

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18285 of 2017

Radha Govind Jha, Son of Late Bachcha Jha, Resident of Village- Balia, P.O.-
Umari, P.S. Lakhnour, District-Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary Govt. of Bihar, Patna.
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. Lalit Narayan Mithila University, Kameshwarnagar, Darbhanga through its Registrar.
4. Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga
5. Registrar, Lalit Narayn Mithila University, Kameshwar Nagar, Darbhanga.
6. Bibhuti Nath Jha, Lecturer in Economics, MLSM College, Darbhanga
7. Ambarish Kumar Jha, Lecturer in Economics, MLSM College, Darbhanga

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 178 of 2018

Sushil Kumar Jha, Son of Sri Mahakant Jha Resident of Village-Ranti P.S.
Rajnagar, District-Madhubani at Present Working as Lecturer, Department of
Economics MLSM College, Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary Govt. of Bihar, Patna.
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. Lalit Narayan Mithila University, Kameshwarnagar, Darbhanga through its Registrar.
4. The Vice Chancellor, Lalit Narayan Mithila University, Kameshwar Nagar, Darbhanga.
5. Registrar, Lalit Narayn Mithila University Kameshwar Nagar, Darbhanga.
6. Bibhuti Nath Jha, Lecturer in Economics, MLSM College, Darbhanga
7. Ambrish Kumar Jha, Lecturer in Economics, MLSM College, Darbhanga

... .. Respondent/s

Appearance :

(In CWJC No. 18285 of 2017)

For the Petitioner	:	Mr. Binodanand Mishra, Advocate
For the State	:	Mr. Umesh Narayan Dubey, AC to GP.-27
For Respondent No.7	:	Mrs. Nivedita Nirvikar, Advocate.
For L.N.M.U.	:	Mr. Nadim Seraj, Advocate
For Responsent No.6	:	Mr. Subodh Kumar Jha, Advocate
		Mr. Chittranjan Sinha, Senior Advocote

(In CWJC No. 178 of 2018)

For the Petitioner	:	Mr. Binodanand Mishra, Advocate
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For the State : Smt. Binita Singh SC-28
For L.N.M.U. : Mr. Md. Nadim Seraj, Advocate
For Respondent No.6 : Mr. Subodh Kumar Jha, Advocate
For Respondent No.7 : Mrs. Nivedita Nirvikar, Advocate.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 25-09-2018

Both the writ petitions involve common question of fact and law and as such with the consent of parties both writ petitions was heard together on different dates.

2. After hearing the parties at length, on 12.09.2018 hearing was concluded and case was directed to be listed for orders on 20.09.2018. These cases were not listed on 20.09.2018, in view of the change in list on 20.09.2018.

3. The pivotal issue in both the writ application relates to absorption of the teachers in constituent college in fourth phase. 40 colleges were made constituent in fourth phase including the M.L.S.M. College, Darbhanga under (Lalit Narayan Mithila University). After conversion of the college as constituent unit like other colleges, the dispute arose as to the identification of teaching and non-teaching employees for absorption in terms of Section 4 (1) (14) of the Bihar State University, Act. After several round of litigation, the matter was taken to the Apex Court. The Apex Court constituted a committee headed by Justice S.C. Agarwal (Retd.) Commission to inquire into the factual aspect within the parameters and reference made by the Apex Court Justice S.C.



Agarwal (Retd.) Commission after marathon scrutiny of documents and hearing the parties submitted exhaustive report. On submission of the report by Justice S.C. Agarwal (Retd.) Commission the Apex Court considered the objection filed by the persons aggrieved. The Apex Court has finally issued the direction to the concerned Universities to take a decision in terms of Section 4 (1) (14) of the Bihar State University, Act. The Judgment of the Apex Court is reported in (2005) 9 SCC 129. From the judgment of the Apex Court it is evident that objection filed against the report of the Justice S.C. Agarwal (Retd.) Commission was rejected by the Apex Court. However, from the discussion of the Apex Court in Paragraph 27, 72 and 73 it would be evident that the Apex Court has granted liberty to the concerned Universities to make inquiry with regard to the qualification of the individual in the matter of taking decision under Section 4 (1) (14) of the Act. In the report of S.C. Agarwal (Retd.) Commission there is discussion that teachers belonging to Rural Economics are not eligible for appointment against the post of teacher of economics, but in the same report vol.1 Justice S.C. Agarwal Commission has also noted that the case of the teacher belonging to Rural Economics Scheme deserve absorption and while preparing report the commission has noted that teachers appointed from Rural Economics Scheme is fit



for absorption. The Commission has also noted the minimum qualification for appointment as teacher. Referring to the decision of the State Government contained in circular No. 133C dated 09.05.1988 Commission held out that the respondent Bibhuti Nath Jha on the strength of obtaining Ph.D. degree is eligible for absorption as lecturer in economics. In case of respondent No.7 Ambarish Kumar Jha the commission also came to the conclusion that the respondent No. 7 although not holding the qualification in terms of 1983 statute but on account of obtaining Ph.D degree Ambarish Kumar Jha is also entitled to absorption. After the order of the Apex Court in Mahasangh Case the University issued notification in exercise of power and jurisdiction under Section 4 (1) (14) of the Bihar University Act. Since, only five posts of lecturer was admissible in M.L.S.M. College, Darbhanga, three in the category of sanctioned and two in the category of recommended post, therefore, the University issued notification for absorption of five teachers three against sanction posts and two against recommended posts. So far as the writ petitioners Radha Govind Jha and Sushil Kumar Jha is concerned the University took a decision to absorb the services of the Radha Govind Jha and Shushil Kumar Jha also pursuant to the tripartite agreement between the State Government, University and Federation of



Teachers and the University issued notification absorbing the services of the petitioner herein along with the several others teaching and non-teaching employee. Later on the State Government resiled from the position which was the basis issued notification of absorption of the petitioners. In Second round of litigation the matter was taken to the Apex Court in the case of Dr. Krishna Nand Yadav, the Apex Court once again constituted a committee initially Justice S.C. Agrawal (Retd.) was asked to identify the teaching and non-teaching employee at the anvil of previous report. After refusal of Justice Agarwal the Apex Court appointed Justice S.B. Sinha (Retd.) to inquire into the matter and submit report. Justice S.B. Sinha (Retd.) after hearing on different dates submitted his report to the Apex Court in Krishna Nand Yadav case, the Apex Court accepted the report of Justice S.B. Sinha (Retd.) Commission, which was in favour of the claimant for absorption. However, the Apex Court granted liberty to the person whose claim was not accepted by the Justice S.B. Sinha (Retd.). Paragraph 21 of the Judgment of the Apex Court in Krishna Nand Yadav case is quoted below:-

“ With respect to the cases of incumbents not found fit for acceptance by the Commission. They are free to approach the



concerned High Court, as prayed, for redressal of their grievance, if they so desire. In case petitions refiled before the High Court, it is expected that petitions would be dealt with as expeditiously as possible preferably within a period of one year.

4. In view of the liberty granted by the Apex Court in Krishna Nand Yadav case petitioners have filed the writ application. Mr. Binodanand Mishra learned counsel appearing on behalf of the petitioner has raised the following issues for consideration of this Court:

(I) Mr. Mishra submitted that once the Agarwal Commission has opined that for the post teacher of economics, M.A. in Rural Economics is not appropriate then any teacher occupying the post of teacher of economics, who belongs to Rural Economics (M.A. in rural economics) cannot be considered for absorption.

(II) He submitted that once the teacher who belongs to Rural Economics Scheme are ousted then the resultant vacancies would be available for those teachers who were categorized by Justice Agarwal in R-II and NR and as such their categorization has to change



5. Mr. Mishra has advanced argument with reference to the report of Agarwal Commission that the conclusion of Justice S.C. Agarwal has to be considered in the context of the discussion made in the report wherein it is held that the Rural Economics stream people are ineligible for appointment then the categorization of the teachers for absorption in category of NR and R1 does not cut much ice as the Apex Court while discussing in Mahasangh Case has granted liberty to the University in paragraph 27, 72 and 73 of the judgment to adopt corrective measures in individual cases. Mr. Mishra further submitted that the matter of absorption a person who was not holding requisite qualification cannot be considered for appointment as the Apex Court while approving the report of Agarwal Commission has also granted liberty to the University to examine individual cases with regard to the qualification and in view of that liberty, University was required to examine whether the candidate whose names figures in the report of Justice Agarwal Commission for absorption was holding the statutory eligibility conditions or not? He submits that testing the case of Ambarish Kumar Jha it would be evident that even after Ph.D degree he was not eligible as obtaining Ph.D degree itself will not confer eligibility under the statue. Referring to the State Government decision letter dated 9th May, 1988. He would submit that the



government letter cannot override the statutory qualification and the Apex Court had at no point of time held out that government decision dated 09.05.1988 can dilute the minimum statutory requirements / eligibility under the statute for appointment. As the last limb of argument of Mr. Mishra submitted that once the University has taken the decision of absorption of petitioner, the university has no power to review its order. He also relied upon the judgment of the Apex Court in case of **State of Bihar Vs. Sunny Prakash & Ors. Reported in (2013) 3 SCC 559** to contend that the tripartite agreement which led to absorption of the petitioner cannot be nullified by the role back of the State as the decision of the absorption of the petitioner were based on clear understanding and agreement between State Government and the University.

6. On behalf of the respondent initially Mr. Subodh Kumar Jha argued on different dates and Mr. Chitranjan Sinha senior advocate appeared on 12.9.2018 to assist the Court. This Court has the advantage of hearing of Mr. Subodh Kumar Jha on different dates and also learned Senior Counsel Mr. Chitranjan Sinha in part heard matter. Mr. Jha and Mr. Sinha while appearing on behalf of respondent No.6 submitted that the report of Justice S.C. Agarwal (Retd.) Commission leaves no scope for scrutiny by the University as all the objections raised against the report of Justice S.C.



Agarwal (Retd.) Commission was rejected by the Apex Court and as such the University cannot open the matter which has attained finality in Mahasangh Case. He submitted that so far as appointment of teacher from Rural Economics stream is concerned the report of Justice Agarwal if read in totality it would be evident that after initial discussion the Agrawal Commission has noted the decision of the University, considering the decision of the University for the purpose of the appointment Justice S.C. Agawal (Retd.) Commission came to the conclusion that respondent No. 6 as fit for absorption. In view of the above it is not open for the University to reopen that matter and petitioners are precluded from questioning the legality validity of absorption of the respondent No. 6. He submitted that even the petitioner failed in his attempt before the Justice S.B. Sinha (Retd.) Commission and as such this Court is not competent to decide the issue raised in the writ petition. The report of Justice S.B. Sinha (Retd.) Commission has attained finality and it was approved by the Apex Court.

7. Learned counsel appearing on behalf of the Respondent No. 7 has not filed any counter affidavit but has advanced argument that in view of the decision of the government the minimum qualification under the statute is no bar in holding the respondent No. 7 as qualified for absorption. In view of the fact that



respondent No. 7 has obtained Ph.D degree Ms. Nivedita Nirvikar referring to the State Government letter dated 09.05.1988 whereby the Government has taken a decision to grant opportunity to improve qualification within a period of four years from the date of absorption, submitted that Respondent No. 7 was rightly absorbed. Ms. Nirvikar has taken the stand on the line of the argument advanced by Mr. Chitranjan Sinha senior advocate and Mr. Subodh Kr. Jha that the issue as to absorption of respondent No. 7 has become final and is not open for this Court to re-scrutinized or re-open that matter.

8. After argument concluded by the parties, this Court granted liberty to the parties to file written notes of argument. (a) On behalf of the petitioner following stand was taken in the written notes of the argument.

1. This written notes of argument is being filed in compliance of the order dated 12.9.2018 passed in the present case

2. In view of the liberty granted by the Hon'ble Supreme Court in the C.A.No 2703 of 2017 (Krishnanand Yadav & Ors v Magadh University & Ors) the Petitioner is seeking absorption on the post of lecturer in Economics in MLSM College,



Darbhanga converted into a constituent college in the fourth phase.

The case of Respondent No 6

3. The respondent no 6 namely Bibhuti Nath Jha was appointed as a lecturer in Economics by order dated March 19,1983. The relevant statute existing at the time of his appointment was the statute approved by the Chancellor dated April 24,1978. The minimum qualification for appointment of lecturer under the said statute was “A consistently good academic record with 1st or high 2nd class at the Masters degree in the relevant subject, or an equivalent degree of a foreign university. So far as the case of respondent number -6 is concerned; he has obtained his post graduate degree in rural economics as such he was not holding a post graduate degree in the relevant subject. In the report of Hon’ble Justice Agrawal commission at page 40 (vol-1) there is a categorical finding that rural economics is not a relevant subject for appointment of lecturer in Economics. Hence, the appointment of Respondent no 6 as a lecturer in Economics was void ab initio as



he was not fulfilling the requisite eligibility qualification.

4. The case of the respondent number six was considered in volume 2 of the report at page 100. It appears that respondent number -6 filed an affidavit before honourable Agrawal commission and relied upon a resolution of the syndicate of Bhagalpur University dated August 28, 1967 to claim that rural economics is a relevant subject for appointment of lecturer in economics. The case of respondent number-6 was rejected categorically holding that respondent number -6 on the date of his appointment was not possessing the requisite qualification for appointment on the post of lecturer in economics, since he was not having postgraduate qualification in economics.. However, it has been said that Shri Jha obtained PhD degree in 1990. He therefore, became eligible for appointment in 1990. This is in variance/contrary to and in direct conflict with with the finding of the commission at page 53 of volume 1 of the report. **The honourable commission at page 53 of the report categorically said that**



under the 1978 statutes the high second master's degree in the subject was an essential qualification even in respect of a person holding a PhD degree and in the absence of high second master's degree he could not be treated as possessing the requisite qualifications even though he possessed a PhD degree in the subject. Thus, on the basis of the findings of Justice Agrawal commission report the respondent number -6 cannot be said to be eligible on the basis of his PhD degree because he has been appointed under the 1978 statute.

5. The relevant portion of the finding of the commission at page 53 in volume 1 is quoted hereinbelow:-

“under the 1978 statutes high second class Masters degree in the subject was an essential qualification even in respect of a person holding a PhD degree and in the absence of high second master's degree he could not be treated as processing the requisite qualifications even though he possessed a PhD degree in the subject.”



**6. ADJUDICATION OF A SIMILAR
CASE BY HON'BLE S.B.SINHA COMMISSION.**

[annexure-8 to the supplementary affidavit filed by
the Petitioner]

7. In this case the claim petition has been allowed, report favourable to the claimant has been accepted by the Hon'ble Supreme Court as such same became part and parcel of the Judgement of the Hon'ble Supreme Court in the case of Krishnanand Yadav(C.A.NO 2703of 12017). The claimant Jai Krishna Prasad Yadav was appointed on the post of lecturer in Ancient Indian History and Culture in parwati Science College, Madhepura. In the same department one Lalan Pd Adri was appointed as a lecturer. Lalan Pd Adri was placed at serial no 2 under S(Sanctioned) Category and Jai Krishna Prasad Yadav was placed at serial no 5 under R-IINR category. Sri Lalan Prasad Adri even though was working on the sanctioned post was not holding the post graduate qualification in the relevant subject at the time of appointment. The claimant jai Krishna Prasad Yadav was holding the post graduate



qualification in the relevant subject at the time of appointment. Lalan Pd Adri obtained the post graduate qualification in ancient Indian history and culture on march 31,1990 and on that basis he has been said to be eligible in volume-2 of the report(college report) The Hon'ble S.B.Sinha Commission categorically observed,

“So far as Sri Lalan Pd Adri is concerned, although he is said to have been appointed against the second sanctioned post, having regard to the policy decision adopted by Justice Agrawal commission itself, it must be held that Sri Adri was not eligible to be appointed on 19.02.1983 in view of the fact that he did not have Ancient Indian history as a special paper in his post-graduation course.”[internal page 11 of the S.A]

8. In the said case it has also been contended that those who have been treated under R-2/N.R. Category can never be treated to be eligible for consideration for absorption in the services of the University. The Hon'ble Commission replied the same in the following words



“ in the event it is shown that an error was committed in the report of Justice Agrawal commission as regards name and description of an employee, the same could be corrected by the University. In that view of the matter if the name of Sri Adri has been shown to have been appointed in the faculty of Ancient Indian history wrongly, the claimant Sri Jai Krishna Prasad Yadav should not suffer therefor, who had a better claim for the same post.”

9. The claim of Jai Krishna Prasad Yadav was allowed in the following words

“in the light of the discussions made heretobefore, this commission is of the opinion that the claim of Sri Jai Krishna Prasad Yadav must be allowed.”

10. From the aforesaid order of justice SB Sinha commission it is evidently clear that postgraduate degree in the relevant subject is a sine qua non for appointment as a lecturer. Since, the respondent number -6 failed to obtain postgraduate qualification in the relevant subject i.e. Economics he



has no claim for absorption. He has been wrongly shown to have been appointed as a lecturer in economics. In the light of the judgment of honourable Supreme Court in the Mahasangh case the error found in part II of the report was to be corrected by the University and for that the Petitioner should not have been made to suffer.

THE CASE OF RESPONDENT NO 7

11. The respondent number 7 was appointed as a lecturer in economics by order dated October 15, 1984. The relevant statute prescribing qualification at the time of his appointment was the revised statute approved by the Hon'ble Chancellor on 12.12.1983. The requisite qualification for appointment was good academic record with at least second-class master's degree in relevant subject. The criteria for determining good academic record has been explained in the statute.

- i. A candidate holding a Ph.D degree should possess a second class Masters degree; and a second class in the bachelors degree or



- ii. a candidate without a Ph.D degree should possess a high second class Masters degree; and second-class in the bachelors degree or
- iii. a candidate not processing PhD degree but possessing second-class Masters degree should have obtained first-class in the bachelors degree.

12. Since, Respondent no 7 was not possessing the basic minimum qualification for appointment in as much as he secured only 43.2.% marks in the post graduate examination as such he was not eligible to be considered for appointment on the post of lecturer in Economics. Unfortunately, he has been considered eligible on the basis of his Ph.D degree obtained on October 1, 1988. This was clearly an error in view of the finding of the Commission at page 53 volume 1 of the report. The relevant portion of the report is quoted hereinbelow:-

“under 1983 statutes, in view of clause (i) of explanation I, a person having a PhD degree was treated as possessing the requisite qualifications if he had a second-class Masters degree. This means that a person



who did not have a high second master's degree but had a second class Masters degree on the date of appointment under the 1983 statutes would be treated as possessing the requisite qualifications on the date he obtains PhD degree in the subject."

Thus, one must have 2nd class in the post graduation degree to be eligible on the basis of his Ph.d.degree. Unfortunately, Respondent no 7 had 3rd class in the post graduation.

The findings of Justice S.B.Sinha Commission with regard to Respondent no 7

13. It may also be noted that respondent number 7 was heard before honourable Justice SB Sinha commission. The honourable commission in its order dated 24.05.2015 categorically observed that when the respondent no 7 was appointed on 15.10.1984, he did not have the requisite educational qualification and consequently the benefit granted by previous commission at page 66-67 of volume I of the report was not available to him. The Hon'ble



Commission, however, observed that if the appointment of respondent no 7 instead of 15.10.1984 is treated to be 9.11.1985 the respondent no 7 would rank senior to Radha Govind Jha (petitioner) because on 9.11.1985 the respondent no 7 obtained another Ph.D. degree in Economics having 47.38% marks.

14. The Hon'ble Commission has further observed that date of appointment of Sri Ambrish Kumar Jha in the event is treated to be 9.11.1985 Sri Radha Govind Jha would remain junior to him.

15. From the order of Justice S.B.Sinha Commission (Annexure-4 page 58) of the writ petition it is evident that respondent no 7 accepted the position that on the basis of his IIIrd class post graduate qualification he was not eligible to be absorbed at all. However, to save his appointment/absorption he took the position that 9.11.1985 should be treated his date of appointment because on that day he obtained another post graduate degree having second class. On that basis he was able to save his appointment/absorption. At this stage without challenging the finding of Justice S.B.Sinha



Commission the respondent no 7 cannot turn around and claim eligibility/ absorption on the basis of his date of appointment as 15.10.1984 and class III degree in post graduation.

16. If at all 9.11.1985 is treated as the date of appointment of Respondent no 7 he would be junior to Sushil Kumar Jha (petitioner in CWJC No 178 of 2018) and therefore not entitled to absorption.

Section 4(1)(14) of the Bihar State Universities Act 1976

17. That as per the Mahasangh Judgement the University was required to take a decision of absorption on the basis of the legal position explained in the Judgment. The legal position explained in the Judgment was that the subject of taking over institution affiliated or non affiliated is regulated by the provisions of clause 14 of section 4(1) of the Bihar State Universities Act alone. From the perusal of the 2nd proviso to clause 14 of section 4(1) it is apparent that Legislature in its wisdom empowered the University to take a decision if any **irregularity** is found in any appointment in an institution taken over by the University. There is a clear cut distinction between



irregularity an illegality. Irregular can be made regular but the illegal cannot be made legal. A few years before this enactment the Hon'ble Supreme Court in the case of R.N. nanjundappa v T.Thimmaiah and another reported in **AIR 1972 SC 1767** categorically laid down the law, **“if the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment.”**(paragraph 26 at page 1772)

It seems that the framers of the University act were conscious of the law laid down by the honourable Supreme Court and as such they have empowered the University to only cure the irregularity not the illegality.

18. In the present case the respondent number 6 and 7 were not possessing the minimum eligibility qualification for appointment same is an illegality and it goes to the root of the appointment as such the same



cannot be cured taking recourse to the provisions of section 4 (1) (14) of the Bihar state universities act 1976.

HUMANITARIAN CONSIDERATIONS

19. It may also be submitted here that illegal appointment cannot be saved even on humanitarian considerations. The law laid down in the case of **State of M.P. and Anr v. Dharam Bir(1998) 6 SCC 165** relied on in the case of **State of Gujarat and ors V Arvindkumar T. Tiwari and Anr(AIR 2012 SC 3281)** the plea of humanitarian grounds has been rejected and held as under

“ The courts as also the tribunal have no power to override the mandatory provisions of the Rules on Sympathetic Consideration that a person though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the government under article 309 of the Constitution.



20. It may also be submitted that in the case of **state of Orissa and another versus Mamta Mohantii, (2011) 3 Scc 436** the honourable Supreme Court has held that any appointment made in contravention of the statutory requirement i.e eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

21. It has also been held that a person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. **Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity**

The Mahasangh Judgement

22. The honourable Supreme Court while considering the report of honourable Justice Agrawal commission in paragraph number 26 of the judgment categorically held, “so far as the qualifications of the



various categories of holders of teaching and non-teaching posts are concerned, the commission has gone into contents of the various statutes prescribing qualifications for different teaching pursuant to the recommendations of University Grants commission which were adopted by the universities with implementation of the revised scales of pay.

23. In paragraph number 27 of the judgement it has been said, “in our opinion, decision on absorption of the existing teaching and non-teaching staff of the affiliated colleges, which are taken over as constituent colleges, is within exclusive jurisdiction of the universities concerned. This is an individual cases, with due regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualification, if any, for the teaching and non-teaching posts, is required to be taken by the University based on the findings in the report of Justice Agrawal commission and in the light of the legal position explained in this judgement.



24. Further, in paragraph number 72 of the judgment it has been said, “in some of the written objections, certain mistakes of names and descriptions of employees in the report of the commission have been pointed out. Such mistakes in the report of the commission May be proud by the affected employees to the notice of the university’s concern. It would be open to the universities, for the above limited purpose to undertake enquiry and verification of the records to rectify and rely upon the report of the commission with the necessary corrections only with regard to the names and description of the employees.

25. The conclusions of the honourable Supreme Court in the Mahasangh judgment are recorded in paragraph number 73 of the judgment. The conclusion 6 of the judgment reads as follows

“a large number of objections to the report of the enquiry commission filed before us by associations of employees and individuals pertain to the alleged lack of prescribed qualifications for the posts on which they are



working. All those objectors have not been recommended for absorption in the report of the enquiry commission. Decision in individual cases, with due regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualifications, if any, for the teaching and non-teaching posts, shall be taken by the universities based on the findings in the report of justice Agrawal commission and in the light of the legal position explained above.”

26. From the reading of the various paragraphs of the aforesaid Judgement it is abundantly clear that Hon’ble Supreme Court categorically directed that the if someone has been wrongly placed in annexure-IV A within the sanctioned and recommended strength, he is not holding the requisite qualification for appointment in terms with statute and the findings of the Justice Agrawal commission then the mistake has to be rectified and absorption of such a person has to be



refused and persons wrongly described under RII/NR category has to be absorbed.

Absorption of RII/NR category

27. Hon'ble Justice Agrawal commission itself stated that the list annexure-IV A has not been confined to the number of sanctioned posts because in the event of refusal of absorption of the person holding sanctioned post, persons from the said list could be absorbed

28. Honourable justice S.B. Sinha commission in its order dated 19.11.2015 in claim petition number 694 of 2013 (Niwas Jha vs Lalit Narayan Mithila University has shifted the claimant from R-II list to R-I list{ Annexure-5 page 64 relevant at page 70 last but one paragraph}

“in that view of the matter, Sri Anisur Rahman and Dr.Niwas Jha having been appointed on 30.4.19 85 and 5.12.1985 , respectively must be held to be entitled to be absorbed in the services of the University, although they were placed in RII/NR category in the said report.



29. It would be evident from annexure 6 page 72 that the honorable S.B. Sinha Commission allowed the claim of Satish Chandra Thakur and Rajkumar Choudhary even though they were described under RII/NR category for the region Ashok Kumar Jha and Pradip Jha have been wrongly placed in the RI category, they were lacking qualification to hold the post on the date of appointment and the Claimant Satish Chandra Thakur and Sri Niwas Jha were holding the qualification on the date of appointment.

30. It is evident from Annexure-8 to the supplementary affidavit filed by the Petitioner that Hon'ble Justice S.B.Sinha Commission ordered absorption of Jai Krishna Prasad Yadav even though he was described under RII/NR category and refused the absorption of Lalan Pd Adri who was described under sanctioned category in the report of Justice Agrawal Commission.

31. The Petitioner Radha Govind Jha CWJC No 18285 of 2017 and Sushil Kumar Jha (CWJC No



178 of 2018) are entitled for absorption for the following reasons:-

1. Bibhuti Nath Jha and Ambrish Kumar Jha Respondent No 6 & 7 were not eligible in terms with the statute, findings of the Agrawal Commission and the legal positions explained in the Mahasangh Judgement.
2. Bibhuti Nath Jha was not holding post graduate qualification in relevant subject.[finding at page 40 of the Agrawal Commission report.]
3. Bibuti Nath Jha cannot be eligible on the basis of his Ph.D. degree unless and until obtains high second class in master's degree in the relevant subject.[finding at page 53 of Agrawal Commission report.
4. Ambrish Kumar Jha was not holding the basic minimum qualification as laid down in the University statute of 1983.
5. Sri Ambrish Kumar Jha cannot be eligible on the basis of his Ph.D degree until and unless he obtains 2nd class in post graduate degree.



[finding at page 53 of Agrawal commission report]

6. As per the report of Justice S.B.Sinha Commission the only way to save the appointment of Ambrish Kumar Jha is to treat his date of appointment as 9.11.1985 if that be so he would be junior to Sushil Kumar Jha whose date of appointment is 18.1.1985.
7. Having accepted this position and saved his appointment on that basis Ambrish Kumar Jha cannot turn around and take a different view.
8. In view of 2nd proviso to sub section 14 of section 4(1) of the Bihar State Universities Act 1976 the University may condone the irregularity which does not go to the root of the appointment, however, lack of eligibility qualification is an illegality which cannot be cured.
9. In view of the directions of the Hon'ble Supreme Court in paragraph No 72 and 73(6) of the Mahasangh Judgment [(2005) 9 Scc



129] the Petitioners are entitled to be absorbed.

9. Mr. Subodh Kumar Jha appearing on behalf of the respondent No. 6 Bibhuti Nath Jha has filed written notes of argument in support of the case of respondent No. 6, which is reproduced hereinbelow._

In both the writ petitions the identical issues are involved as such the common written submission is being filed in the following manner:-

1. That, the petitioners in CWJC No. 18285/2017 and CWJC No. 178/2018 (Sushil Kumar Jha) have filed the aforesaid writ petitions questioning the legality and validity of the order dated 24.5.2015 passed by the Hon'ble Justice S.B. Sinha (Ret.) Commission, New Delhi in claim Petition No. 1146 of 2013 and prays for the following reliefs:-

1. For issuance of an order/direction for writ including the writ in the nature of certiorari quashing the order dated 24.05.2015 passed in Claim Petition



No. 1146 of 2013 by Hon'ble Justice (Retd.) S.B. Sinha Commission.

ii. For issuance of an order direction for writ including the writ in the nature of certiorari quashing the order dated 08.07.2016 passed in Claim Petition No. 1146 of 2013 by Hon'ble Justice (Retd.) S.B. Sinha Commission.

iii. For issuance of an appropriate declaration holding that the petitioner was entitled for absorption as a Lecturer in Economics in MLSM College, Darbhanga.

iv. For issuance of an appropriate declaration holding that the Respondents No.6 and 7 were not entitled for absorption as a Lecturer in Economics in MLSM College, Darbhanga as per the Judgment of the Hon'ble Supreme Court in C.A. No. 6098 of 1997 and the report of Hon'ble Justice (Retd.) S.C. Agrawal Commission.

v. For issuance of an order/direction for writ including writ in the nature of Mandamus commanding the Respondents to absorb the petitioner



on the 5th post of Lecturer in the Department of Economics in MLSM college, Darbhanga.

vi. For issuance of an order/direction or writ including writ in the nature of mandamus commanding the Respondents to grant all the consequential benefits of absorption to the petitioner such as pay, increment, seniority, salary, seniority and promotion.

vii. For issuance of an order/direction for writ including writ in the nature of mandamus commanding the Respondents to make payment of unpaid arrears of salary to the petitioner with the interest on the delayed payment.

viii. For any other relief(s) to which the petitioner may be found entitled in the facts and circumstances of the present case.

On perusal of the reliefs as prayed by the petitioner it is evident that the petitioner is praying for absorption on the Vth post of Lecturer in the Department of Economics in MLSM College, Darbhanga, accordingly the petitioner is not seeking any reliefs against the Respondent No.6, whose



services has been absorbed by the Respondent University U/S 4(1)(14) of the University Act on 28.02.2005 after the Mahasangh Judgment as per the decision of Syndicate dated 10.02.2005 against the IIIrd sanctioned post in the Department of Economics in MLSM College, Darbhanga. Since then the Respondent No.6 is working on the post as Assistant Professor/Associate Professor from the last 35 years to the best of his ability and full satisfaction of the students and higher authorities and now the Respondent No.6 is going to be retired in three years.

2. That, it is stated that the petitioners of both the writ petitions were working on the post which were recommended after the cut-off date fixed by Hon'ble Justice S.C. Agrawal Commission in Page-15 which clearly stipulates that "in the light of recommendation made by these two committee, the Govt. of Bihar on Dec. 18, 1989 passed an order regarding absorption of the teachers appointed and working against sanctioned post and post which were recommended up to April 30, 1986 in the colleges converted as constituent colleges under the Bhagalpur, Magadh,



Bihar, L.N.M. and Ranchi Universities in the Ivth Phase. Keeping in view of the fact that the petitioners were not found appointed and working against sanctioned post and posts which were recommended upto 30.04.86 as such their names have not been finds place in any Government Notification issued for absorption of teachers i.e. No.181(C) dated 19.12.89 and notification No. 36(C) dated 24.02.1990, hence they were not getting salary from the date of their appointment and they were found under the category of R.-II/N.R. by the Hon'ble Justice S.C. Agrawal Commission in its report which has been accepted by the Hon'ble Supreme Court in Mahasangh Judgment reported in 2005 (9) SCC Page-129 and on that ground alone both the writ applications seeking absorption contrary to the Hon'ble Justice Agrawal Commission report is fit to be dismissed.

3. That, it is also stated that the petitioner has also not made the Respondent No. 6 as Opposite Party before the Hon'ble Justice S.B. Sinha Commission, which will be evident from the order dated 24.05.2015 passed in Clam Petition No. 1146/2013 as



contained in Annexure-4 to the main writ application. The Hon'ble Justice S.B. Sinha Commission in the order dated 24.05.2015 has said that:-

“The claimant claims seniority against Sri Bibhuti Nath Jha also on the premise that he, although has appointed against sanctioned post on or about 19.03.1983, but became eligible therefore only in the year 1990, Sri Bibhuti Nath Jha has not been impleaded as party in these proceedings.

In that in view of the matter, it is not possible for this Commission to consider the case of Sri Bibhuti Nath Jha having regard to the fact that in the event, Sri Radha Govind Jha succeeds in his claim petition, he shall be adversely affected”.

However, the Hon'ble Justice S.B. Sinha Commission after considering the matter at length in the light of the judgment passed in Mahasangh case and as much as the report of Justice Agrawal commission, dismissed the claim of the petitioner Radha Govind Jha and Sushil Kumar Jha with the following observation:-



“If, thus Sri Amrish Kumar Jha was treated by the previous Commission, as ask by the University to have been appointed against R-1 post, he could not have ranked junior to Sri Radha Govind Jha, who was in the R-II/N.R. category unless and until a clear finding is arrived at that Sri Amrish Kumar Jha, prior to 01.10.1988 or otherwise, in law, could not have held the post of Lecturer in the Department of Economics”.

4. That, in the order dated 24.05.2015 the petitioner has raised all the objection including the qualification and eligibility in terms of the report of Justice S.C. Agrawal Commission by referring certain page no. and in response to the submission made by both the petitioners the Hon’ble S.B. Sinha Commission has observed that **the difficulty on the part of the Commission arises, having regard to the fact that previous Commission in its report has for the purpose of giving certain benefits to a certain class of a teacher, in equity, laid down certain principles which have not been interfered**



**with by the Hon'ble Supreme Court of India in the
case of Mahasangh.**

It has been stated by this commission on a number of occasions that it is for the Hon'ble Supreme Court of India, ultimately to issue suitable clarification in this behalf".

Accordingly the claim of the petitioner has been considered by the Hon'ble Justice S.B. Sinha Commission and dismissed the claim keeping in view of the fact that the petitioner Sri Raha Govind Jha and Sushil Kumar Jha were in the R-II/N.R. category and the report of the previous Commission by which certain benefits to a certain class of teachers, in equity laid down certain principle and the same has not been interfered by the Hon'ble Supreme Court of India in the Mahasangh Case.

5. That, it is submitted that the Hon'ble Supreme Court of India in Civil Appeal No. 2703/2017 disposed of on 31.08.2017 has been pleased to passed an order in paragraph No. 20 regarding acceptance of favourable direction given by Hon'ble Justice S.B. Sinha Commission and to be acted upon by the State



Government and as much as, they implemented forthwith without any further delay within the outer limit of three months.

However, the Hon'ble Supreme Court of India in the said judgment in the para-21 has been pleased to give the liberty to the incumbents not found fit for acceptance by the Commission. The order of the Hon'ble Supreme Court is as follows:-

Para-21 *“With respect to the cases of incumbents not found fit for acceptance by the Commission. They are free to approach the concerned High Court, as prayed, for redressal of their grievance, if they so desire. In case petitions are filed before the High Courts, it is expected that petitions would be dealt with as expeditiously as possible preferably within a period of one year”.*

6. That, it is submitted that the Hon'ble Supreme Court in the judgment dated 31.08.2017 in paragraph No. 13 and 14 has been pleased to observe that-

Para-13- *“This court has directed to consider the individual cases of the concerned employees to the Commission. This Court has referred to Section 4*



(1) (14) of the Bihar University Act 1976 and observed in the case of Mahasangh (Supra) as under:

“72. In some of the written objections, certain mistakes of names and descriptions of employees in the report of the Commission have been pointed out. Such mistakes in the report of the Commission may be brought by the affected employees to the notice of the universities concerned. It would be open to the universities concerned. It would be open to the universities, for the above-limited purpose to undertake enquiry and verification of the records to rectify and rely upon the report of the Commission with the necessary corrections only with regard to the names and descriptions of the employees.

73. In view of this judgment and the directions made herein to the university to take a final decision based on the report of the Enquiry Commission, all the applications for impleadment as parties and objections filed to the enquiry report are rejected. It is for the university to take a final decision concerning the individual employees. For the same



reason, no further orders are required on the interlocutory applications seeking certain directions pending the appeal and for modification of earlier orders made. Other interlocutory applications also need no further directions or orders. They all stand disposed of.”

Thus, Justice Sinha has observed that University was empowered to issue the necessary orders. The only grievance of the claimants was that they were not getting their salary on the basis of 5th and 6th Pay Revision Committee of the University Grants Commission (UGC). Only certain claimants’ cases were accepted by Justice Sinha Commission and it has been ordered that respondents to ensure that the claimants be paid their salary as per the law from the date on which their services had been regularized.

14. In view of the factual matrix, the orders of accepting cases passed by Justice Sinha Commission are fully in accordance with law and the exercise undertaken by Justice Sinha cannot be said to be in violation of either the Reports of



Justice Agrawal or the decision of this Court in Mahasangha case (supra). It was the decision in the case of Mahasangha (supra) that cases of individuals were required to be examined and thereafter, under the aforesaid terms of reference, Commission was required to decide individual cases. Thus, we find that the objections raised by the State of Bihar and the State of Jharkhand, refusing to accept the orders, cannot be accepted.

On perusal of the aforesaid observation made by the Hon'ble Supreme Court of India in which Para 72 & 73 of the Mahaangh Judgment has been reproduced and on perusal of the same it is evident that the Hon'ble Supreme Court has given the liberty to the concerned University to only correct the mistake only with respect to the names and description of the employees in the report of the Hon'ble Commission. The Hon'ble Supreme Court has further been pleased to take final decision based on the enquiry report and rejected all the objection filed against the said enquiry report including the



objections filed by petitioners of both the writ petitions.

7. That, it is stated that since the Respondent No.6 has been found eligible for absorption for Lecturer in the Department of Economics from 1990 as he obtained Ph.D. degree in the year 1990. He therefore, became eligible for appointment in 1990. The case of the Respondent No.6 has been dealt with in page-100, 101 & 102 of the Vol-2 of the Justice Agrawal Commission report, accordingly the Respondent University keeping in view of the finding of Justice S.C. Agrawal Commission report which will be at the page no. 128, Annexure-III-A, where the name of the Respondent No. 6 stands at SI. No. 39 appointed against the sanctioned post and page no. 132 Annexure-III B and page 135 Annexure-IVA, the Respondent University in exercise of power U/S 4(1) (14) of the University Act after Mahasangh Judgment, absorbed the service of the Respondent No. 6 against the sanctioned post from the date of eligibility as per the recommendation of Hon'ble Justice Agrawal Commission report as much as Mahasangh Judgment.



8. That, it is submitted that so far as the observation made by Hon'ble Justice S.c. Agrawal Commission in volume-1 page no. 40 & 41 which is continuation of the provision as enumerated in 1978 statutes. Even as per the observation made by the Hon'ble Justice S.C. Agrawal Commission it is mentioned that "At page No.41 that this would show that in Bhagalpur University the degree in Economics and Rural Economics were treated as equivalent for the purpose of appointment on the post of Lecturer in Economics". Keeping in view of the observation and finding recorded in its report the teachers having Master degree in Rural Economics have been appointed and absorbed in service in the Department of Economics in all over the State in all the Universities i.e. under Bhagalpur University, B.N. Mandal University, Mithila University and other Universities and they are working and getting all the service benefits as such as the case of Respondent No. 6 cannot be discriminated.



9. That in volume-1 page-43 Hon'ble Justice Agrawal has dealt with 1983 statutes. Thereafter Hon'ble Justice Agrawal commission in page no.49 dealt with the Government Resolution dated 09.05.1988 by which certain relaxation has been given in the qualification of the teacher who were not possessing the requisite qualification on the date of appointment. The Hon'ble Justice Agrawal Commission has also considered the date from which period of four years for improving of qualification would be counted. Hon'ble Justice Agrawal Commission has also given the relaxation of all such teachers who were appointed being the appearing candidate for the Post Graduate Examination but the result had not been declared on the date of appointment. The result was declared after few months. All such appointments according to the Agrawal Commission can be treated as possessing the requisite qualification on the date of result of Post Graduate Examination declared with that end view, date of their eligibility for consideration for absorption is being treated on which they obtained



Post Graduate degree qualification on the date of publication of result.

10. That, it is necessary to submit here that under terms of the reference no.3 the Commission has given certain relaxation to the teaching and non-teaching employees or their absorption in qualification prescribed by the Act and statute. The Hon'ble Commission has, however, under terms of preference no.4 considered the Government resolution dated 09.05.1988 as contained in Annexure-E to this application at page-65, 66 and 67 in which observed that at page 66 volume-1 "keeping in view of the nature of the post on which they were appointed so that person appointed against sanctioned post, who did not possess requisite qualification on the date of appointment but become eligible for consideration for absorption, subsequently are placed at the bottom of that category of the person appointed against sanctioned posts and teachers appointed against posts recommended upto the cut-off date, on the date of appointment who did not possess the requisite qualifications but became eligible for consideration



for absorption subsequently are placed at the bottom of the category of teachers who were eligible for absorption on the posts recommended upto the cut-off date. It would be more reasonable and equitable to construe the guidelines in this manner. Such a construction would not be inconsistent with the object underlying the guidelines contained in the Resolutions dated April 4, 1988 and May 9, 1988. In preparing the list of teachers who were eligible for absorption for the purpose of answering this reference, the teachers who did not possess the requisite qualifications on the date of appointment but became eligible subsequently have been placed keeping in view the nature of the posts on which the appointment was made.

11. That, it is stated that considering the terms of reference as referred by the Hon'ble Supreme Court of India the Hon'ble commission has considered the case of the M.L.S.M., Darbhanga under the terms of reference no.2 regarding the post either sanctioned or recommended prior to cut-off date and under terms of reference no.3 considered the affidavit filed by the



University and at page-99 in the bottom considered the case of the teachers regarding qualification, who were working in the light of statute applicable at the time of appointment. The Hon'ble Agrawal Commission has considered the case of the Respondent No.6 at page No. 100 SI. No. IV and found the Respondent No.6 eligible for appointment in 1990 in page no.102 the Hon'ble Justice Agrawal Commission has found the Respondent No.6 eligible for appointment as Lecturer from 1990 in the light of the statute applicable at the time of his appointment.

The finding recorded by the Hon'ble justice Agrawal Commission report at page-102 has been accepted by the Hon'ble Supreme Court in toto and accordingly the University has issued the notification of his absorption U/S 4(1)(14) of the University Act from the date of his eligibility in the year 1990.

12. That, it is submitted that under the terms of reference no.4 Hon'ble Justice Agrawal Commission has prepared a chart in which in Annexure-3A Page-128 name of the Respondent No. 6 is at Sl.No. 39 against the sanctioned post whereas



the name of the petitioner Radha Govind Jha and Sushil Kumar Jha stands at Sl. No. 45 & 42 respectively against R-II/N.R. which is non-recommended/recommended after cut-off date of 30.04.86.

13. That, in Annexure-3B at page No. 132 the list shown to the teachers who did not possess the requisite qualification on the date of appointment but become eligible after appointment. In the said list the name of Respondent No. 6 stands at SL.No.12 in the subject of Economics with the date of eligibility 1990.

14. That, like wise in Annexure-IV of the Hon'ble Justice Agrawal Commission report, which deals about the teaching staffs who can be considered for absorption. At page 135 the name of the Respondent No. 6 stands at Sl. No. 3 in the Department of Economics, appointed against sanctioned post, whereas the name of the petitioner namely Radha Govind Jha and Sushil Kumar Jha Stands at Sl. No. 7 & 8 respectively with remarks " no payments made after conversation in the aforesaid view of the matter.



The case of the petitioner which has not been found fit for absorption either by the Hon'ble Justice Agrawal Commission report, affirmed by the Hon'ble Supreme Court of India in Mahasangh Judgment or by the Hon'ble Justice S.B. Sinha Commission report affirmed by the Hon'ble Supreme Court of India in Civil Appeal No. 2703/2017 hence the writ petition is fit to be dismissed with cost".

15. That, it is necessary to state here that even as per the qualification prescribed for appointment of a Lecturer in the Department of Economics by the University Grant Commission, the Commission has prescribed the subject Code of Economics, which will be evident from application invited for N.E.T. 2001. On perusal of same it will be evident that the subject Economics includes, Rural Economics.

16. That, now coming to the facts of the case it is stated that the name of the petitioner has neither been find place ion the government notification bearing No. 181 (c) dated 19.12.89 and notification No. 36 (c) dated 24.02.1990. Since the petitioner was not found working by the different committee so constituted by



the Respondent State time to time relying upon which the said notification was issued as such the petitioner has not received any salary from the University till date. Even the services of the petitioners have not been absorb in the college i.e. M.L.S.M. College, Darbhanga whereas the Respondent No. 6 is working as Regular employee rather they have been absorbed under the Tripartite settlement in other college later on same has been withdrawn.

17. That, so far as the case of the Respondent No. 6 is concerned it is stated that the Respondent No. 6 was appointed by the competent authority on 19.03.1983 in the Department of Economics and his name has also been approved by the then College Service Commission in the Department of Economics against the IIIrd sanctioned post U/S 2 Sub-Section 11 of Bihar College Service Commission Act, 1976 on 09.08.1986. Thereafter the Respondent No. 6 did his Ph.D in the year 1990. the name of the Respondent No. 6 has also find place in three men committee report, government notification bearing No. 181 (c) dated 19.12.1989 and as much as the



Respondent No. 6 has received salary regularly and his service has been absorbed by the University after the Mahasangh Judgment based on Hon'ble Justice Agrawal Commission report U/S 4(1)(14) of the University Act and now the Respondent No. 6 has also promoted on the post of Associate Professor w.e.f. 06.11.1998 under the Merit Promotion Statute by notification dated 27.04.2011.

18. That, it is stated that after the absorption made by the University under Section 4(1)(14) of the Respondent No. 6 vide Notification dated 28.02.2005, the Respondent No. 6 had also moved before this Hon'ble Court for shifting of date of his absorption from 1990 to 20.03.1983 in CWJC No. 478 of 2007 stating inter alia that the Respondent No. 6 having qualified for the post of Lecturer in the Department of Economics being M.A. with Gold Medal, applied against M.L.S.M., Darbhanga and appointed on 19.03.83 and joined on 20.03.1983 after due process of selection. Thereafter their services have been approved by the Bihar College Service Commission on 08.08.1986. The Respondent No. 6 was claiming



seniority on the decision of the academic council of Bhagalpur University, by which it was decided as Degree in M.A. degree in Rural Economics are entitled to teach economics and are entitled for appointment of Lecturer in the Department of Economics.

19. That, it is stated that the Respondent No. 6 has also placed on record a judgment reported in 2001(7) Scale, Tariq Islam Vs. Aligarh Muslim University, by which the Hon'ble Supreme Court held that *"this Court stated that normally, it is a wise and safe for the course, who leave the decision of a academic matter, to experts, who are more familiar from the problem, they faced then the court generally are area of interference by the court would be limited"*

20. That, in the aforesaid writ petition the Respondent State had also filed their Court Affidavit in which they admits that the Respondent No. 6, obtained Ph.D. degree in subject in the year 1990, therefore, the relevant date of absorption is notified as 1990.



The aforesaid CWJC No. 478/2007 has finally been heard and disposed of on 12.02.2018 with a finding recorded in Para-5 to the extent that *“the matter has attained finality by the order of Supreme Court which has accepted the recommendation of report submitted by Justice S.C Agrawal Commission and in terms thereof as per the recommendation itself his services have been regularized w.e.f. 1990. Once the same has been done, it cannot be interfered much less by this Court”*

21. That, it is submitted that even in L.N.M. university and other Universities the service of Lecturer in Department of Economics have been absorbed who are holder of Master Degree in rular Economics, namely:

- i) Manindra Kumar Singh
- ii) Mithila Nand Jha
- iii) Md. Muslim
- iv) Sri Uday Kumar Singh
- v) Yogendra Prasad Singh
- vi) Kiran Akhouri Verma



Whose names were also finds in Hon'ble Justice S.C. Agrawal Commission report in different volumes and different pages. Accordingly the case of the Respondent No. 6 was also considered and was absorbed in terms of Section 4(1)(14) and in compliance of the Mahasangh Judgment.

22. That, it is submitted that any part of the report submitted by Hon'ble Justice S.C. Agrawal Commission cannot be taken in isolation, even in the reply given in the terms of reference No. 3 from Page 97 to 102 of Vol. II of the report and as much as reply to term of Reference No. 4 mentioned in Annexure- IIIA, IVA cannot be ignored on the basis of the observation made in page-40 & 41 of Vol. I of the said report dealing with terms of Reference No. 3. Even the Page-40 & 41 of Vol. I of the said report accepts that in Bhagalpur University the degree in Economics and Rural Economics is treated as equivalent for the purpose of appointment on the post of Lecturer. However, it is submitted that in Vol. II page-101, the Hon'ble Justice Agrawal has observed that the teacher in the Department of Rural



Economics could not be considered for promotion on the higher post in the Department of Economics. It does mean that the M.A. in Rural Economics are eligible for appointment in the Department of Economics in the Bhagalpur University.

23. That, in the facts and circumstances stated above it is crystal clear that the prayer made by the petitioners challenging the order of Hon'ble Justice S.B. Sinha Commission dated 24.05.2015 and as much as for absorption against the fifty recommended post and seniority over the Respondent No. 6 is wholly misconceived which has already been set on rest by the Hon'ble Supreme Court of India in Mahasangh Judgment reported in 2005(9) SCC 129 and also by the recent Judgment of Hon'ble Supreme Court of India passed in Civil Appeal No. 2703/2017 dated 31.08.2017, specially in Para-13 and 14 of the said judgment and as such the said writ petitions are fit to be dismissed with cost.

10. Mrs. Nivedita Nirvikar appearing on behalf of the respondent No. 7 has also filed written notes of argument in support of the case of respondent No. 7, which is also reproduced hereinbelow.



a) The Petitioner is aggrieved by the rejection of his claim by order dated 24.5.2015 and rejection of the Review application dated 08.07.2016 passed by the Hon’ble Mr. Justice S.B. Sinha Committee.

b) **The Comparative Chart**

PETITIONERS

Radha Govind Jha Appointed 04.04.1986 Joining 04.04.1986 Proceeding is not valid	Sushil Kumar Jha Appointed 18.01.1985 Joining 19.01.1985 19.11.1985 Two date of joining are mention in second proceeding
Hon’ble Agarwal Commission identified appoint against R-II/NR Posts	Hon’b’ble Agarwal Commission identified and appoint against R-II/NR posts.
University Three Men Committee enlisted after cutoff date i.e. after 30.4.1986	University Three Men Screening Committee enlisted after cut off date i.e. after 30.4.1986
Hon’ble Sinha Commission Consider petitioner name against R-II/NR Post	Hon’ble Sinha Commission consider petitioner name against R-II/NR posts
	No requisite qualification at the time of appointment improved



	qualification 1993 much latter the improvement of Respondent.
The Hon’ble S.B. Sinha Commission dismissed the claim petition 1146 of Radha Govind Jha in its order dated 24.5.2015	Hon’ble Sinha rejected the absorption of Sushil Kumar and suggested petitioner to ventilate his grievances before appropriate forum.
The petitioner again approached for review with I.A.- 87 in S.B. Sinha Commission but Hon’ble S.B. Sinha Commission again dismissed I.A.-87 on 08.07.2016	The petitioner had not impleaded the respondent in S.B. Sinha Commission. He had not filed I.A. in Supreme Court of India. He has no right to file case against respondent Ambrish Kumar Jha.

RESPONDENT

Ambrish Kumar Jha

Appointed on 15.10.1984 on 5th
Recommended post comes under purview of cut-off dated i.e. 31.4.1986

**Joining
15.10.1984**

Obtained 43.2% marks at P.G. Examination in the subject of Economics. Result published on 31.07.1981.

Enhanced marks having 47.3% on 09.11.1985 obtained Ph.d on 01.01.1988.



The University Three Men Screen Committee enlist Respondent name on 5th recommended post which comes under 30.04.1986 cut-off date.

The respondent name was mentioned in government order 36 'C' which published on 24.02.1990.

The Hon'ble S.C. Agarwal Commission identified and appoint against R-I post and found eligible on 01.10.1988.

The University absorbed the service of respondent against (R-I) post w.e.f. 01.01.1988 on 28.02.2005.

C) The respondent had obtained Ph.d degree on 01.10.1988. It was just five month after issued of resolution 133/C date 09.05.1988.

Respondent Ambrish Kumar Jha comes in purview of different categories of relaxation which are mentioned in Hon'ble Agrawal Commission report Volume-I especially at page 53 bottom. Above principle is applicable in the case of Ambrish Kumar Jha and his date of appointment cannot shifted from 15.10.1984 to 09.11.1985, for fulfilling the statutory provision he had improved M.A. result and obtain Ph.D degree on 01.10.1988.



Hon'ble Justice Agrawal Commission has dealt different categories of relaxation in educational qualification at page 53-54 and further more dealt with shifting of the dates of eligibility in respect of various categories of teachers at page 66-67 in volume I.

At page 53 bottom of Hon'ble Agrawal Commission report it has stated that "Person appointed under the 1978 or the 1983 statutes, who were not having a second class master's degree examination in the subject and had secured less than 45% marks in the master's examination but who were having Ph.D. degree on the date of appointment or have obtained a Ph.D degree after appointment but before May 9, 1988, would be treated as possessing the requisite qualification on May 9, 1988, the date of the resolution of the government of Bihar whereby an opportunity was given to teachers who did not possess the requisite qualification to improve their qualifications by obtaining Ph.D. degree or high second class post graduation before May 9, 1988 would be treated as possessing the requisite



qualification on the date they obtained the Ph.D. degree or high second class post graduation for purpose of absorption of the services, the placement of such lectures in the list of teachers in the particular subject will be as per the date on which they can be treated as possession the requisite qualification.”

Before word has printed twice. There is no link between the word before and the sentence the date they obtained Ph.D degree or high second class. It is typing error or clerical error. It should be ‘after’.

At page 51 (second paragraph) Hon’ble Justice Agrawal stated “ Another question that arises is as to the date from which the period of four years for improving the qualification should be counted, on behalf of the State Government, it has been urged that the said period of four years should be counted from the date of conversion because absorption of services of teachers has to be with effect from that date or at any rate the said period may be counted with effect from May 9, 1988, the date of the resolution and only those teachers who have improved their qualification



within the period of four years from these dates can be considered. A perusal of the said resolution dated May 9, 1988, however shows that it requires a decision regarding absorption of teachers who possess the qualifications prescribed by the university Grants Commission first and there after teachers who had secured less than 52.5% marks were permitted to continue on ad-hoc basis subject to their attaining the prescribed marks or Ph.D. degree within four years. This shows that the period of four years has to be counted after the absorption of the teaches possessing the qualification prescribed by University Grants Commission, since no final order for absorption has been passed in respect of any teacher the said period of four years for improving the qualification has not commenced and matter of absorption has to be considered now. In the circumstance teachers who have improved their qualifications by obtaining the qualifications of the prescribed marks of 52.5% in the post graduate degree examination or have obtained Ph.D. degree can be considered for purpose of absorption.



For clearance of before May 9, 1988 and after May 9, 1988 in Hon'ble Agrawal Commission report, the resolution no. 133/C dated 09.05.1988 are observable.

“The teacher who possess the requisite qualification prescribed by the university Grants Commission will be absorbed in the first instance against the posts which are to be created on the basis of above computation or the posts recommend up to 30.04.1986, whichever is less and if after their absorption, there are posts still available then teachers who have received less than 52.5% marks will be allowed to continue on an ad-hoc basis with the condition that within 4 (four) years they obtain the prescribed percentage marks for eligibility or get Ph.D. the name of such teachers, without any consideration to the date of their appointment, will figure at the end of teacher who has been absorbed on the basis of having requisite qualification. Such teachers will continue to get their pay at first stage of the pay scale till they have obtain the requisite qualification and their seniority will be determined on



the basis of the above date treating it as a date of appointment. If they fail to improve their qualification within the stipulated period, their services will be automatically terminated.”

This resolution 133/C dated 09.05.1988 Government of Bihar shows the guideline for acquiring of requisite qualification within four years after issuing the letter on 09.05.1988. the contention of before and after is cleared.

In this connection, the Hon’ble Justice S.B. Sinha in its order dated 19.11.2015 regarding statutory qualification of M.L.S.M. Colege under (Lalit Narayan Mithila University) has cleared the meaning of this paragraph and has stated “those teachers who did not have 2nd class Master’s degree, meaning there by had less than 45% marks in Master’s degree, the said report says that they would be deemed to have attained eligibility for absorption on (i) 09.05.1988 if they had obtined Ph.D degree at the time of appointment or before 09.05.1988 and (ii) the date they obtained Ph.D degree in cases where Ph.D degree was obtained after 09.05.1988 (*See*



*page 53 bottom Hon'ble Agrawal Commission report
volume-I)*

The resolution no. 133/C was issued on 09.05.1988 where an opportunity was given to those teachers who did not possess requisite qualification at the time of appointment were allowed to improve qualification within four years either acquiring high second class master degree or obtain Ph.D. after observation of resolution no. 133/C it is cleared that the grace of four years was given after issuing the letter no. 133/C dated 09.05.1988 (see the true copy resolution no. 133/C date 09.05.1988)

11. Mr. Nadim Seraj appearing on behalf of the University has also filed written notes of argument in support of the case of University, which is also reproduced hereinbelow.

“Pursuant to the verbal observation of the Hon'ble Court on 12.9.2018 after the conclusion of the hearing of the aforesaid cases, the following written arguments on behalf of the University are being submitted. Moreover, the counter affidavit and supplementary counter affidavit have also been



filed stating the factual position of the cases referred above:-

1) That it is humbly submitted that the Hon'ble Supreme Court in the case of State of Bihar Versus Bihar Rajya MSES KK Maha Sangh reported in (2005) 9 SCC 129 opined that the decision regarding absorption of the existing teaching and non-teaching staff of the affiliated colleges, which are taken over as constituent colleges, is within exclusive jurisdiction of the universities concerned. Decision is individual cases, with due regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualification, if any, for the teaching and non-teaching post, is required to be taken by the University based on the findings in the report of Justice Agrawal Commission and in the light of the legal position explained in the Mahasangh Judgment (Supra).



2) That it is humbly submitted that for identification of teachers and non-teaching employees who are entitled to absorption on the basis of government resolution dated 19.8.1986 and the subsequent agreements entered into between universities and the concerned affiliated colleges, the commission after a thorough enquiry and probe into records of the various colleges gave three separate lists which are as follows:-

(i) teachers appointed against the sanctioned posts have been placed in the order of the date they became eligible for consideration;

(ii) list of teachers appointed against posts for which the recommendations were sent by the universities to the State Government upto the cut-off date are arranged in the order of the date they became eligible for consideration, and

(iii) list of teachers appointed against posts for which recommendations were sent by



the universities to the State of Bihar after the cut-off date i.e. 30.4.1986 and those for which no recommendations were sent by the universities.

3) That it is humbly submitted that the Supreme Court in Mahasangh judgment accepted the report of the commission so far list no. (i) containing names of employees working on sanctioned posts and list no. (ii) containing names of employees working on posts for which recommendations were sent by the universities to the State upto the cut-off and so far as list no. (iii) is concerned, the teachers, who were appointed against the posts for which recommendations were sent by the universities to the State after cut-off date i.e. 30.4.1986 or for which there were no recommendations sent by the universities, can claim no right of consideration for absorption, whatever may be the reasons for alleged delay in sending recommendations. In view of the above, since the Petitioner falls under the third category,



therefore, the Petitioner can claim no right of absorption.

4) That it is humbly submitted that in accordance with Section 4 (I) (14) of the BSU Act, the concerned universities themselves, in respect of colleges within their jurisdiction, are empowered to take a decision on the disputes regarding the validity of the appointments in the affiliated colleges and the absorption of those appointees in the constituent colleges and that in view of the non-obstante clause contained in proviso to Section 4 (I) (14), the constraints in Section 35 of the Act which provides for grant of prior approval to the creation and appointment to the posts in the affiliated colleges, will have no application to absorption of existing staff of affiliated colleges taken over by the Universities on their conversion as constituent colleges.

5) That it is relevant to note that the Hon'ble Supreme Court in Mahasangh (Supra) held that there is no conflict in the provisions



of Section 4 (I) (14) and Section 35, although each contains a non-obstante clause. They intent to override each other in the field exclusively assigned to each provision. Clause 14 of Section 4 (I) (14) of the Act operates in exclusive field of considering and taking decision on absorption of staff appointed regularly or otherwise in an institution including an affiliated or non-affiliated college which is to be taken over as 'constituent college' under a formal agreement reached between the university and the Governing Body of that college. In the matter of absorbing staff of colleges taken over, any alleged non-observance of alleged mandatory provision of obtaining prior approval under Section 35 of the Act, before creation of posts and appointments to them, would not be an impediment in the way of university to permit absorption of an employee working against a post. It may for the above purpose seek ex-post facto approval of the State Government.



6) That it is settled by the Apex Court that appointments in affiliated colleges in normal circumstances has to be with prior approval of State Government in accordance with Section 35 but subject matter of absorption of services of staff taken over shall be within exclusive jurisdiction of concerned university in accordance with law Section 4 (I) (14) of the Act. Hence, the act of University in rejecting the claim of absorption of the Petitioner in the constituent colleges is well within its exclusive jurisdiction and the Petitioner cannot question the Jurisdiction and discretion of the university in considering and rejecting the absorption of the Petitioner.

7) That the effect of non-obstante clause in Section 4 (I) (14) is that in the matter of absorption of staff of such institution/college proposed to be taken over, would be within the sole power and jurisdiction of the university concerned within whose jurisdiction the affiliated college or institution falls. On matter



of absorption of staff of taken over institutions, Section 35 requiring prior sanction or approval of the State Government for creation of posts and appointment, would not be a constraint on the power of the university. It is a different thing that the university in considering absorption of the staff of institution taken over may give due consideration to the legality/regularity or otherwise of a particular appointment but it would not be inhibited by the absence of prior sanction or approval of the State as contemplated in Section 35 of the Act. This is how the two non-obstante clauses have to be harmoniously construed and applied as giving overriding effect to each and restrict their operation within exclusive field assigned to each.

8) That it is submitted that the Apex Court in the Mahasangh judgment while recognizing the exclusive power of the universities in the matter of absorption under Section 4 (I) (14) held that the universities shall



take a decision under Section 4 (I) (14) of the Act in the matter of absorption of appointees named in list no. (ii) of the Report of the Commission, being appointees against posts for which recommendations were sent by the universities to the State up to the cut-off date in accordance with the decision of the State Government conveyed in its letter dated 19.8.1986 followed by letters dated 25.8.1986 and 12.6.1987.

9) That it is submitted that the following observation of Apex Court demolishes the case of the Petitioner:

“ The appointees mentioned in list no. (iii), being the appointees against the post for which recommendations were sent by the universities to the State Government after the cut-off date *or those working against the posts for which no recommendations were sent for approval of the State Government, have no right of being considered for absorption* - whatever may be the fortuitous circumstances



or otherwise in the matter of not sending recommendations for sanction in their cases. The negative report of the enquiry commission with regard to list no. (iii) is accepted and the universities are directed to exclude all such appointees named in list no. (iii) from consideration for absorption.”

“The universities concerned shall now complete the process of absorption of the Staff of the affiliated colleges (teaching and non-teaching) in the matter and to the extent stated above in our judgment within a period of four months from the date of receipt/production of the copy of this order.”

10) In the present case, upto the cut-off date, out of 5 appointments 3 were in sanctioned list and 2 were in the recommended list and 2 including the name of the Petitioner were in the list of not recommended, so in view of the mandate of the commission in the light of legal position laid down by the Apex Court in Mahasangh case, the claim of the Petitioner



was rightly rejected by the commission and subsequently by the Hon'ble Apex Court."

12. In the instant case the writ petitioners have challenged the absorption of the respondents No. 6 and 7 considering the decision of absorption of employee of petitioners in other college pursuant to the tripartite agreement of Federation of employee, State Government and the University, necessitated the University to file written notes of arguments to explain position of the University in the instant case. On close scrutiny of the oral argument and written notes of argument of the counsel for the petitioner in the instant case following grounds of challenge emerged;

(I) The respondent No. 6 was lacking eligibility in terms of the relevant statute dated 24th April 1978 when the respondent No.6 was appointed. He was not holding consistently good academic records. He referred to discussion of Justice Agarwal Commission to contend that minimum qualification cannot be diluted. He has also referred at different pages of the report of the Agarwal Commission to contend that qualification in the concerned subject was lacking in the case of respondent No. 6 and that cannot be diluted. Mr. Mishra submitted that the decision of the Syndicate dated 28th October, 1966 cannot be construed as



diluting the requirement of M.A. in concerned subject for appointment of teacher in the concerned subject economics as Rural Economics is only part of Economics and cannot be considered as qualification for appointment as lecturer in Economics obtaining Ph.D. will not confer any eligibility to the respondent No.6, who was lacking eligibility and qualification in concerned subject. He referred to the discussion of Justice S.B. Sinha Commission to contend that in substance Justice S.B. Sinha (Retd.) Commission has accepted contentions of the petitioners and referring to the case of respondent No.7 he highlighted in his written notes of arguments that he was lacking minimum qualification as he has obtained 47.3 per cent in M.A. and Ph.D degree by no stretch of imagination can confer eligibility in terms of 1978 and 1983 statutes. He referred to the University statute to contend that obtaining Ph.D. itself will not confer eligibility unless the individual possesses consistent good academic records as required under the concerned statutes. He also highlighted that in case of Mahasangh Case the Apex Court has granted liberty to the University to examine the qualification of individual particularly referring in paragraph 27,72 and 73 of the Judgment. Mr. Mishra in his written notes of arguments has submitted that in the matter of categorization of R2 and NR when on factual inquiry error was



noticed the teachers were re-categorized as S and R1. He referred to the case of different teachers in whose case the categorization was changed from R2/NR to S or R1 in sum substance Mr. Mishra submitted that the judgment of the Apex Court confers enough liberty to the University to take decision in the matter of absorption on verification of qualification of individual case, the University was required to see that only those teachers who were eligible in terms of University statute is considered for absorption and not absorb if not holding the requisite qualification. He also submitted that once the teachers belonging to the Rural Economics scheme are excluded then resultant vacancies would be available for the teachers categorized as R2 and NR. On behalf of the respondent No.6 in the written notes of arguments it was highlighted that petitioners were working against the post which was not recommended upto the cut off date and as such they were not entitled to absorption as they were identified as R2 and NR category by Justice Agarwal Commission and that report was accepted in toto by the Apex Court in Mahasangh Case. Secondly Mr. Jha in his written notes of arguments highlighted that respondent No.6 was not made party before the Justice S.B. Sinha Commission in claim petition. Justice S.B. Sinha (Retd.) has noted the effect of non-joinder of necessary party and as such Justice



Sinha (Retd) held out that in the absence of impleadment of B.N. Jha the claimant cannot succeed in this case. Referring to the various paragraph of Justice S.B. Sinha (Retd.) Commission in the written notes of arguments he has highlighted that Justice S.B. Sinha (Retd.) Commission has rightly dismissed the claim of the petitioner as petitioners were categorized R2 and NR and not eligible for absorption in terms of the Mahasangh case. Reference was also made in the written notes of arguments that the decision of the Apex Court in Krishna Nand Yadav case that the decision in Mahasangh Case is final and binding and accordingly Justice S.B. Sinha (Retd.) Commission report is clinching on the point of absorption of teachers including the respondent No.6. He also referred to the discussion of Justice Agarwal Commission at page 32 to contend that Economics and Rural Economics is equivalent for the purpose of appointment of lecturer. Referring to the discussion of Justice Agarwal Commission he submitted that the Commission has discussed in detail the statute regarding appointment of the lecturer and then they submitted report holding the respondent No.6 is eligible for appointment. It was also highlighted in terms of reference No. 4 to Justice Agrwal (Retd.) Commission who returned a finding that respondent No.6 at Sl. No. 39 is in (S) category whereas the petitioner Radha Govind Jha



and Sushil Kumar Jha stand at Sl. No. 45 and 42 respectively against R-II and NR and they were appointed against the post which was recommended after cut off date 30.04.1986. In the written notes of arguments it was highlighted that once the report of commission was accepted it is not open for this Court to consider the claim of petitioner. He also highlighted that in letter No. 181 (c) respondent No. 6 figures as in terms of the judgment of the Apex Court respondent No. 6 deserves absorption and he was rightly absorbed in the service of the University in exercise under Section 4 (1) (14) Mr. Jha in his written notes of argument also referred to those teachers, who were absorbed in the subject of economics and on the strength of M.A. in Rural Economics Mr. Jha in his written notes of argument also submitted that the present writ application does not merit any consideration and the writ petition deserves to be dismissed.

13. Mr. Jha in his written notes of arguments submitted that UGC notification for NET of December 2001 Economics and Rural Economics as equivalent. The said notification for NET is 2001 and further it is only for claiming NET and not as conclusive material whether Rural Economics is concerned subject or species of concerned subject economics. It may be relevant subject for lecturer Rural Economics and not for Economics.



14. Mr. Jha has placed reliance on 2001 (7) Scale 86 on the point of equivalence of qualification reliance on the judgment of Apex Court in (2001) 7 Scale 91 is misplaced and not applicable in the present fact situation.

15. On behalf of the Amrish Kumar Jha the written notes of argument was filed by Ms. Nivedita Nirvikar wherein referring to resolution No. 133 (c) dated 09.05.1988 argument was advanced that once the Amrish Kumar Jha respondent No. 7 has acquired Ph.D on 01.10.1988 he becomes eligible and statutory eligibility does not come in the way of absorption of the Respondent No.6, in view of the resolution of the State Government dated 09.05.1988. In the written notes of argument it was highlighted that in term of resolution 133 (c) dated 09.05.1988 four years time was available for improvement of the qualification and once the respondent No. 7 has acquired Ph.D he has become eligible for absorption in the subject economics. The whole argument is based on the construction of resolution No. 133 (c) dated 09.05.1988 that obtaining Ph.D confers eligibility, the resolution No. 133 (c) dated 09.05.1988 overrides the statutory requirement of the eligibility for appointment.

16. On behalf of the University the written notes of argument is conspicuously silent on the issue of notification of absorption of



the petitioners after agreement with the State Government. It is also not explained under what provision of law the University can review its previous order/decision after conscious decision was taken by the University to absorb the services of the petitioners and issued notification as once the University has issued notification of absorption it become *functus officio* after taking decision for absorption under Section 4 (1) (14) of the University Act. The written notes is also silent on the point as to the effect of tripartite agreement particularly in view of the judgment of the Apex Court in the case of **State of Bihar Vs. Sunny Prakash & Ors. Reported in (2013) 3 SCC 559**. The University in its written notes of argument has only harped on the report of Justice Agrawal Commission wherein petitioners were categorized as R2 and NR. There is no reference in the entire written notes of argument whether the University which was vested power of scrutiny in Mahasangh's case has in fact exercised the discretion and the responsibility assigned to the University to examine the qualification in the case of individual. There is no answer in the entire written notes of the argument of the University whether the letter of circulation 133 (c) can nullify the statutory requirement of eligibility. There is no explanation how the Rural Economics become relevant and concerned subject of economics. In the



conspectus of the discussion made above the following question required adjudication by this Court.

(1). Whether the liberty granted by the Apex Court in Mahasangh case to examine the qualification with reference to individual case permits the University to scrutinize the case of the individual and to examine whether individual is qualified in terms of the University statute or not?

(2). Whether the direction of the Apex Court in Mahasangh case particularly in paragraph 27, 72 and 73 has any meaning and the University has any role in the matter of scrutiny of individual cases as to qualification after the report of justice Agrawal Commission. What is the scope of scrutiny in the instant case after decision of Apex Court in Krishnanand Yadav case where the Apex Court has not qualified the exercise of jurisdiction by the writ Court? Paragraph 21 of the Judgment in Krishnanand Yadav Case is very wide worded and confers wide scope of scrutiny under Article 226.

17. While considering this case the Court is also required to examine whether the decision of the syndicate of the University amounts to treating rural economics as qualification in the concerned subject for appointment of lecturers economics and the issue whether the University was competent to review its decision



of absorption of the petitioner after tripartite agreement, whereby the University has absorbed the services of the petitioners.

18. So far as the use of treating rural Economic in M.A as appropriate qualification for appointment as lecturers economics is concerned, after scrutiny of the report of the justice Agrawal Commission, it is manifest that rural economics streams teachers are not M.A. in concerned subject but M.A. in allied subject. The reference to the decision of the syndicate of the University on acquiring Ph.D. degree and conclusion of Justice Agrawal Commission that the teachers are eligible is concerned it has not been approved by the Apex Court otherwise the Apex Court could not have directed to the University to examine the qualification of individual.

19. In fact the Apex Court has the occasion to consider the issue of concerned subject and relevancy of public administrative subject in the matter of appointment of lecturer Political Science. The judgment reported in (2014)3 SCC 767 is clinching on the point whereby the previous judgment of the Apex Court was explained and it was held that the public administrative in Post Graduate may be relevant at the stage of granting promotion as relevant subject of political science when specialized instruction are imparted including in Public Administration. Applying the reasoning in



(2014) 3 SCC 767 the Court is of the view that the qualification of M.A. in Rural Economics may be relevant at promotional stage when specialized instruction in rural economics is imparted and not the stage of initial appointment. The issue whether the statutory rule can be diluted by way of notification is now well settled, the statutory qualification are binding in the matter of appointment and government letter notification or circular cannot nullify or dilute the minimum qualification prescribed by the statute.

20. Although the Court is of the view that the respondents No.6 and 7 are not holding the requisite qualification for appointment and absorption in terms of the University statute but the fact remains that they have been absorbed long back and as such at this stage it would not be appropriate and equitable for this Court to pass any direction for their removal considering the fact that other teachers from Rural Economics have also been absorbed as lecturer Economics in the University, but at the same time the Court is constrained to hold that under the University Act and statute there is no provision for review once the University has taken conscious decision after tripartite agreement with the State Government and issued notification of absorption of the petitioners. The University has no jurisdiction to review its conscious decision as it has been held by the Apex Court in the



case of Kuntesh Gupta Vs. Bahrapur University AIR 1987 S.C. 2186 wherein the Supreme Court held that power of review is statutory one and in absence of statutory power the action of University to review the previous decision is nullity. In view of the above the decision of absorption of the petitioners cannot be reviewed by the University for the added reason that tripartite agreement led to absorption of the teachers including the petitioners Radah Govind Jha and Shushil Kumar Jha is binding on the University and State, particularly, in view of the judgment of the Apex Court in the case of State of Bihar versus Sunny Prakash reported in (2013) 3 SCC 559 and they are estopped from resiling from their decision and render the petitioners jobless.

21. In view of the discussion made above, although the Court held that respondents No. 6 and 7 lacks the eligibility for absorption but considering the totality of the facts situation the Court is not inclined to interfere in the matter of their absorption of respondent no.6 and 7 but at the same time the Court is of the view that the writ petitions deserve to be allowed to the extent that respondents-university has no jurisdiction to review the previous order of notification of absorption Annexure-3 dated 04.04.2006. Accordingly, respondents are restrained from reviewing the notification of absorption contained in Annexure-3. Respondents



are directed to treat the petitioners as absorbed teachers in terms of the notification of absorption of the petitioners and grant all consequential benefits to the petitioners as absorbed teachers under Section 4 (1) (14) of the Bihar State Universities Act, 1976.

22. With the aforesaid, both the writ petition stands allowed to the extent indicated above.

(Anil Kumar Upadhyay, J)

T.Kr./-banti

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.10.2018
Transmission Date	NA

