

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21804 of 2011**

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Suresh Kumar Choudhary Son of Late Upendra Narayan Choudhary Resident  
Of Village/P.O. Parora, Police Station-K. Nagar, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Human Resources Department, Govt. Of Bihar, Patna.
2. The Principal Secretary, Human Resources Department, Govt. Of Bihar, Patna.
3. The B.N. Mandal University, Madhepura Through its Registrar.
4. The Vice Chancellor, B.N. Mandal University, Madhepura.
5. The Registrar, B.N. Mandal University, Madhepura.
6. The Principal, K.B. Jha College, Katihar.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sidhendra Narayan Singh  
For the Respondent/s : Mr. Neeraj Nandan (Gp20)

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**  
**ORAL JUDGMENT**

**Date : 07-09-2018**

Petitioner has filed the present writ application for a direction to the respondents to restore and absorb the service of the petitioner as Routine Clerk/Store Keeper at K.B. Jha College. The college was made constituent as unit in fourth phase. After college was made constituent unit dispute arose on account of identification of the teaching and non-teaching employees for absorption in terms of Section 4(1)(14) of the Bihar State University Act. The matter was taken to the Supreme Court and the Supreme Court constituted Justice S.C. Agrawal Commission to enquire into the factual aspect of availability of the post and entitlement of the individual for



absorption etc. in the colleges made constituent in fourth phase.

2. After Marathon exercise, Justice S.C. Agrawal Commission submitted a voluminous report. The Apex Court on consideration of the report of Justice S.C. Agrwal Commission finally decided the issue of absorption of teaching and non-teaching employees of the colleges made constituent in fourth phase. The Apex Court vide its judgment reported in **2005 (9) SCC 129** after considering the various aspect of the matter issued direction to the concerned University to take decision with regard to absorption of teaching and non-teaching employees in accordance with Section 4(1) (14) of the Bihar State Universities Act, 1976. After the direction of the Apex Court, the concerned University issued notification with regard to absorption of teaching and non-teaching employees exercising jurisdiction under section 4(1) (14) of the Bihar State University Act. Thereafter, controversy arose as to the genuineness of the employees absorbed as teaching or non-teaching employees and the matter was considered by the full bench of the Patna High Court. After judgment of the full bench the matter was taken to the Supreme Court and the Apex Court once again constituted Committee to examine the claim of respective teachers and non-teaching employees at the anveil of



Justice S.C. Agrwal Commission report. Initially Justice S.C. Agrwal Commission was asked to decide the issue but on his refusal, the Apex Court appointed the Justice S.B. Sinha (Retd.) Commission to examine the claim of the teaching and non-teaching employees. Justice S.B. Sinha (Retd.) Commission has submitted the fact finding report favourable report was accepted by the Supreme Court in Krishnanand Yadav's case and direction was issued to grant consequential benefit. The Apex Court granted liberty to those whose case was not considered favourably or not recommended by the Justice S.B. Sinha (Retd.) Commission to approach High Court. After order of the Apex Court in Krishnanand Yadav's case this court has occasion to inter into the various aspect of the matter factual and legal and thereafter, this Court has finally decided the issue vide order dated 17.7.2018 in C.W.J.C. No. 17670 of 2017. This court has considered the report of Justice S.C. Agrawal Commission, judgment of the Apex Court in Mahasangh Case, report of Justice S.B. Sinha (Retd.) Commission which was approved by the Apex Court in Krishnanand Yadav's case and judgment of the Apex Court in Krishnanand Yadav's case. The present case is also offshoot of dispute of absorption of employees of the erstwhile colleges made constituent in fourth



phase.

3. In the instant case counter affidavit was filed on behalf of the respondent nos. 3 to 5 wherein stands was taken that cut off date in relation to fourth constituent college was fixed as 30.4.1986 and petitioner was appointed after cut off date on 21.7.1986, therefore, not entitled to absorption.

4. In para-10 of the counter affidavit a stand was taken that there was only 23 posts available in the sanctioned category as well as R-1 category for class-III and the petitioner does not figure within the ambit of sanctioned or recommended category and as such petitioner is not entitled to consideration for absorption under University Act. So far as cut off date is concerned the Apex Court has considered the issue in Mahasangh's case and in para-18 of the judgment the Apex Court has noted different cut off date considering the factual scenario.

For ready reference para-18 of the judgment reported in (2005) 9 SCC 129 is quoted below:-

**“18 In answer to Term of Reference 1, the Enquiry Commission has taken different cut-off dates for different affiliated colleges with reference to the dates on which decision was taken to convert them into constituent colleges. Thus taking 30-4-1986 or 31-3-1987 or 1-1-1987 as dates applicable to the**



**particular colleges, the Commission has identified the number of sanctioned posts and the members of the staff working against each of them. It has given separate report for one minority institution in which there was no indication of cut-off date. To answer Term 2, the Commission has divided in into two parts and answered each separately. Identification has been done in respect of each college which had sent proposals with regard to creation of additional posts and which have been submitted by universities concerned to the Education Department of the State before the cut-off date.”**

5. The issue as to the availability of the post is relevant factor and cannot be ignored notwithstanding the fact that cut off date in relation to the college in question is not 30.4.1986 and if there is no post available there is no infirmity in the action of the respondents. Justice S.B. Sinha (Retd.) Commission has considered the cases of those employees who were appointed in the erstwhile colleges and continued for a considerable long time and they have requisite qualification at the time of their appointment the Commission observed that the cases of such employees may be considered by the University for absorption provided there exist vacancies on account of death retirement or other eventuality.

6. Considering the aforesaid, the writ petition is



disposed of with direction to the University to examine the claim of the petitioner and if it is found that at the relevant time the petitioner was appointed holding requisite qualification for the post and the petitioner is regularly working and there is post available on account of death or retirement or otherwise of the employees the case of the petitioner may be considered by the University for absorption.

7. Final decision in this regard may be taken by the University within a period of four months from today. The previous order terminating the petitioner will not come in the way of the respondent in taking decision in the light of discussion made hereinabove.

8. With the aforesaid, the writ petition stands disposed of.

**(Anil Kumar Upadhyay, J)**

Ravi/-

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