

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19205 of 2017

Dr. Krishna Nand Yadav, S/o Sri Hari Nandan Yadav, Lecturer in the department of Economics, Ram Lakhan Singh Yadav College, Aurangabad, presently on deputation in the department of Economics, College of Commerce, Arts and Science, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Higher Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Higher Education, Govt. of Bihar, Patna.
3. The Magadh University, Bodh Gaya through its Registrar.
4. The Vice Chancellor, Magadh University, Bodh Gaya at Bodh Gaya.
5. The Registrar, Magadh University, Bodh Gaya at Bodh Gaya.
6. The Finance Officer, Magadh University, Bodh Gaya at Bodh Gaya.
7. The Principal, Ram Lakhan Singh Yadav College, Aurangabad.
8. The Principal, College of Commerce, Arts and Science, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 7471 of 2018

Dr. Sudhir Kumar, S/o Kuldeep Prasad, aged about 60 years, R/o Bhagwat Nagar, P.O.- Bahadurpur, P.S. Agamkuan, District- Patna, Working as Lecturer, Department of Botany, Ganga Devi Mahila College, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resource Development Department, Government of Bihar, Patna.
2. Magadh University through the Registrar Bodh Gaya, Gaya.
3. Vice Chancellor, Magadh University, University Campus, Bodh Gaya, Gaya.
4. Registrar, Magadh University, Bodh Gaya, Gaya.
5. Bimala Chaudhary, Lecturer, Department of Botany, through the Head of the Department of Botany, Ganga Devi Mahila College, Kankarbag, Patna.
6. Punam Sinha, Lecturer, Department of Botany, through the Head of the Department of Botany, Ganga Devi, Mahila College, Kankarbag, Patna.

.... Respondent/s

Appearance :

(In CWJC No.19205 of 2017)

For the Petitioner/s : Mr. Dinesh Kumar, Advocate

For the Respondent/s : Mr. Prabhakar Jha, GP-27

(In CWJC No.7471 of 2018)

For the Petitioner/s : Mr. Sujeet Kumar Sinha, Advocate

For the Respondent/s : Mr. Subhash Chandra Mishra, SC-16

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY



ORAL JUDGMENT

Date: 18-07-2018

Heard learned counsel for the petitioners and the respondents.

2. Petitioners in both the writ applications are the lecturer appointed in the erstwhile affiliated college.

3. The petitioner Krishnanand Yadav was appointed as Lecturer. At the time of appointment his result was awaited, whereas in case of petitioner Sudhir Kumar, result was published, but not at the time of interview, but at the time of appointment. Their cases were considered by the Magadh University in the light of the report of Justice S. C. Agrawal Commission, which is quoted herein below:

“In some of the colleges appointments were made of persons who had appeared in the postgraduate degree examination but the result had not been declared on the date of appointment. The result was declared after a few months. In respect of some of such teachers fresh appointment letters were issued after the declaration of the result. The teachers who had appeared in the postgraduate degree examination and the result of such examination was declared after the date of appointment and have obtained the prescribed percentage of marks in such examination was declared after the date of appointment and have obtained the prescribed percentage of marks in such examination, can be



treated as possessing the requisite qualification on the date the result of the postgraduate degree examination was declared. With that end in view, the date of their eligibility for consideration for absorption is being treated as the date on which they obtained Post Graduate degree qualification on declaration of the result. So also a person who did not possess high second class Master's degree in the relevant subject on the date of his appointment but who improved his qualifications by obtaining a high second Master's degree in the relevant subject after appointment can be treated as possessing the requisite qualification for the purpose of consideration for absorption on the date he acquired the improved qualification."

4. Justice S.C. Agrawal Commission has occasion to examine the eligibility of the candidate for the purpose of absorption. Justice S.C. Agrawal Commission has also occasion to examine the Governmental decision whereby opportunity was provided for improvement of the qualification within four years from the date of absorption.

5. Learned counsel appearing on behalf of the petitioners submits that in view of the decision of the Government and the discussion of the Justice S.C. Agrawal Commission in its report referred to above, the case of the petitioners were considered by the University and the petitioners, who have the requisite qualification for



absorption were absorbed by the University and later on their cases were rejected on the ground that on the date of their appointment, in case of Krishnanand Yadav and in case of Sudhir Kumar on the date of holding interview they were not holding P.G. degree. Considering the discussion of Justice S.C. Agrawal Commission, the Court is of the considered view that in view of the discussion of Justice Agrawal Commission and the fact that the State Government has allowed the teachers to improve their qualification for the purpose of absorption, the petitioners, who have acquired their eligibility much before completion of four years of take over are entitled to be considered for absorption.

6. Accordingly, the Court holds that the decision of the University reviewing their absorption is nullity and the respondent University is directed to restore the petitioners in the status of absorbed employee with all consequential benefits. Necessary decision in this regard must be taken by the University within a period of three months from the date of receipt/production of a copy of this order.

7. Accordingly, the subsequent decision reviewing the notification of absorption is hereby declared as nullity. The respondent University is directed to restore the petitioners in the status of absorbed employee with all consequential benefits within a period



of four months from the date of receipt/production of a copy of this order.

8. With the aforesaid, both the writ application stand disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.08.2018
Transmission Date	

