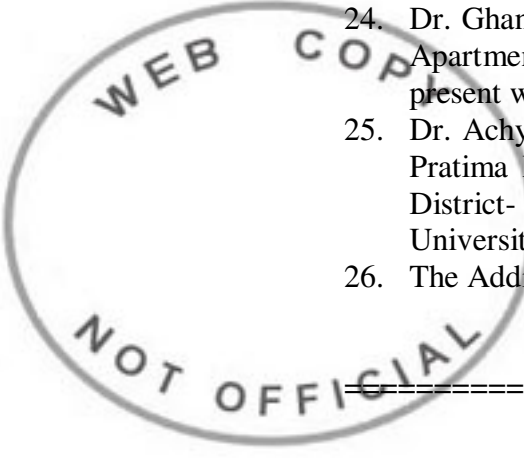
1. Dr. Upendra Prasad Singh, son of Late Deo Narayan Mahto, Department of English, H.D. Jain College, Ara at present resident of Mohallah flat No. B/3, Vaishno Villa, Jagdeo Path More, Bailey Road, P.S. - Hawai Adda, District- Patna.

2. Dr. Sudhir Kumar Mishra, son of Sri Radha Kant Mishra, P.G. Department of Chemistry, J.P. University, Chapra at present resident of Mohalla- Falt No. 303, D- Block, Newton Garden, Jagdeo Path More, Bailey Road, P.S.- Hawai Adda, District- Patna.
3. Dr. Indrajit Prasad Roy, son of Late Yugal Roy, Department of Commerce, Rajendra College, Chapra at Present resident of Teacher's Hostel Campus, Rajendra College Campus, Chapra, Police Station- Bhagwan Bazar, District- Chapra.
4. Dr. Rekha Kumari, wife of Dr. Rajkumar Prasad, Kishori Sinha Mahila College, Aurangabad, at present resident of Mohalla- Maharajganj Road, Aurangabad, P.S. + District- Aurangabad (Bihar).

.... Appellant/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.
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 12. Dr. Arun Kumar Rajak, son of not known, Department of Botany, Gaya College Gaya.
 13. Dr. Smt. Poonam, w/o not known, Department of Economics, College of Commerce, Patna.
 14. Dr. Dalbir Singh, Son of not known, Prof.-in-charge, S.G.G.S. College, Patna City, Patna.
 15. Dr. Usha Sinha, W/o not known, Prof.-in-Charge, Ganga Devi College, Kankarbagh, Patna.
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 19. Dr. D.K. Yadav, S/o not known, Registrar, Magadh University, Bodhgaya.
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20. Dr. Bimal Prasad Singh, S/o Late Rajendra Prasad Singh, resident of Mohalla- Mritunjay Chatterjee Lane, Road No. 6D, P.S. Gardanibagh, District- Patna at present working as Professor & Head, PG Department of Political Science, A.N. College, Patna.
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 26. The Additional Director General, Vigilance, The State of Bihar, Patna.
- Petitioners Respondents 2nd Sect.
With

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Letters Patent Appeal No. 2292 of 2015
IN
Civil Writ Jurisdiction Case No. 19620 of 2014

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1. Dr. Arun Kumar Rajak, S/o Late Rama Rajak, resident of Mohalla- Pachhetti Bodh Gaya, near Maszid, Police Station- Bodh Gaya, District- Gaya.
2. Dr. Sheela Singh, wife of Sri Amar Nath Singh, resident of Mohalla- Veer Kunwar Singh Path, New Area, Aurangabad, Police Station- Aurangabad, District- Aurangabad.

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14. Dr. Parveen Kumar, son of not known, Department of Geography, B.D. College, Patna.
15. Dr. Ved Prakash Chaturvedi, son of not known, Department of English, College of Commerce, Patna.
16. Dr. Shashi Pratap Singh, son of not known, Department of Political Science, A.N. College, Patna.
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27. Dr. D.K. Yadav, son of not known, the Registrar, Magadh University, Bodh Gaya.
28. The Additional Director General, Vigilance, State of Bihar, Patna.

..... Respondents 3rd Set.

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Appearance :

(In LPA No. 2291 of 2015)

For the Appellant/s	:	Mr. Yugal Kishore, Sr. Advocate Mr. Rajendra Narain, Sr. Advocate with Mr. Virendra Prasad
For the Respondent-State	:	Mr. Manindra Kishore Singh, SC-26
For the Chancellor	:	Mr. Rajendra Kumar Giri
For the private respondents	:	Mr. Jitendra Singh, Sr. Adv with Mr. Navin Prasad Singh
For the Vigilance Department :		Mr. Arvind Kumar

(In LPA No. 2293 of 2015)

For the Appellant/s	:	Mr. Siddhartha Prasad
For the Respondent-State	:	Mr. Manindra Kishore Singh, SC-26
For the Chancellor:	:	Mr. Rajendra Kumar Giri

(In LPA No. 2290 of 2015)

For the Appellant/s	:	Mr. Rabi Bhushan Prasad No. 1
For the Respondent-State	:	Mr. Manindra Kishore Singh, SC-26
For the Chancellor	:	Mr. Rajendra Kumar Giri

(In LPA No. 2292 of 2015)

For the Appellant/s : Mr. Md. Khurshid Alam
 For the Respondent-State : Mr. Manindra Kishore Singh, SC-26
 For the Chancellor : Mr. Rajendra Kumar Giri

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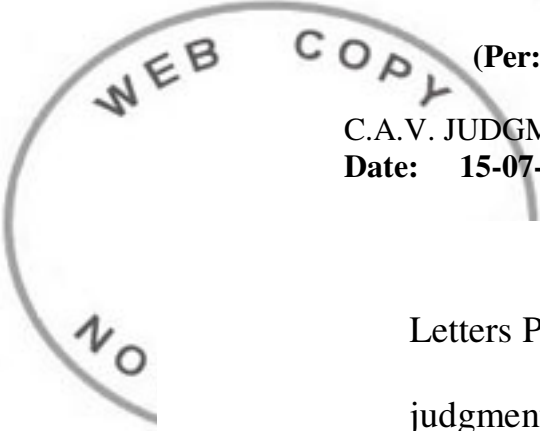
CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And
HONOURABLE MR. JUSTICE JYOTI SARAN

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

C.A.V. JUDGMENT

Date: 15-07-2016



These batch of appeals, preferred under Clause 10 of the Letters Patent of the High Court of Judicature at Patna, arise from a judgment and order, dated 10.12.2015, passed by a learned single Judge of this Court in CWJC No.19620 of 2014, whereby the learned single Judge, while allowing the writ petition, has quashed the notification bearing Memo No.15/GIA/13, dated 16.1.2013, whereunder appointment orders were issued in respect of respondent Nos.7 to 18 to the writ petition against the posts of Principal of constituent colleges falling under Magadh University along with the notification, dated 6.3.2013, impugned at Annexure-10 to the writ petition, appointing respondent Nos.19 to 21 against future vacancies. The learned single Judge has also quashed the order, dated 21.10.2014, issued by the Governor's Secretariat under the orders of the Chancellor, recalling his directions as contained in the letter, dated 18.3.2014, whereby an enquiry committee had been constituted to enquire into the alleged irregularities in the appointment of the Principals, in different constituent colleges of the Magadh University, impugned at Annexure-21 to the writ petition.

The private respondent Nos.7 to 18, whose appointments were put to question along with the appointments of respondent Nos.19 to 21 before the writ Court and came to be set aside by the judgment impugned, have come before the Division Bench through the present set of appeals.

Interestingly, respondents Nos.19 to 21 to the writ petition have not joined the challenge.

Before proceeding to consider the arguments advanced on behalf of the appellants, I deem it necessary to briefly discuss the matter in contest as it fell for consideration before the learned writ Court.

The respondent-Magadh University advertised 22 posts of Principal on 25.10.2008. However, since five additional vacancies had occurred in the meanwhile, the respondent University went on to appoint 27 Principals, i.e., 22+5. The appointments of these 27 Principals were challenged by the writ petitioner No.1 and some others in CWJC No.17804 of 2009 and analogous cases and was set aside vide judgment and order passed on 28.01.2011, since reported in **2011(1) PLJR 1134 (Dr. Bimal Prasad Singh vs. The State of Bihar and others)**. Directions were issued by the writ Court to hold fresh selection after advertising the same, which order of the writ Court was questioned by the appointees by filing LPA No.358 of 2011 and was dismissed by judgment and order passed on 5.4.2011.

In the meantime, the respondent University, in obedience

to the order of the writ Court, advertised 34 posts of Principal on 12.2.2011, which were inclusive of the vacancies that had occurred in the meantime and till the date of advertisement.

On the other hand, the appointees, being aggrieved by the judgment and order of the Division Bench, affirming the order of the writ Court, preferred Special Leave Petitions bearing SLP Nos.11529-11531 of 2011, which, again, were dismissed, but with the following riders:

- (a) *The University shall make fresh selection from amongst those, who had applied pursuant to the advertisement issued on 25.10.2008;*
- (b) *Appointment would be strictly in accordance with the relevant Statutes/Rules and Regulations; and*
- (c) *The selection process would not to be influenced by the direction of the writ Court appearing in the operative portion of the judgment.*

As a consequence of the order of the Supreme Court in the Special Leave Petitions, the subsequent advertisement published by the University, on 12.2.2011, lost its force.

A selection process was carried out in the light of the directions issued by the Supreme Court and 22 of the applicants against the advertisement, dated 25.10.2008, were appointed as Principals. The appointments of these 22 Principals were challenged in a batch of writ petitions and a Bench of this Court, upon consideration of the matter, has set aside the appointment by

judgment and order, dated 12.9.2014, passed in CWJC No.9167 of 2012 (Dr. Arun Kumar Singh vs. State of Bihar) and analogous cases. It is stated at the Bar that the judgment and order of the writ Court is pending consideration in Letters Patent Appeal filed on behalf of the writ petitioners.

Reverting to the matter in issue, it may be pointed out that the remaining vacancies, i.e., 12 posts, were re-advertised, on 8.5.2012, in daily newspapers as well as on the respondent University's website and as against this advertisement, about 350 candidates, including the writ petitioners, applied. A Selection Committee was constituted under Section 57 of the Bihar Universities Act, 1976 (hereinafter referred to as 'the Act'), which held interview and vide notification issued on 16.1.2013, 12 Principals (i.e., respondent Nos. 7 to 18) were appointed, who submitted their joining. By a subsequent notification issued on 6.3.2013, three others, i.e., respondent Nos. 19 to 21, were appointed against future vacancies of Principals. The writ petitioners, having participated in the selection process but not having succeeded, questioned the appointments by filing a writ petition giving rise to CWJC No. 19620 of 2014 and the writ petitioner having succeeded under the judgment and order impugned, the appointees, as appellants, are before this Court in the present batch of appeals.

It is in consequence to the judgment and order of the writ Court that some interim arrangement has been carried out and

the same remain protected by order passed, on 22.12.2015, as a temporary measure.

Some of the relevant events, which remain undisputed in the present case together with Annexures to the writ petition, are as follows:

08.05.2012 Advertisement, dated 4.5.2012, was published by the Magadh University in Hindi daily newspaper, namely, Hindustan and some others inviting applications for appointment against 12 posts of Principals in the different constituent colleges under the Magadh University. The copy of the advertisement, placed at Annexure-1 to the writ petition, makes reference to the judgment of the Supreme Court and the advice tendered by the Additional Solicitor General of India on the issue.

03.09.2012 Notification bearing No.456 was issued by the respondent University constituting a selection committee for appointments, in question, under Section 57B of the Act read with Clause 7(1) of the Revised Statutes. The names of the Government nominees and the senior most Principal are missing. The notification is placed at Annexure-2 to the writ petition. This notification was not acted upon.

24.09.2012- The Academic Council, Magadh University, in its meeting, approved the panel of Experts for

constituting selection committee for appointment of Principals. Annexures A/10, B/10 and C/10 at page 297 to 300 of the writ proceedings.

22.11.2012- Following the meeting held on 24.9.2012, the Selection Committee was reconstituted vide Annexure-H at page 735 of the writ proceedings.

21.12.2012- Selection Committee, so constituted, decided the modalities of the selection process.

26.12.2012- The Selection Committee concluded interview of the candidates, including the interview of writ petitioners, and a panel was prepared merit wise and category wise. The names of few of the writ petitioners also figured therein. The panel is placed at Annexures 4 and 5 to the writ proceedings.

16.01.2013- On the basis of the recommendation, a panel of names, which was twice the number of the vacancies, was prepared and placed before the Vice-Chancellor vide Annexure-7 to the writ petition.

16.01.2013- On the same day, the impugned notification, appointing 12 of the panelist against the posts of Principal, was issued vide Annexure-8 to the writ petition and the second notification, appointing three persons against the future vacancies, was issued on 6.3.2013 vide Annexure-10.

09.04.2013- A complaint was filed before the Chancellor raising

grievances against the selection process vide Annexure-14.

30.04.2013- The Chancellor, vide Annexure-15, directed the Vice Chancellor to make enquiry on the allegations made in the complaint and submit report.

15.07.2013- The Commissioner, Magadh Division–cum-Vice-Chancellor, Magadh University, submitted his report vide Annexure-16.

12.08.2013- The Pro Vice-Chancellor, Magadh University, submitted his report vide Annexure-17.

14.08.2013- The Chancellor, in exercise of powers vested under Section 9 of the Act, constituted a one-man enquiry committee under the Chairmanship of Shri B.B. Lal vide Annexure-18.

11.11.2013- Shri B.B. Lal submitted his report upholding the complaint vide Annexure-19.

18.03.2014- The Chancellor, vide letter No.460, directed the Vice Chancellor to initiate action in the light of the report submitted by Shri B.B. Lal Committee vide Annexure-20.

21.10.2014- Vide letter No.1494, the Chancellor withdrew his earlier letter No.460, dated 18.3.2014 on grounds of absence of jurisdiction, vide Annexure-21.

I would, now, briefly discuss the arguments advanced on behalf of the contesting parties for and in opposition of the

appointments to appreciate whether the conclusions and opinion, expressed by the learned single Judge, warrants any interference or modification.

Mr. Yugal Kishore and Mr. Rajendra Narain, both learned Senior Advocates of this Court along with Mr. Khurshid Alam and Mr. Siddharth Prasad, learned counsel, have appeared in their respective appeals to question the conclusions and opinion expressed by the learned single Judge.

It is the argument of the learned counsel appearing for the appointees that the sheet anchor for the writ petitioners to assail their appointment is the report of the one-man committee of Shri B.B. Lal and nothing else. It is argued that since the committee's report is *ex parte*, no reliance can be placed thereon and even otherwise, there is nothing in the selection process, which warranted intervention.

Contesting the view expressed by the learned single Judge on the issue of advertisement, it is argued that the writ petitioners, having participated in the selection process, cannot take up issues against the advertisement, for, it did not cause any prejudice to them. In so far as the issue of circulation of the advertisement is concerned, it is argued that the advertisement was published in other newspapers and was also put up on the official website of the University and, thus, did not suffer from any infirmity.

On the issue of constitution of Selection Committee, it is argued that there was no infirmity therein and the, lacuna, if any, in

the constitution of the selection committee, on 3.9.2012 vide Annexure-2, which did not contain the names of Experts approved by the Academic Council, was removed, when the Academic Council of the University held its meeting on 24.9.2012 and approved the panel of Experts.

It is also argued that a fresh selection committee was constituted on 22.11.2012 vide Annexure-H at page 735, which consisted of a Government nominee, three Experts and the Principal of Gaya College. It is pointed out that since one of the Experts, i.e., Professor Manju Jyotsana, expressed her inability to attend the interview, another Expert from the panel, approved by the Academic Council on 24.09.2012, namely, Professor Narendra Kumar, Head of the Department of B.R. Ambedkar University, Lucknow, was requested vide letter, dated 18.12.2012, annexed at Annexure-I/1 at page 737, to participate and who agreed to participate and did attend the interview.

As regards the Government nominee, it is argued that although a letter was issued to the Government nominee, Dr. Sitaram Singh on 18.12.2012 vide Annexure-J at page 738, but he did not choose to respond.

Reverting back to the members of the selection committee reflected from the proceedings enclosed at Annexure-3, it is argued that six of the seven members had participated in the selection process including two external Experts, i.e., Dr. Durga Prasad Gupta, Jamia Milia University, New Delhi, and Professor Dr.

Narendra Kumar, B.R. Ambedkar University, Lucknow, and, hence, the quorum as per clause 57(iii) of the Act stood satisfied.

Responding to the allegations regarding the participation of Dr. Srikant Sharma, it is argued that the circumstances have been dealt with in paragraph 10 of the counter affidavit filed by respondent No.10 at page 284, which has not been contested by the writ petitioners. It is argued that since no other senior principal was available at the relevant time, the inclusion of Dr. Srikant Sharma was natural.

On the issue of backdating of appointment, it is argued that merely because respondent No.15 joined the University, on 24.1.2013, pursuant to his appointment on 16.1.2013 after resigning on 23.1.2013 that such an opinion has been formed, which has no foundation.

As regards the appointment letters, it is argued that it is by convention that no appointment letters are issued in the Magadh University; rather, the practice prevalent is of affixing the notification of appointment on the notice board and this practice is well-known to the writ petitioners too.

Learned counsel, appearing for the appellants, have relied upon the following judgments to canvass that the writ petitioners, having gone through the selection process by facing the Selection Committee, cannot turn around to question the same on its constitution:

(1) (1986) Supplement SCC 285 (Om Prakash Shukla vs.

Akhilesh Kumar Shukla): AIR 1986 SC 1043, paragraph 24;

- (2) **(1995) 3 SCC 486: AIR 1995 SC 1088 (Madan Lal vs. State of Jammu and Kashmir), paragraphs 9 to 11;**
- (3) **(2002) 6 SCC 127 (Chandra Prakash Tiwari vs. Shakuntala Shukla) paragraphs 32 to 35;**
- (4) **2014(3) PLJR (SC) 128: (2014)16 SCC 187 (Ranjan Kumar vs. State of Bihar), paragraphs 13 to 17.**
- (5) **(2009) 5 SCC 529 [Syed Askari Hadi Ali Augustine Imam vs. State (Delhi Administration)] paragraphs 53 to 55.**

Referring next to the opinion expressed in the case of **Dr. Bimal Prasad Singh** (supra), it was contended that the Chancellor has rightly withdrawn his order directing enquiry into the selection process, for, any decision or action of the selection committee not being an act of the University, is not amenable to the jurisdiction of the Chancellor. It is argued that the view of the learned single Judge stood affirmed by the Division Bench and, finally, by the Supreme Court in SLP (Civil) Nos.11529-11531 of 2011, when the Supreme Court, while affirming the view expressed by this Court, directed the University to make a fresh selection from amongst those, who had applied against the advertisement, dated 25.10.2008, strictly in accordance with the Statutes, Rules and Regulations and without being influenced by the direction of the writ Court present in the last portion of the order.

It is, thus, contended that in the above view of the matter, neither the report of the Shri B.B.Lal Committee had any legal sanction nor was there any infirmity in the Chancellor's order recalling his earlier order of enquiry into the appointments and the learned single Judge, while passing the impugned judgment, has overlooked this fact.

An additional issue has been canvassed by Mr. Siddhartha Prasad, learned counsel appearing for the appellant in LPA No.2293 of 2015, who was respondent No.18 before the writ Court. Mr. Prasad, while explaining the circumstances leading to the participation of this appellant in the meeting of the Academic Council held on 24.9.2012, has submitted that since the appellant was the In-charge Principal of Guru Govind Singh College, Patna, and since the Principal/Professor In-charge of 22, out of the 44 constituent colleges under the Magadh University, are *ex officio* members of the Academic Council, he had participated. It is submitted that since this meeting was merely for approval of the panel of experts from which panel the Vice-Chancellor had to constitute the Selection Committee, there was no infirmity in the participation. It is further argued that the college, in question, is a Sikh minority institution and was taken over by the University as a minority-cum-constituent college, vide notification, dated 13.6.1986, as per the agreement signed on 12.6.1986. According to Mr. Prasad, learned counsel, the agreement gives certain privileges to the college, because of its minority status, which requires that the

Principal of the college would be a person belonging to Sikh community. It is submitted that the college recommended the name of the appellant as a Principal and this suffers from no infirmity, because the same system is also followed in the Patna Women College, a Christian minority institution, which has always appointed a Christian Principal.

The arguments, advanced by learned counsel for the appellants in support of the appointments, mainly centered around the following aspects:

- (a) The advertisement was not only published in the Hindi newspaper '*Hindustan*', but was also put on the official website of the University as well as in other newspapers, namely, Times of India, Dainik Jagaran, etc., and the writ petitioners, having responded to the advertisement, had no business to question the advertisement on any count;
- (b) In response to the criticism of the selection committee, it is argued that the Vice-Chancellor initially constituted a committee on 3.9.2012 vide Annexure-2, but since the Experts on the panel needed the approval of the Academic Council, meeting of the Academic Council was held on 24.9.2012 and vide decisions, placed at Annexure-A/10, B/10 and C/10 at page 297 to 300 of the writ proceedings, the Academic Council approved the names of 11 persons and out of these 11 persons the Vice-Chancellor was required to pick up 3 (three) as per the provisions of

Section 57(1)(4) as it stood amended vide Amendment Act 21 of 2007 and 16 of 2008;

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- (c) It is after the approval of panel of Experts by the Academic Council that the Vice-Chancellor constituted the Selection Committee vide notification, dated 22.11.2012, placed at Annexure-H at page 735;
 - (d) Since Professor Manju Jyotsana expressed her inability to participate in the interview, Professor Sona J. Minz was requested, who also showed her inability and, hence, Professor Dr. Narendra Kumar, B.R. Aamedkar Central University, Lucknow, upon request made, gave his consent;
 - (e) The Government nominee, Dr. Sitaram Singh, was intimated vide letter, dated 18.12.2012, but he did not choose to respond;
 - (f) The inclusion of Professor Dr. Srikant Sharma, in the Expert panel, is explained in paragraph 10 of the counter affidavit filed on behalf of the respondent No.10 at page 284 and similar statements present in the counter affidavit of the other respondents, but have not been contested by the writ petitioners;
 - (g) In view of the provisions underlying Section 57(iii) as it stood vide Amendment Act 21 of 2007 in force at the relevant time, the quorum for the meeting of Selection Committee is only five including two Experts, which

mandatory conditions stood fulfilled;

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- (h) A combined merit list was prepared as is manifest from page 398 of the proceedings, which is the enclosure to the counter affidavit of the respondent University and mentions the original documents submitted before the writ Court;
 - (i) The notification of appointment, as per the practice prevalent in the University, was put up on the notice board;
 - (j) The appointment stands approved by the Syndicate in its meeting held on 8.2.2013;
 - (k) There was no backdated appointment;
 - (l) The reliance on Section 58 of the Act by the writ petitioners is wholly misconceived inasmuch as the said provision was deleted from the Act by the Amendment Act 21 of 2007.
 - (m) With reference to Section 57 of the Act, it is argued that the writ petitioners have committed an error in relying upon the pre amended provisions of Section 57 of the Act, when the fact is that Section 57 has undergone an amendment by the Amendment Act 21 of 2007;
 - (n) The writ petitioners, having undergone the selection process without raising any protest and having failed to be selected, cannot raise any complaint against the recommendations, dated 26.12.2012, almost two years after the completion of the selection process;

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- (o) The so-called enquiry by Shri B.B. Lal committee is *ex parte*, for, no notice, in respect thereof, was served on any of the appointees;
- (p) The view of the learned single Judge, expressed in the case of **Dr. Bimal Prasad Singh** (supra), insofar as the jurisdiction of the Chancellor to enquire into the selection process is concerned, having been affirmed up to the Supreme Court, there was no error in the Chancellor's order recalling his earlier order to enquire into the selection process, for, the issue stood concluded;
- (q) Even though the learned single Judge has relied upon the judgment of the writ Court in the case of **Dr. Bimal Prasad Singh**, yet the conclusion, drawn by the learned single Judge, at paragraph 10 of the said judgment regarding absence of jurisdiction in the Chancellor to enquire into the selection process, has been ignored.

While Mr. Rajendra Kumar Giri, learned counsel appearing for the Chancellor, and learned counsel for the University have reiterated the stand taken before the writ Court, the opposition has mainly surfaced from the arguments of the learned counsel appearing for the writ petitioners.

Mr. Jitendra Singh, learned Senior Counsel leading the argument for the writ petitioner-respondents along with Mr. Navin Prasad Singh, has referred to the opinion expressed by the learned single Judge, which, according to Mr. Singh, requires no



interference, for, according to Mr. Jitendra Singh, the view, expressed by the learned single Judge, is on the facts available on record and since the apprehension, expressed by the writ petitioners, stood confirmed by the report of Shri B.B. Lal committee, the appointments were rightly interfered with by the learned single Judge. According to Mr. Singh, right from the publication of advertisement until the so-called completion of the selection process, the entire proceedings were marred with irregularities, which stand noted in the judgment of the learned single Judge. It is argued that although notices were issued by Sri B.B. Lal Committee to the appointees, the appointees chose not to appear and, thus, they cannot question the findings of B. B. Lal Committee on grounds of being *ex parte*. It is argued that the Chancellor, having initiated an enquiry into the appointments, had no occasion to recall such order, for, the power to enquire into the same stood vested in the Chancellor as concluded by the writ Court by referring to the opinion of the Supreme Court expressed in the judgment reported in **(2014)8 SCC 369 (Hitendra Singh vs. P.D. Krishi Vidyapeeth)**.

With reference to the notification, dated 14.8.2013, placed at Annexure-18, issued by the Joint Secretary, Governor's Secretariat, learned senior counsel submits that the reasons for holding such enquiry stands explained in the notification.

Charging the advertisement of being localized besides casting influence, it is submitted that the illegality is present at the

very threshold of the process.

Questioning the constitution of the Selection Committee placed at Annexure-2, which is dated 3.9.2012, it is argued that even before the Academic Council could approve the experts, which was only done in the meeting held on 24.9.2012, the Committee already stood constituted in gross violation of Clause 7(1) (a) of the Statute read with Section 57B of the Act.

With reference to the provisions of Section 57(ii), it is argued that although the Selection Committee is obliged to prepare a merit list for appointment and make recommendations in conformity with the reservation roster, no such combined merit list was prepared by the Selection Committee.

With reference to a decision of the Supreme Court, reported in **(1997) 9 SCC 527 (Raj Kumar vs. Shaktiraj)**, it is argued, by referring to paragraph 16, that the principle of estoppel is not a rule of universal application; rather, each case has to be tested on its own merits and where the illegalities are staring on the face of the selection, mere participation, in the selection process, would not cure such illegality in a selection process.

It is also the argument of learned Senior counsel, with reference to the report submitted by Sri B.B. Lal Committee, that the marks, awarded by the Selection Committee, are absurd and candidates, with good academic records, were given poor marks.

According to the learned Senior counsel appearing for the writ petitioners, since the very constitution of the Selection

Committee was in violation of Clause 7 of the Revised Statute, dated 30.6.2008, as well as Section 57 of the Act, the consequences, flowing therefrom, are all clothed with illegalities and which culminated in the impugned notification of appointment. It is, thus, argued that no cause for indulgence is made out in the present set of appeals, which is devoid of merit and fit to be dismissed.

The arguments, advanced by learned counsel appearing for the writ petitioners-respondents, can be summarized as follows:

- (a) The advertisement has tried to cast influence on the selection process by making reference to the Supreme Court and the advice of the Additional Solicitor General of India;
- (b) The advertisement was not given nationwide publication;
- (c) The Experts, nominated by the Vice-Chancellor as members of the Selection Committee, were not approved by the Academic Council of the University;
- (d) The Constitution of Selection Committee was in violation of Clause 7(1)(a) of the Revised Statute, dated 30.6.2008, which provides that three Experts would be nominated from a panel of 10 Experts recommended by the Academic Council of the University;
- (e) The inclusion of Dr. Srikant Sharma, as a member of the selection committee, was in violation of Clause 7(1) (b) of the Revised Statutes as he was not the senior most

amongst the Principals of the constituent colleges under the Magadh University;

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- (f) There was no Government nominee in the Selection Committee;
 - (g) The notification, constituting a Selection Committee, dated 3.9.2012, was a *sham* inasmuch as the three notified Experts, namely, Professor Durga Prasad Gupta of Jamia Milia University, New Delhi, Professor Sona J. Minz of J.N.U, New Delhi, and Professor Kumaresh Prasad Singh, Vice-Chancellor of V.K.S. University, Professor Minz stood replaced by Professor (retired) Manju Jyotsana of Ranchi University;
 - (h) The Expert panel, present at Annexure-H at page-735, does not bear the name of Dr. Narendra Kumar, who participated in the selection process;
 - (i) The selection process was vitiated as no combined merit list was prepared;
 - (j) The selection process was vitiated, because no result was published;
 - (k) The appointment orders were backdated by Professor Dr. Arun Kumar, Vice-Chancellor of B.N. Mandal University, to wriggle out of the restraint order issued by the Hon'ble Supreme Court, on 18.3.2013, passed in SLP No.6830-31 of 2013 heard with Writ Petition (Civil) No.158 of 2013.
 - (l) The recall order passed by the Chancellor, on 21.10.2014,

vide Annexure-21 is not sustainable.

Since the argument, advanced by learned counsel for the appellants, is that a combined merit list, in conformity with Section 57(ii) of 'the Act', had been prepared and submitted under the directions of the writ Court to the Vigilance Counsel, Mr. Arvind Kumar, learned counsel for the Vigilance, was directed to produce the record and a copy thereof has been placed before the Court in a sealed cover, which was put to examination by the learned counsel appearing for the contesting parties. The combined list so produced faces no contest.

We have heard learned counsel for the parties and we have perused the records of the proceedings including the judgment and order of the learned single Judge.

The learned single Judge, in consideration of the facts and circumstances existing as stand noted hereinabove, was persuaded to strike down the appointments, *inter alia*, on grounds that it was contrary to the statutory provisions and was infracted by large scale irregularities, which stood confirmed in the report submitted by the one man committee presided by Shri B.B. Lal. According to the learned single Judge, the Vice Chancellor had indulged in wholesome violations to draw a panel, which exercise was *sham*, because the decision on the appointments was already taken. A reading of the judgment, impugned in the present batch of appeals, would show that the appointments were primarily struck down on the following grounds:

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- (a) The advertisement was localized;
 - (b) The mention of Supreme Court and/or the Additional Solicitor General was with an intent to ward off scrutiny;
 - (c) The selection committee was illegally constituted without approval of the Academic Council;
 - (d) The committee had no Government nominee;
 - (e) The inclusion of Dr. Srikant Sharma and Dr. Narendra Kumar was illegal;
 - (f) The Vice Chancellor Dr. Arun Kumar has influenced the selections;
 - (g) The notification of appointment, impugned at Annexure-8, is backdated;
 - (h) No combined list was published;
 - (i) No appointment orders were issued; and
 - (j) The withdrawal of the order directing enquiry by the Chancellor was bad.

The judgment and order passed by the learned single Judge mainly centers around the language of the advertisement, the constitution of the Selection Committee, the preparation of combined merit list, participation of the Vice-Chancellor, the issue of appointment orders including its backdating and the order of the Chancellor recalling his order of enquiry, which, according to the learned single Judge, is heavily clothed with illegalities that has led to the opinion so expressed. We shall be dealing with each of the

issues one by one.

1. **Regarding advertisement:** (a) The advertisement has been criticized on its language, which, according to the learned single Judge, has been deliberately done to ward off scrutiny. The other ground attributed is that it did not have a nationwide circulation. In my considered opinion, the writ petitioners having participated in the selection process, they have no business to question the advertisement on any count. It is not a case, where any of the writ petitioners, complains prejudice by the advertisement or by its non-circulation. Moreover, the very statement of the respondent-appellants that the advertisement was not only published in other newspapers, but was also put on the official website of the University, no grievance can be raised by any one, much less the writ petitioners, who have taken the benefit thereof by responding thereto.

(b) A lot has been argued that the mentioning of advice tendered by the Additional Solicitor General and the judgment of the Supreme Court in the advertisement was with an intent to ward off critical scrutiny of the selection. In my opinion, the apprehension, expressed by the writ petitioners, is without any foundation and is, rather, a conjectural criticism. Even if the reference to the legal advice and the judgment of the Supreme Court could have been avoided a mention in the advertisement, but, then, it is too far-fetched to accept that a mere reference thereto would make a selection immune from any kind of scrutiny.

2. **Regarding: (c) Constitution of the Selection Committee; (d) the committee had no Government nominee; (e) inclusion of Dr. Srikant Sharma and Dr. Narendra Kumar was illegal; and (f) the Vice Chancellor Dr. Arun Kumar has influenced the selections:**

Before expressing our opinion on the issues, we would like to place on record the relevant provisions governing the issue.

The Act was amended vide Bihar Act 21 of 2007 and while Section 4 of the Amending Act substituted Section 57 of the Act, Section 5 substituted Section 57A, Section 6 added a new Section 57B to the Act and Section 7 deleted Section 58 from the statute book.

The amended provision of Section 57(i) provides, *inter alia*, that the appointment to the post of Teachers and Officers, other than (Vice Chancellor, Pro Vice Chancellor and Registrar and Dean of Faculty), shall be made by the University on the recommendation of the selection committee consisting of the following members:

- (1) Vice Chancellor of the University concerned;
- (2) One member to be nominated by the Chancellor;
- (3) One Member to be nominated by the Government;
- (4) Three Experts not connected with the University to be nominated by the Vice-Chancellor from a panel of not less than seven names approved by the Academic Council for each post of which one

member should belong to scheduled caste/
scheduled tribe and two shall be from outside the
State;

- (5) The Head of the Department of the discipline
concerned.

Section 57(ii) provides that the selection committee would
prepare a merit list for appointment of teachers and officers from
amongst the eligible candidates and make recommendation for their
appointment according to merit in conformity with reservation
roster prepared by the University in accordance with law relating to
Reservation in Appointment in force in the State.

Section- 57(iii) provides that the Quorum for the selection
committee would be 5 with, at least, 2 experts.

Section 57B, incorporated vide the said Amendment Act
2007, begins with a non-obstante clause and binds the selection
committee constituted under section 57 and 57A by the procedure
prescribed by the Statute.

Section 57(1) (4), which provided for nomination of
Experts, was, again, amended by Amendment Act 16 of 2008 and
runs as follows:

“57(1)
.....

(4) *Three experts not connected with the
University to be nominated by the Vice-Chancellor
from a panel of not less than 10 names approved by
the Academic Council for each posts of which, at*

least one member should be belonged to scheduled caste/scheduled tribe and two members shall be from outside the State. The Academic Council shall send the name of not less than two members belong to schedule caste/scheduled tribe category.

Clause 7(i) of the Revised Statutes, dated 30.6.2008, so heavily relied upon by the writ petitioners to question the constitution of the Selection Committee and the induction of Dr. Srikant Sharma runs as follows:

“7. (i) Composition of the Selection Committee for the post of the Principal (Professor scale/Reader scale) for multiple subject faculty colleges:

(a) Subject to the provisions contained in the Patna University Act’ 1976 (As amended up-to-date) and the Bihar State Universities Act’ 1976 (as amended up-to-date) all the three experts shall be in the rank of University Professor and out of that at least one shall be the Vice-Chancellor/Former Vice-Chancellor/Director/Principal of a constituent college.

The 3 (three) experts in the Selection Committee will be nominated by the Vice-Chancellor from a panel of not less than 10 (ten) experts approved by the Academic Council subject to the following conditions:

- (i) All the three experts shall be from outside the University.*
- (ii) At least one expert should belong to SC/ST community.*
- (iii) At least two experts shall be from outside the State.*

(b) Seniormost Head of the Deptt./seniormost Principal of constituent college of concerned University in the rank of University Professor.”

Testing the constitution of the Selection Committee in the backdrop of the statutory provisions, it is seen that a selection committee was constituted vide notification, dated 3.9.2012, placed at Annexure-2 and was understandably not acted upon since there

was no recommendation of the Academic Council. The Academic Council held its meeting on 24.9.2012 vide Annexure A/10 at page 297 and approved the panel of Experts for the selection committee for appointment of Principals vide Agenda No.II vide Annexure-B/10 at page 298 which panel of Experts is annexed as Annexure-C/10 at page 300. The statutory requirement, mandating approval of the panel of experts by the Academic Council having, thus, been complied with, a fresh selection committee was constituted vide Annexure-H at page 735 consisting of the following members:.

1.	<i>Vice Chancellor, Magadh University, Bodhgaya</i>	<i>Chairman</i>
2.	<i>Governor's Nominee Prof. Baleshwar Paswan, Dept. of Commerce, H.D. Jain College, Ara, V.K.S. University, Ara</i>	<i>Member</i>
3.	<i>Government's Nominee Dr. Sita Ram Singh, Director, Higher Education, Government of Bihar, Patna.</i>	<i>Member</i>
4.	<i>Prof. Manju Jyotsna, (Rtd. Professor), Ranchi University, Ranch.</i>	<i>Member</i>
5.	<i>Prof. Durga Pd. Gupta, Prof. & Head, Dept. of Hindi, Jamia Milia Islamia Central University Jamla Nagar, New Delhi-25 Tel. No.: 011-29535970</i>	<i>Member</i>
6.	<i>Dr. Kumaresh Pd. Singh Vice Chancellor, V.K.S. University, Ara</i>	<i>Member</i>
7.	<i>Dr. Shreekant Sharma, Principal,</i>	

	<i>Gaya College, Gaya.</i>	
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The constitution of the Selection Committee has been questioned and the challenge is upheld by the learned single Judge, *inter alia*, on grounds that:

- (a) It failed to satisfy Section 57 of the Act read with Clause 7 of the Revised Statutes, dated 30.6.2008;
- (b) There was no Government nominee;
- (c) The inclusion of Dr. Srikant Sharma was illegal; and
- (d) The selection committee, constituted as present at Annexure-H, did not contain the name of Dr. Professor Narendra Kumar, who was included subsequently.

In so far as the constitution of the Selection Committee is concerned, it is discernible from the discussions above that the mandate stands satisfied and even if an irregularity initially existed in the constitution of the Selection Committee vide Annexure-2, the illegality whatsoever was rectified by the meeting of the Academic Council on 24.9.2012 vide Annexure- A/10, B/10 and C/10 in which meeting, the panel of expert was approved by the Academic Council. The Selection Committee was, thereafter, constituted vide Annexure-H at page 735 and which suffers from no infirmity.

In so far as the absence of Government nominee is concerned, it is manifest from Annexure-J at page 738 that a letter

was addressed to the Government Nominee Dr. Sitaram Singh, but he did not choose to respond. However, since the quorum for the Selection Committee, in terms of the amended provisions of Section 57(iii), is only 5, the constitution of the Selection Committee did not suffer from any infirmity by the non-participation of the Government nominee Dr. Sitaram Singh.

As regards the inclusion of Dr. Srikant Sharma, the learned single Judge has relied heavily on the conclusion drawn in CWJC No.9167 of 2012, more particularly, paragraphs 81 to 83 of the said judgment, which stands reproduced at paragraph 37 of the judgment under appeal. The opinion formed is that since Dr. Srikant Sharma was not the senior-most Principal, the constitution of the Selection Committee is bad, for, it does not satisfy the requirements of Clause 7(i) (b) of the Statutes, which, according to learned counsel for the writ petitioners-respondents, has a binding nature in view of the amended provisions of Section 57B.

The discussions on the issue and what has been quoted at paragraph 37 of the judgment do confirm one thing, that is, that Dr. Srikant Sharma was nominated under Section 57((1)(5) read with Clause 7(i) (b) of the Statutes. Now, whether this nomination, in the circumstances explained in the counter affidavits filed in the writ proceedings, can yet be held to be an illegality personified and capable enough to strike down the constitution of the Selection Committee itself, is an issue, which arises for consideration. In this context, I deem necessary to reproduce the explanation given by the

respondent No.10 in his counter affidavit filed in the writ proceedings, which remains uncontested and amply clarifies the confusion, if any:

“10. At this stage it is relevant to point out that Prof. (Dr.) Srikant Sharma is the senior-most Principal. Dr. S.N.Singh is the senior-most Principal but there are some charges from Raj Bhawan against him. Dr. Asha Singh, then Principal of Arvind Mahila College, Patna has taken leave to go outside and Dr. Haridwar Singh, Principal A.N.College, Patna showed his inability to participate in the selection committee. So far Dr. Madan Murari, then Principal, A.N.S. College, Barh and Dr. Vishundeo Singh Vidyarthi are concerned, it is stated that these two persons were already retired on having attained the age of superannuation of 62 years before consideration of the names of experts and they were fighting litigation for enhancement of age to 65 years. Thus there was no illegality in nomination of Dr. Srikant Sharma in Selection Committee.”

The reasons, for the inclusion of Dr. Sharma in the Selection Committee, thus, stand explained in paragraph 10 of the counter affidavit filed on behalf of the respondent No.10 in the writ proceedings at page 284, which has gone uncontested and unanswered as no rejoinder was filed thereto. It has been explained and not contested by anyone that the inclusion of Dr. Srikant Sharma was in the circumstances, where no Principal, senior to him, was found available. Here, I deem necessary to mention that the circumstances discussed above do not find mention in the opinion of the learned single Judge, at paragraphs 81 to 83 of the judgment passed in CWJC No.9167 of 2012 (Dr. Arun Kumar Singh vs. State).

In so far as the inclusion of Dr. (Professor) Narendra Kumar as an external expert is concerned, I would, again, revert back to the proceedings of the Academic Council, at page 300, to mention that his name figures in the panel of experts and the reason assigned for his inclusion is that the external expert, Dr. Manju Jyotsana, backed out at the last moment and, hence, he was nominated.

The constitution of the Selection Committee in the circumstances so discussed above, did not, in my considered opinion, suffer from any infirmity much less any statutory violation for being subjected to any critical assessment.

Apart from the fact that the constitution of the Selection Committee is sound on statutory requirements, another aspect of the matter, which does not persuade me to interfere therewith is that the writ petitioners have, nowhere, explained or pleaded on record as to how they had been prejudiced by such constitution of the Selection Committee or whether such constitution has resulted in favouratism, nepotism or the likes. Although the writ petitioners have sweepingly alleged *mala fide* against the conduct of the respondents, but such allegation have no foundational facts to support. Neither the petitioners have claimed prejudice by such constitution nor have they given examples of nepotism by such constitution. An unnecessary ghost has been created by the writ petitioners to comment upon the constitution of the Selection Committee, which was, in my view, fit to be nipped in the bud and at the very

threshold. In my opinion, issues like prejudice, favouritism and nepotism are issues of fact and have to be demonstrated by the material evidence, which is grossly amiss in the present case.

3. Regarding: (g) the notification of appointment impugned at Annexure-8 is backdated; (h) No combined list was published; and (i) no appointment orders were issued:

In so far as the charge of antedating the notification of appointment, impugned at Annexure-8 is concerned, which, *inter alia*, gives 60 days time to the appointees to give their joining, what transpires from the discussion is that it is solely based upon belated joining by the appointees, who have chosen to join in March, 2013. In my opinion, these stray instances by itself is not sufficient to hold that the appointment notification was ante dated, especially, in the circumstances that some of the appointees have stated, in their affidavit, that they went to give their joining in January, 2013, itself, but was not accepted. Respondent No.15 has stated that he tried to give his joining, on 24.1.2013, as stated by him in paragraph 16 at page 330 of his counter affidavit filed in writ proceedings, but was not accepted. Similarly, respondent No.16 has mentioned that he tried to give his joining as Principal on 25.1.2013, but was not accepted. The allegation also loses its tenacity by the production of the combined merit list by the Vigilance Counsel in a sealed cover, which was given for inspection to the learned counsel appearing for the contesting parties. In fact, the papers, produced by Mr. Arvind Kumar, learned



counsel appearing for the Department of Vigilance, do not only contain the combined merit list, which is signed by the members of the Selection Committee on 26.12.2012, but also accompanies final list of different categories. Another very relevant aspect of the matter is that the recommendations of the Selection Committee was approved by the Syndicate of the University in its meeting held on 18.2.2013 vide agenda no.45 present at page 816 of the writ proceedings. Thus, the allegation of antedating of the notification of appointment as well as the allegation that no combined merit list was published, becomes unacceptable.

In so far as the charge of non-issuance of appointment order is concerned, it has been specifically stated and not contested by any of the parties that as per the practice prevalent in the University, the notifications of appointment are affixed on the notice board in the University.

4. Regarding the withdrawal of the order directing enquiry by the Chancellor vide order passed on 21.10.2014:

In view of the categorical finding recorded by this Court at paragraph 10 of the judgment rendered in the case of **Dr. Bimal Prasad Singh** (supra), which view stands affirmed by the Division Bench of this Court as well as the Supreme Court, the decision, taken by the Chancellor, to recall his order directing the enquiry in the light of the opinion received, impugned at Annexure-21, suffered from no infirmity. Though the learned single Judge has heavily relied upon the judgment of the Supreme Court rendered in

the case of **Hitendra Singh** (supra) for differing with the opinion of the Chancellor to recall his order of enquiry, the view expressed by the learned single Judge or the conclusions, which has been reached, cannot be upheld on two counts, namely:

(a) This Court, in the case of **Dr. Bimal Prasad Singh** (supra) so relied upon by the learned single Judge for recording his opinion, has categorically held, in paragraph 10 of the judgment, that any decision or action of the Selection Committee cannot be considered as an Act of University and, thus, would not be amenable to the jurisdiction of the Chancellor. In fact, it would be apt to reproduce the opinion expressed by the Bench for a ready reference:

“10.

 However, by Act 21 of 2007, the expressions ‘The Bihar State University (Constituent Colleges) Service Commission’ and ‘Bihar Inter University Board’ and their references were deleted from the 1976 Act as well as from the Statute/Ordinance/Regulation. Simultaneously, Sections 57 and 57A of the said 1976 Act were substituted by new sections whereby, in substituted Section 57, the role of recommendation for appointments under the University was assigned to a ‘Selection Committee’ constituted under the new section itself. Thus clearly the Selection Committee, constituted under the provisions of new Section 57 of the 1976 Act, is an independent body and has been bestowed with an independent statutory status under the Act, not subject to any control of the University. The jurisdiction of the Chancellor as contained in Clause (iv) of Section 9 empowers the Chancellor to annul any proceeding of order of the ‘University’ which may not be in conformity with the Act, Statutes, Ordinance or Regulation. In view of the status of the Selection Committee, flowing from the new Section 57 of the 1976 Act, any act, decision or

action of the Selection Committee cannot be considered as any act of the University and, therefore, will clearly not be amenable to the jurisdiction of the Chancellor.”

(b) Whereas Section 11 of the Maharashtra Agricultural Universities (Krishi Vidyapeeth) Act, 1983, empowers the Chancellor to cause an enquiry in any matter connected with the administration or finances of the University and it is, thus, the empowerment under the said Act, which led the Supreme Court to uphold the enquiry initiated by the Chancellor of Universities in the case of **Hitendra Singh** (supra); but I am afraid there is no such conferment on the Chancellor under the Act, in question, to enquire into any matter connected with the administration or the finances of the University.

This distinctive feature in the two statutory provisions, i.e., Section 9(2) of the Bihar State Universities Act, 1976, and Section 11 of the Maharashtra Agricultural (Krishi Vidyapeeth) Act, 1983, has escaped the notice of the learned single Judge, while questioning the decision of the Chancellor to recall his order of enquiry. In fact, the opinion of the learned single Judge, on the recall order passed by the Chancellor, would amount to review of the opinion expressed by this Court in the judgment rendered in the case of **Dr. Bimal Prasad Singh** (supra), which stands affirmed upto the Supreme Court.

Although an attempt was also made by Mr. Singh, learned senior counsel appearing for the writ petitioners, to question the

award of marks by the Selection Committee, *inter alia*, on grounds that people, with a poor academic records, have been given good marks in the interview, the fact remains that the law is well settled and this Court would refrain itself from sitting in appeal over the decision of Selection Committee, more particularly, in absence of materials exhibiting favouratism, nepotism or the likes.

My opinion, on the issues raised and contested in so far as it relates to the appointment of the respondent Nos.7 to 18 to the writ petition, i.e., the appellants herein, is sufficient enough to uphold their appointments vide notification, dated 16.1.2013, impugned at Annexure-8. However, in so far as the appointments of three persons against future vacancies are concerned, i.e., respondent Nos.19 to 21 in the writ petition, I am afraid that in view of the opinion expressed by this Court in the case of Dr. **Bimal Prasad Singh** (supra), as recorded in paragraph 13 of the judgment and in absence of notification of these vacancies in the advertisement, no appointment could have been made against the future vacancies.

For the reasons aforementioned, this Court, while upholding the view of the learned single Judge in so far as it relates to the appointment of respondent Nos.19 to 21, vide notification dated 6.3.2013, impugned at Annexure-10 to the writ petition, is unable to uphold the views and conclusions expressed by the learned single Judge in so far as the same relate to the appellants herein, who were the respondent Nos.7 to 18 before the writ Court and to that extent, the judgment, passed in CWJC No.19620 of 2014, in so far

as it relates to the appointment of respondent Nos.7 to 18 who are the appellants before this Court, cannot be upheld and is hereby set aside.

In the result, the judgment and order passed by the learned single Judge in CWJC No.19620 of 2014 stands modified to the extent aforementioned.

The letters patent appeals are accordingly allowed but without any order as to costs.

(Jyoti Saran, J)

I. A. Ansari, ACJ-

I agree.

(I. A. Ansari, ACJ)

SKPathak/-

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