

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19566 of 2014

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Shiv Kumar Choudhary, son of Late Hari Narayan Chaudhary, resident of Village - Sahuriya, P.O.- Devhara, P.S.- Andhratharhi, District - Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Higher Education, Human Resources Development Department, Bihar, Patna.
3. Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, District - Darbhanga through its Registrar.
4. Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, District - Darbhanga through its Registrar.
5. Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, District - Darbhanga through its Registrar.
6. The Principal, Madheshwar Nath Sanskrit College, Madheshwar Asthan, Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Baidya Nath Thakur, Advocate
		Mr. Shankar Kumar Thakur, Advocate
For the Respondent/s	:	Mr. Arvind Kumar, AC to GA-9
For the University	:	Mr. Gyanand Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 02-11-2018

Heard learned counsel for the petitioner, State and the University.

2. This writ application has been filed after service of two advance copies on 17.11.2014 to the office of learned Advocate General and the learned counsel appearing on behalf of the University. Unfortunately, no counter affidavit has been filed either on behalf of the University or the State.

3. The present writ application has been filed by the petitioner on account of the fact that the petitioner was apprehending



adverse action against him.

4. From the pleadings, it appears that the case of the petitioner for regularization was favourably recommended by the University and thereafter the case of the petitioner and other similarly circumstanced were under consideration before the State Government.

5. Learned counsel for the petitioner submits that the similarly circumstanced others have been favoured with regularization, but the petitioner has received information that a decision adverse to his interest was taken, but that decision rejecting the claim of the petitioner has never been communicated. This position has not been disputed by the respondents that the order rejecting the claim of the petitioner for regularization by the State Government has not been communicated, as yet.

6. If the decision has not been communicated even after four long years of filing of the writ application, the Court has reason to believe that no such order exit. It is now well settled that order in file is no order unless it is communicated. Reference in this connection may be made in the case of **Bachhiter Singh vs. State of Punjab**, reported in **AIR 1963 SC 395** and reiterated in the case of **State of Bihar Etc. Etc. Vs. Kripalu Shankar Etc. Etc.**, reported in **AIR 1987 SC 1554**.

7. In view of the law laid down by the Apex Court



referred to above, if any decision in file adverse to the interest of the petitioner has not been communicated as yet, such order cannot be taken as existing and as such the present writ application is disposed of as premature.

8. However, liberty shall be available to the petitioner to file appropriate application, if any adverse order is passed contrary to the interest of the petitioner.

9. In the event, no such decision is taken as yet, the State Government is required to take appropriate decision on the favourable recommendation of the University in the light of the Full Bench Decision in the case of **Braj Kishore Singh Vs. The State of Bihar & Ors**, reported in **1997(1) PLJR 509**, the judgment of the Apex Court in the case of **Secretary, State of Karnataka and Others. Vs. Umadevi and Others**, reported in **(2006) 4 SCC 1**, the decision in the case of **State of Karnataka vs. M.L. Kesari**, reported in **(2010) 9 SCC 247** and also in the case of **Amarkant Rai vs. State of Bihar & Ors.**, reported in **(2015) 8 SCC 265**.

10. Necessary decision on the claim of the petitioner for regularization in the light of the recommendation of the University must be taken by the respondents, if not taken as yet, within a period of four months from the date of receipt/production of a copy of this order in the light of the observations made herein above.



11. In the event, any adverse decision is taken by the respondents, liberty shall be available to the petitioner to challenge the same before the appropriate forum/court in accordance with law.

12. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2018
Transmission Date	

