

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.349 of 2010

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K. Sheela Singh, W/O Amarendra Prasad Singh, R/O Bailey Road, Navneet Bihar Colony, P.S. Danapur, Distt.- Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Higher Education, Govt. of Bihar, New Secretariat, Patna
2. The Vice-Chancellor, Magadh University, Bodh Gaya
3. The Registrar, Magadh University, Bodh Gaya
4. The Principal, B.D. Evening College, Mithapur, Town and Distt.- Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vishwajeet Singh
Mr. Sanjeet Kumar

For the Respondent/s : Mr. (GP8)
Mr. Sarvesh Kr. Singh
Mr. R.K.Giri

For the University : Mr. Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-08-2018

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

The petitioner was initially appointed in the erstwhile B.D. Evening College, Mithapur as Library Assistant on 07.01.1984. The College was made constituent Unit in the 4th phase. After the College was made constituent, controversy as to absorption of teaching and non-teaching employee traveled up to the Apex Court in the case of **State of Bihar & Ors. Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.**, reported in **(2005) 9 SCC 129** and the Apex Court constituted one man Committee of Justice S. C. Agrawal



(retired). After the report of Justice S. C. Agrawal Commission, the Apex Court issued direction to the concerned University to take steps for absorption of the services of the teaching and non-teaching employees in terms of the discussions of Justice S. C. Agrawal Commission and the discussion in the judgment of the **Mahasangh case** (supra).

In the discussion of Justice S. C. Agrawal Commission, the post of typist was admissible for absorption, but the 4th post of typist was shown as vacant and since the petitioner was working in the College in question, the University considering the available vacancy adjusted the petitioner and absorbed the petitioner as typist in exercise of power under Section 4 (1)(14) of the Bihar State University Act. Subsequent to absorption of the petitioner, a decision was taken to displace the petitioner and as such the petitioner has filed the present writ application in 2010.

Considering the decision of the Apex Court in **Mahasangh case** (supra) and the report of Justice S.C. Agrawal Commission contained in Annexure-IVB where one post of typist was shown vacant and the subsequent notification issued by the University contained in Annexure-6 whereby the services of the petitioner was absorbed as typist. The Court considering the available sanctioned vacant post and the decision of absorption of the petitioner against the



aforesaid sanctioned vacant post does not find justification of the respondents in reviewing the order of absorption and particularly in view of the decision in the case of Krishna Nand Yadav case where the Apex Court has allowed the continuance/absorption of non-teaching employees, who were appointed prior to cut off date having requisite qualification and there was available vacancy.

Accordingly, the writ application is disposed of with a direction to the University to allow the petitioner as absorbed employee with all consequential benefits. Final decision with regard to consequential benefit must be taken by the respondents within a period of four months from the date of receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.08.2018
Transmission Date	

