

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 218 of 2016

IN

Civil Writ Jurisdiction Case No. 21232 of 2014

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1. The State of Bihar through the Director, Higher Education, Bihar, Patna.

2. The Director, Higher Education, Bihar, Patna.

.... Respondent Nos. 1 & 2/Appellants

Versus

1. Ram Pravesh Rai, Son of Late Jagdish Rai, Lecturer, Department of Zoology.

2. Bechu Prasad Singh, Son of Late Ram Devi Singh, Lecturer, Department of Political Science.

3. Shiv Prasanna Singh, Son of Late Bishwanath Singh, Lecturer, Department of Philosophy.

4. Ram Yatan Singh, Son of Late Badri Singh, Lecturer, Department of Geography.

5. Bikrama Singh, Son of Late Baijnath Singh, Lecturer, Department of Mathematics.

6. Kanhaiya Rai, Son of Late Kundan Rai, Lecturer, Department of Economics.

7. Sri Bhagwan Singh, Son of Late Dharamraj Singh, Lecturer, Department of Hindi.

8. Hirday Narain Singh, Son of Late Jagropan Singh, Lecturer, Department of Political Science.

9. Rambharat Singh, Son of Ram Sihasan Singh, Lecturer, Department of History.

10. Nagendra Kumar, retired on end of August, 2014, Son of Gorakh Prasad Kashyap, Lecturer, Department of Commerce.

11. Raj Kumar Prasad, Son of Late Dukhi Prasad, Lecturer, Department of Commerce.

12. Surya Bansh Singh, Son of Late Ram Janam Singh, Lecturer,



Department of Sociology.

13. Haribansh Singh, Son of Late Ram Pati Singh, Lecturer,
Department of Economics.

14. Birendra Prasad Singh, Son of Ram Chandra Singh, Lecturer,
Department of History.

15. Muni Ram Singh, Son of Late Bhagirathi Singh, Lecturer,
Department of Philosophy.

16. S.M. Sahabuddin, Son of Late S.M. Sayeaddudin, Lecturer,
Department of Urdu.

17. Kedar Nath Singh, Son of Late Sahjanand Singh, Lecturer,
Department of Hindi.

18. Arun Kumar Sinha, retired on end of November, 2013, Son of
Late Baldeo Prasad Sinha, Lecturer, Department of Geography.

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

.... Petitioners/Respondent 1st Party

19. The Veer Kunwar Singh University, Ara, through its Registrar.

20. The Vice-Chancellor, Veer Kunwar Singh University, Ara.

21. The Registrar, Veer Kunwar Singh University, Ara.

.... Respondent Nos. 3 to 5/Respondent 2nd Party

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Appearance :

For the Appellant/s : Mr. Y.P. Sinha, AAG-7

Mr. Ram Subhash Singh, Adv.

For the Res. Nos. 1-18 : Mr. Amaresh Kr. Singh, Adv.

Mr. Sushil Kr. Rai, Adv.

For the Res. Nos. 19-20 : Mr. Purushottam Kr. Jha, Adv.

Mr. Avanindra Kr. Jha, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

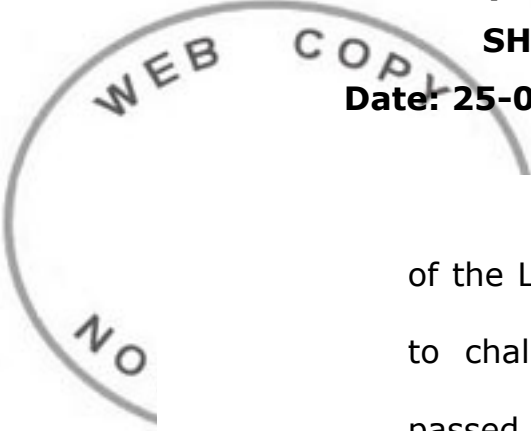
And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT & ORDER

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 25-07-2016



In the present appeal, preferred under Clause 10 of the Letters Patent of this Court, the State of Bihar has put to challenge the judgment and order, dated 23.06.2015, passed by a learned Single Judge of this Court, in C.W.J.C. No. 21232 of 2014, whereby the learned Single Judge has quashed the notifications (Annexure-13 series of C.W.J.C. No. 21232 of 2014), issued by the Veer Kunwar Singh University, Ara, shifting the effective dates of absorption of the respondent Nos. 1 to 18 (contesting respondents) herein to 01.02.1988, being the date, when the posts were sanctioned, instead of the dates, when they attained their eligibility, as recommended by Justice S.C. Agrawal Committee ***(hereinafter referred to as the Committee)***.

2. The facts, relevant for decision of this case, are short and not much in dispute. Respondent Nos. 1 to 18 (contesting respondents) were appointed as Lecturers in Shershah College, Sasaram, which became constituent college in the 4th phase in the year 1986. The said Shershah College, Sasaram, is, at present, a constituent unit of Veer Kunwar Singh University, Ara.

3. The dispute relating to absorption of teaching



employees of the colleges, consequent upon their conversion into constituent units in 4th phase, had travelled up to the Supreme Court. A one Man Committee was formed under the orders of the Supreme Court, headed by Justice S.C. Agrawal (a retired Judge of the Supreme Court), who had made certain recommendations, which were accepted by the Supreme Court in case of ***State of Bihar & Ors. Vs. Bihar Rajya MSESCK Mahasangh & Ors.***, reported in ***2005 (1) PLJR 464***. The Committee noticed that some of the Teachers were appointed against the posts, which were not sanctioned by the State Government at the time of their appointment, but recommendation for such sanction was already pending with the State Government at that point of time. The Committee, in such cases, also recommended that the Lecturers would be entitled for absorption in the University service from the respective dates of their eligibility. There appears to be no dispute about the fact that in the recommendations, made by the Commission, the dates, with effect from which the respondent Nos. 1 to 18 (contesting respondents) had acquired eligibility, have been mentioned therein, indicating specifically the date with effect from which they were entitled to be absorbed.

4. The Supreme Court, in case of ***State of Bihar & Ors. Vs. Bihar Rajya MSESCK Mahasangh & Ors.***



(supra), accepted the recommendations of the Commission in *toto* and rejected all the objections made against such recommendations. The Supreme Court directed the Universities concerned to take decision, in terms of Section 4(1) (14) of the Bihar Universities Act, 1976, in the matter of absorption of the appointees named in list (ii) of the report of the Commission.

5. Learned Counsel, appearing on behalf of the State of Bihar, has not disputed the fact that the names of respondent Nos. 1 to 18 figured in list (ii) of the report of the Commission, who were appointed against the posts recommended for sanction, which were pending with the State Government for sanction.

6. In view of the recommendations made by the Commission and the Supreme Court, in case of ***State of Bihar & Ors. Vs. Bihar Rajya MSESKE Mahasangh & Ors.*** (supra), whereby the said recommendations were accepted, the Veer Kunwar Singh University, Ara, appears to have issued notifications, in the years 2005-2006 for absorption of respondent Nos. 1 to 18, with effect from the respective dates, when they had acquired the requisite eligibility for the post.

7. Nearly nine years thereafter, the Veer Kunwar Singh University, Ara, came out with a notification shifting the

date of absorption of respondent Nos. 1 to 18 to 01.02.1988, i.e., the date, when the State Government had sanctioned the post.

8. Challenging the legality of the said notification, issued by Veer Kunwar Singh University, Ara, respondent Nos. 1 to 18 (contesting respondents) filed an application, under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 21232 of 2014, primarily on the ground that shifting of the date of absorption was, in the teeth of Supreme Court's decision, in case of **State of Bihar & Ors. Vs. Bihar Rajya MSESKE Mahasangh & Ors.** (supra), wrong and illegal inasmuch as the Justice Agrawal Committee had recommended the dates of absorption to be the dates, when the concerned Teachers acquired the eligibility criteria for the posts concerned.

9. Learned Single Judge, referring to two previous decisions of this Court, in case of **Manju Chaudhary Vs. B.N. Mandal University & Ors.**, reported in **2012 (3) PLJR 773**, and in case of **Babu Saheb Jha & Ors. Vs. The State of Bihar & Ors. (C.W.J.C. No. 3017 of 2016)**, turned down the stand of the State Government and the University that the services of respondent Nos. 1 to 18 (contesting respondents) were to be absorbed with effect from the date of sanction of respective posts and quashed the

impugned notifications.

10. Learned Counsel, appearing on behalf of the appellant, has submitted, referring to Section 4(1) (14) of the Bihar Universities Act, 1976, that sanction of the State Government is mandatory before the University could take over the college in question and in the absence of sanction of posts by the State Government, no appointment could be said to be legal. He has, accordingly, submitted that appointment of respondent Nos. 1 to 18 (contesting respondents) could be validated only with effect from the date when the posts were actually sanctioned by the State Government.

11. We do not find any force in the submission, so advanced on behalf of the State of Bihar, for the simple reason that these aspects have been elaborately considered in the report of the Justice S.C. Agrawal Committee and, upon examination of all the aspects, the Committee recommended that in such cases, where recommendations for sanction of posts were pending with the State Government, before the cut off date, the effective dates of absorption of the teaching employees would be the dates, when they acquired the eligibility criteria. As has been already noted above, the said report has been accepted by the Supreme Court in its decision in case of **State of Bihar & Ors. Vs. Bihar Rajya MSESCK Mahasangh & Ors.** (supra). The issue, which has already

been decided up to the level of Supreme Court, cannot be re-opened in the present proceeding. The learned Single Judge has rightly held the notifications, under challenge in the writ proceedings (C.W.J.C. No. 21232 of 2014), to be, in the teeth of Supreme Court’s decision in case of **State of Bihar & Ors. Vs. Bihar Rajya MSESkk Mahasangh & Ors.** (supra), bad in law and, therefore, not sustainable.

12. We do not find any merit in this appeal, which is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
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