

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1114 of 2018

In

Miscellaneous Jurisdiction Case No.60 of 2018

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1. Prof. Qamar Ahsan, the Vice Chancellor, Magadh University, Bodhgaya
 2. Dr. Shailesh Kumar, The then Registrar, Magadh University, Bodhgaya,
District- Gaya, Bihar.

... .. Appellant/s

Versus

1. Phulo Paswan S/o Late Kheyali Paswan, resident of Mohalla- 292/7,
Madhwi Kunj, Alka Colony, Sandalpur, Sampatchak, Mahendru, Patna.
2. The State of Bihar
3. Patluputra University, Patna through its Registrar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20763 of 2018

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1. Dr. Jawahar Prasad Singh, Son of Late Maheshwar Prasad Singh, Behind
Small Quarters, D.V.C. Road, Yarpur, gardanibagh, Patna.
 2. Dr. Om Prakash Singh, Son of Late Ramjee Singh, Village P.O.- Parsar, P.S.-
Karakat, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,



Govt. of Bihar, Patna

2. The Director, Higher Education Patna.
3. Magadh University, Bodh Gaya through its Registrar.
4. The Vice-Chancellor, Magadh University, Bodh Gaya.
5. The Registrar Magadh University, Bodh Gaya.
6. The Selection Committee, Magadh University, Bodh Gaya through Chairman-cum-Vice-Chancellor, Magadh University
7. Dr. Shailej Kumar Srivastava father's name not known, Mohalla Gayatri Tap Girh, Road No. 4, P.O.- Chitragupta Nagar, P.S. Patrakar Nagar, Patna.
8. Dr. Tapan Kumar Shandilya, father's name not known, J62, P.C. Colony, P.O. Lohiya Nagar, P.S. Kankarbag, Patna.
9. Jawed Asraf, father's name not known, Road No. 4, S.I. Rahman Campus, White House Compound, Gaya.
10. Dr. Kumar Rajeev Ranjan, father's name not known, Mohalla- 8M66, Bahadurpur, P.O.- Kankarbagh, P.S.- Agamkuan, District- Patna.
11. Dr. Navin Kumar, father's name not known, P.G. Department of Geography, V.K.S, University, Ara.
12. Dr. Maheshwar Prasad Trivedi, father's name not known, Department of Botany, Patna Science College, Patna.
13. Dr. Deepak Kumar, father's name not known, 204 Shiv Apartment, P.O.- Lohia Nagar, P.S.- Kankarbagh, Patna.
14. Dr. Meghan Prasad, father's name not known, 35 FA, I/39 HIG Flat, P.O.- B.H. Colony, P.S.- Agamkuan, Patna.
15. Dr. Satish Singh Chandra, father's name not known, Mohalla Road No. 1, New Colony, Chotki Delha, P.S.- Delha, District- Gaya.
16. Dr. Md. Shamsul Islam, father's name not known, P.G. Department of Botany, Magadh University, Bodh-Gaya.
17. Dr. Arjun Sharma, father's name not known, 39 West Anandpuri, Opposite S.B.I Anandpuri, Patna.
18. Dr. Raj Kumar Majumdar, father's name not known, Mohalla- Krishnapur, P.O. P.S.- Hilsa, District- Nalanda.
19. Satyendra Prajapat, father's name not known, C/o Sri Ganga Prasad, Alkapuri Ratu Road, Ranchi.
20. Ganesh Mahto, father's name not known, Asthal Bishnupur, P.O.- Bishnupur Mirzapur Bahandra, District- Begusarai.
21. A.Q Ansarai, father's name not known, P.G. Department of Ancient Indian



and Asian Studies, Magadh University, Begusarai.

22. Meera Kumari, father's name not known, MIG- 313, Kankarbagh, Near Tempo Stand Mohalla, P.O. P.S.- Kankarbagh, Patna.
23. Jitendra Rajak, father's name not known, Staff House No. 08, P.O.- Maharaj Singh College, Tilak Nagar, Saharanpur U.P..
24. Vijay Rajak, father's name not known, C/o Prof. Shamsuddin Ahmad New Colony, New Karimayan, P.O.- Gaya, District- Gaya.
25. Dr. Phulo Paswan, father's name not known, Professor Quarter No. C-4, T-2, T, Type Building Saidpur Campus, P.O.- Rajendra Nagar, P.S. Bahadurpur, Patna.
26. Sri Vinod Kumar, father's name not known, Panel Chowk Mohanpur Road, P.O. P.S.- Shastrinagar, Patna.
27. Dr. Jai Shankar Prasad, father's name not known, Village P.O.- Paunda, P.S.- Sarai, Vaishali.
28. Arun Kumar Rajak, father's name not known, Mohalla- Pachahati, P.O. Bodh- Gaya, Gaya.
29. Patliputra University through Vice-Chancellor.
30. The Director General, Vigilance Department, Govt. of Bihar, Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 20981 of 2018

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1. Dr. Achyuta Nand Singh, son of Sri Jaikrishna Prasad Singh, Resident of F. No. 103, Pratima Manson, Shivpuri, Boring Road, Patna 800023, at present working as Professor, Department of Physics, J.P. University, Chapra.
 2. Dr. Narendra Kumar, son of Late Rameshwar Singh, Resident of A/24, Jagat Bhawani Apartment at S.P. Sinha Path East Boring Canal Road, P.S. Kotwali, Patna- 800001 at present working as Professor , Dept. of English,



College of Commerce, Arts & Science, Patna, under Patliputra University, Patna

3. Dr. Ashutosh Kumar Sinha, son of Sri Ram Yatan Singh, A-35 Patel Janta Nagar, East of Samrat Hospital, Bhagwat Nagar Road, Kumhrar, P.O. Bahadurpur Housing Colony, P.S. Agam Kuan, Kankarbagh, District- Patna, at present working as Associate Professor and Head of Department of Physics, Commerce College Arts & Science, Patna under Patliputra University, Patna

4. Dr. Arun Kumar, son of Late Ramakant Kumar, Resident of 404, Dev Kunj Apartment, Block-A, Road No. 6, North Patel Nagar, Patna 800024, at present working as Prof-in-Charge, A.N.S. College, Nabinagar, Aurangabad, Under Magadh University, Bodh Gaya.

5. Dr. Rajesh Shukla, son of Late Hari Sankar Shukla, Resident of A/301, Rajkishori Complex, Chitragupta Nagar, Kankarbagh, Patna 800020, at present working as Professor, Dept. of History, College of Commerce Arts & Science, Patna, under Patliputra University.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Vikash Bhawan, Patna

2. The Principal Secretary, Education Department, Government of Bihar, Vikash Bhawan, Patna

3. The Director, Higher Education Department, Government of Bihar, Vikash Bhawan, Patna

4. The Chancellor, Universities of Bihar, Raj Bhawan, Patna

5. The Magadh University, through the Registrar, Magadh University, Bodh Gaya

6. The Vice Chancellor, Magadh University, Bodh Gaya.

7. The Registrar, Magadh University Bodh Gaya

8. The Selection Committee, Magadh University, through the Chairman cum Vice Chancellor, Magadh University



9. Dr. Shailaj Kumar Shrivastava, son of Late Hareshwar Prasad Srivastava, Resident of Mohalla- Chitracharya Nagar- K-14, Gayatri Tapo Griha, P.S. Patrakar Nagar, Kankarbagh, District- Patna at present posted as Associate Professor, Department of Physics, A.N.S. College, Barh, Patna under Patliputra University, Patna
10. Dr. Tapan Kumar Sandilya, son of Sri Shivdani Prasad Singh, Resident of J. 62, P.C. Colony, P.O.- Lohiya Nagar P.S. Kankarbagh, Patna 800020 at present posted as Principal, College of Commerce Arts & Science, Patna under Patliputra University, Patna
11. Jawed Asraf, son of not known, Resident of Road No. 04, Dr. S.I. Rahman Campus, White House Compound, Gaya at present posted as Professor, Department of Psychology, Gaya College, Gaya under Magadh University, Bodh Gaya.
12. Dr. Kumar Rajeev Ranjan, son of Dr. Tapasvi Yadav, Resident of Mohalla- 8M/66, Bahadurpur, P.O. Kankarbagh, P.S. Agamkuan, District- Patna, at present posted as Professor Department of Physics, College of Commerce Arts & Science, Patna under Patliputra University, Patna
13. Dr. Navin Kumar, son of not known, P.G. Department of Geography, V.K.S. University, Ara, At present posted as Principal, M.V. College, Buxar under V.K.S. University, Ara.
14. Dr. Maheshwar Prasad Trivedi, son of not known, Resident of at present posted as Professor, Department of Botany, Patna Science College, Patna under Patna University, Patna
15. Dr. Deepak Kumar, son of not known, Resident of 204, Shiv Apartment, P.O. Lohia Nagar, P.S. Kankarbagh, District- Patna
16. Dr. Meghan Prasad, son of not known, Resident of 3SFA, 1/39, HIG Flat, P.O. Bahadurpur Housing Colony, P.S. Agamkuan, District- Patna at present posted as Professor, Department of Maithili, College of Commerce Arts & Science, Patna under Patliputra University, Patna
17. Dr. Satish Singh Chandra, son of not known, Resident of Mohalla- Road No. 1 New Colony, Chotki Delha, P.S. Delha, Gaya, at present posted as Associate Professor, Department of Chemistry, S.D. Jain College, Ara under V.K.S. University, Ara
18. Dr. Md. Shamsul Islam, son of not known at present posted as Professor, P.G. Department of Botany, Magadh University, Bodh Gaya



19. Dr. Arjun Sharma, son of not known, Resident of 39, West Anandpuri, opposite- SBI Anandpuri, Patna 800001 at present posted as Associate Profesor, Department of Political Science, S.M.D. College, Punpun under Patliputra University.
20. Dr. Raj Kumar Majumdar, son of not known, Resident of Mohalla-Krishnapuri, P.O. P.S. Hilsa, District- Nalanda at present retired from Post of Principal
21. Sri Satyendra Prajapat, son of not known, C/o- Sri Ganga Prasad, Resident of Alkapuri, Ratu Road, Ranchi.
22. Dr. Ganesh Mahto, son of not known, Resident of Asthal Bishnupur, P.O. Bishnupur, Mirzapur Bhandar, District Begusarai
23. Dr. A.Q. Ansari, son of not known, at present posted as P.G. Department of A.I. & A.S. Magadh University, Bodh Gaya
24. Dr. Meera Kumari, wife of not known, Resident of MIG 313, Kankarbagh, Near Tempo Stand, Mohalla- P.O. P.S. Kankarbagh, Patna
25. Dr. Jitendra Rajak, son of not known, Resident of Staff House No. 08, P.O. Maharaj Singh College, Tilak Nagar Saharanpur, Uttar Pradesh
26. Dr. Vijay Rajak, son of not known, C/o- Prof Sharamuddin Ahmad Resident of New Colony, New Karimganj, P.O. Gaya, District- Gaya
27. Dr. Phulo Paswan, son of Late Kheyali Paswan, Resident of Village- Makia, P.O. Benipatti, District- Madhubani at present posted as Principal in L.N. Mithila University, Darbhanga
28. Dr. Vinod Kumar, son of not known, Resident of Punai Chak, Mohanpur, Road P.O. P.S. Shastrinagar, District- Patna at present posted as Principal in B.R.A. Bihar University, Muzaffarpur
29. Dr. Jai Shankar Prasad, S/o- not known, resident of Village- Paunda, P.S. Sarai, District- Vaishali
30. Dr. Arun Kumar Rajak, son of not known, resident of Mohalla- Patliputra, P.O. Bodh Gaya, District- Gaya
31. The Patliputra University Patna through the Vice Chancellor
32. The Director General, Vigilance, Govt. of Bihar, Patna

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr.Sunil Kumar Singh, Advocate
Mr. Navin Prasad Singh, Advocate
Mr. Ranvijay Singh, Advocate
For Magadh University : Mr. Shivendra Kishore, Sr. Advocate
Mr. Ritesh Kumar, Advocate
For Respondents 15,16,22: Mr. Rajendra Narayan, Sr. Advocate
Mr. Vijay Prakash Bhargav, Advocate
Mr. Ravi Bhushan Prasad No. 1, Advocate
Mr. Vijay Anand, Advocate
For Respondent No. 23 : Mr. Ajeet Kumar, Advocate
Mr. Krishna Chandra, Advocate
For Respondent No. 20 : Mr. Manoj Kumar Singh, Advocate
For Respondent No. 21 : Mr. Hamendra Prasad Singh, Sr. Advocate
For Respondents. 7,10,25,29: Mr. Kumar Ravi Shankar, Advocate
Mr. Krishna Murari Prasad, Advocate
For Vigilance Department: Mr. Anjani Kumar, Sr. Advocate
For the State : Mr. Samir Kumar, A.C. to S.C. 16
Mr. Amit Bhushan, A.C. to G.P. 17
For Patliputra University: Mr. P.K. Verma, Sr. Advocate
Dr. Anand Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-03-2019

These two writ petitions challenge the third round of selections held in January, 2015 pursuant to an advertisement dated 25th October, 2008 inviting applications from eligible



candidates for the selection and appointment against 22 vacancies of the post of Principals in the constituent colleges of the respondent Magadh University.

2. The prayer is to quash the select list dated 05.09.2018 whereby 22 candidates have declared successful.

3. The process of the first round of selection commenced and after the interview of the applicants, a panel was prepared that was given effect to. The same was challenged in C.W.J.C. No. 17804 of 2009 (**Dr. Bimal Prasad Singh and others Vs. The State of Bihar & Ors.**). The said writ petition was allowed and the appointment of all the 22 Principals was quashed with a direction to the University to commence a fresh selection process after issuing a fresh advertisement within six months but the Principals appointed were allowed to continue without any independent financial power and subject to the control of the respondent University. The said decision is reported in **2011 (1) PLJR 1134**.

4. The aforesaid judgment was challenged by the selected candidates in L.P.A. No. 358 of 2011 that was dismissed on 5th of April, 2011. The judgment is reported in **2011 (2) PLJR 787 (Dr. Om Prakash Singh & Ors. Vs. Dr. Bimal Prasad Singh & Ors.)**. The said judgment was carried



further in Special Leave to Appeal (Civil) Nos. 11529-11531 of 2011 and the Hon'ble Supreme Court vide order dated 6th of May, 2011 dismissed the Special Leave Petitions but issued directions modifying the judgment of the learned Single Judge to the effect that the fresh selection shall be held from amongst those who had applied pursuant to the advertisement dated 25th October, 2008 in accordance with the relevant statutes, rules and regulations and without being influenced by the directions given by the learned Single Judge in the last portion of the order passed by him. The University was directed to complete the selection processes within four months and till then the petitioners were allowed to continue in their present position. It was further made clear that the order passed by the Supreme Court would not create any equity in favour of the petitioners. The judgment of the Apex Court is extracted hereinunder:-

“The petitioners are aggrieved by order dated 05.04.2011 passed by the Division Bench of the Patna High Court whereby the Letters Patent Appeal filed by them against the order of the learned Single Judge who quashed their selection and appointment as Principals of the colleges affiliated to Magadh University, Gaya.

We have heard learned senior counsel for the petitioners and perused the record.

In our view, the detailed reason



assigned by the learned Single Judge for nullifying the selection and appointments of the petitioners was legally correct and the Division Bench did not commit any error by refusing to interfere with the order of the learned Single Judge. But, at the same time, we feel that while dismissing the Letters Patent Appeal, the Division Bench should have clarified that the University shall make fresh selection in accordance with the extant statutes, rules and regulations without taking into consideration the directions given by the learned Single Judge.

The special leave petitions are accordingly dismissed with the direction that the University shall make fresh selection from amongst those who had applied pursuant to the advertisement issued on 25.10.2008 strictly in accordance with the relevant statutes, rules and regulations and without being influenced by the directions given by the learned Single Judge in the last portion of the order passed by him.

The University shall complete the process of selection within a period of four months. Till then, the petitioners shall be allowed to continue in their present position. However, it is made clear that this shall not create any equity in favour of petitioners.

The Registry is directed to send a copy of this order to the Registrar, Magadh University, Bodh Gaya by fax.”



5. A contempt petition was also filed in the Apex Court being Contempt Petition (C)No. 87-89 of 2012. On 2nd of March, 2012, the following order was passed in the said contempt applications:-

“Contempt Petition Nos. 87-89 of 2012

There is no urgency in the contempt petitions. List on the date already notified by the registry. I.A. Nos. 4-6/2010 in S.L.P. (C) Nos. 11529-11531/2011.

Taken on Board.

Interlocutory applications are disposed of by 2 directing the applicant to comply with order dated 7.9.2011.

Shri Amrendra Sharan, learned senior counsel appearing for the applicant states that the requisite number of members of the Selection Committee have already signed the proceedings. If that be so, there should be no hesitation in declaring the result of selection.”

6. In view of the directions aforesaid, the second round of selection process, therefore, proceeded on the basis of the same advertisement and from amongst the applicants against the said advertisement. This second round of selection process was completed that again came to be challenged in C.W.J.C. No.



9167 of 2012. A learned Single Judge of this Court vide judgment dated 12th of September, 2014 allowed the writ petition and quashed the same with a direction to hold fresh selections.

7. Against the judgment of the learned Single Judge quashing the selection proceedings, the selected candidates preferred Letters Patent Appeal Nos. 1461 of 2014, 1473 of 2014, 1474 of 2014, 18 of 2015 and 43 of 2015 before the Division Bench. An interim order was passed by the Division Bench on 19th January, 2015, which is extracted hereinunder:-

“We have heard Mr. Ajay Thakur, learned counsel, appearing on behalf of the appellants, in L.P.A. No. 1461 of 2014, and Mr. Deo Kumar Pandey, learned Assistant Counsel to Government Pleader No. 6, for the State. We have also heard Dr. K.N. Singh, learned Senior Counsel, appearing on behalf of the respondent-Magadh University, on I.A. No. 449 of 2015 made in L.P.A. No. 1461 of 2014 and I.A. No. 343 of 2015 made in L.P.A. No. 1473 of 2014.

Perused the materials available on record.

Having considered the matter in its entirety and in the interest of justice, we are of the view that an interim direction is necessary in order



to ensure that no prejudice is caused to the appellants and, at the same time, the interview, which has been scheduled to take place between 20th January, 2015 and 25th January, 2015, is not held up.

Balancing, therefore, the twin conflicting interests, we, in the interest of justice, hereby direct that though the respondent University may proceed to hold the interview, as has been scheduled, the result of the interview shall not be published and/or acted upon without obtaining leave of this Court.

We also make it clear that the appellants shall remain free to appear in the interview and their appearance, in the interview, will be without prejudice to their rights, if any, in the present appeals.

Considering the fact that it has been agreed by the learned counsel for the respondent-University that the University may hold, if so directed, interview of the appellants on 24th January, 2015, we direct that as far as the appellants are concerned, their interview shall be held, if they so participate, on 24th January, 2015.

With the observations and directions aforementioned, both the Interlocutory Applications, bearing I.A. No. 449 of 2015 made in L.P.A. No. 1461 of 2014 and I.A. No. 343 of 2015 made in L.P.A. No. 1473 of 2014, shall stand disposed of.”



8. This was followed by another interim order on 23.01.2015, which is extracted hereinunder:-

“Pending further orders, we direct that the appellants herein, shall be entitled to participate in the ensuing interviews and even if any FIR has been lodged against them, they shall not be arrested, nor they shall be disabled from appearing in the interview.”

9. The reason for the passing of the aforesaid interim order was on account of a vigilance inquiry having been set up and an investigation which was being carried out.

10. The appeal was ultimately dismissed on 21.12.2017, which judgment is reported in **2018 (1) PLJR 285 [Dr. Jitendra Rajak & Ors. Vs. The State of Bihar & Ors.]**

11. It may be mentioned that there was another offshoot of the said litigation which was in relation to 12 other posts which were re-advertised on 8.5.2012. This came to be challenged in C.W.J.C. No. 19620 of 2014 that was allowed on 10.12.2015. The judgment of the learned Single Judge was assailed in Letters Patent Appeals before a Division Bench and the same was partly allowed which judgment is reported in **2016 (3) PLJR 651 (Pravin Kumar and others Vs. The State of**



Bihar and others). We have made a reference to this judgment as the same has also been referred to by the Division Bench in the case of **Dr. Jitendra Rajak** (supra).

12. Against the Division Bench judgment in the case of **Dr. Jitendra Rajak** (supra), Special Leave to Appeal (C) No. 1553 of 2018 was preferred and the said appeal was dismissed on 25.1.2018 by the following order:-

“ The special leave petitions are dismissed.
Pending applications are disposed of.”

13. A Miscellaneous Application was filed being M.J.C. No. 124 of 2018 (The Magadh University & Ors. Dr. Jitendra Rajak & Ors.) in the decided case before the dismissal of the S.L.P. by the Apex Court. This M.J.C. application came before the same Division Bench that had decided the case finally and a clarificatory order was passed on 8th February, 2018 modifying the judgment dated 21.12.2017 to the effect that in view of the time gap that had lapsed since the advertisement in 2008, the University has to follow a fresh selection process by publishing a fresh advertisement with all eligible candidates entitled to participate and apply. The order dated 8th February, 2018 is extracted hereinunder:-

“Heard learned counsel for the parties.



The present application has been filed for modification/clarification of the order, dated 21.12.2017, passed in L.P.A. No. 1461 of 2014 and its analogous cases. The Magadh University has brought this application, seeking a clarification, as according to them, while disposing off the said L.P.A., it is not stated as to what has to be done regarding the observation of the Learned Single Judge for constitution of a fresh selection committee and then preparation of a fresh combined merit-list after taking fresh interview.

Learned senior counsel appearing on behalf of the university submits that in view of the direction of the Learned Single Judge a fresh combined merit-list was prepared, but the said merit-list may contain the name of some of the candidates against whom vigilance enquiry is going on. On perusal of the records, we find that vide order no. 8, dated 19.01.2015, while disposing off some of the Interlocutory Applications, filed by the appellants, the Division Bench had made it clear that while the university may proceed to hold the interview, the result of the interview shall not be published or acted upon without obtaining leave of the Court. While disposing off the LPA, we have not granted such leave to the university, because we were conscious of the fact that the advertisement, pursuant to which the present appointments were made, relates back to the year 2008 and there had been several rounds of



litigation over the selection procedures adopted in the past.

Considering the time gap, which had already occurred since 2008, almost a decade, we make it very clear that since we have not granted the leave to the university to publish the result, the university has to follow a fresh selection process and for that purpose the university will start a fresh selection by publishing a fresh advertisement, as per the existing Rules, where all eligible candidates shall be entitled to participate.

The application stands disposed off with modification/clarification as above.”

14. This order on the modification application was challenged before the Apex Court in Special Leave to Appeal (C) No. 7102 of 2018 and the operation of the said order dated 08.02.2018 was stayed by the Apex Court on 28.03.2018. The order dated 28th March, 2018 is extracted hereinunder:-

“Issue notice returnable in four weeks.

Dasti, in addition, is permitted.

In the meanwhile, there shall be a stay of operation of the order passed by the High Court on 8th February, 2018.

We are informed that the result of the fresh interviews is lying in a sealed cover in the Patna High Court. We request the Registrar



General of the Patna High Court to send the sealed cover to the Secretary General of this Court who will place it before us when the matter is next listed”.

15. The 3rd selection process had already been undertaken and the interviews were held on 24.01.2015 but the results had not been published. The same had been directed to be kept in the Court’s safe custody under the interim orders before the Division Bench. However, when this fact was brought to the notice of the Apex Court, it was directed that the said sealed cover relating to the results of the 3rd selection process should be dispatched to the Apex Court, as is evident from the order quoted hereinabove.

16. On 14th of May, 2018, the Apex Court acknowledged the receipt of the said results in a sealed cover in the order dated 14.05.2018, which is extracted hereinunder:-

“Pursuant to order dated 28.03.2018, the Registrar General of Patna High Court has sent a sealed cover to the Secretary General of this Court.

The sealed cover should be kept in a safe custody and be sent to us on the next date of hearing.

List the matter for final disposal on



21st August, 2018.

Pleadings be completed in the
meanwhile.”

17. The appeals were ultimately allowed and the original records that were kept in a sealed cover were returned back. The judgment dated 21st August, 2018 is extracted hereinunder:-

“Application for deleting the name of Respondent No. 20 from the array of parties is allowed, at the risk of the petitioner.

Leave granted.

We have heard learned counsel for all the parties before us.

It is quite clear to us that in view of the order passed by this Court on 6th May, 2011 and subsequent orders passed by this Court including the order dated 21st December, 2017, the view taken by the High Court in the impugned order dated 8th February, 2018 is clearly unsustainable. The Division Bench of the High Court could not have directed the holding of a fresh selection process (fourth), particularly since the result of the third selection process was not even declared and that direction is, in any event, contrary to the orders of this Court.

By an order dated 28th March, 2018, we had called for the result of the third selection



process. The record has been received by us, but it appears that the record contains marks only and the rankings of the candidates in each category.

The respondents will declare the Select List within a period of two weeks from today. Upon declaration of the Select List, it is quite possible that the petitioners or the private respondents may be aggrieved by the Select List. They are at liberty, if so aggrieved, to challenge the Select List in the High Court.

It has been brought to our notice that an order was passed on 24th December, 2017 removing some of the parties before us from their post of Principal.

It is stated by learned counsel that the persons who have been removed, which includes Dr. Phulo Paswan, Appellant No. 4 in civil appeal arising out of SLP (C) No. 7476 of 2018, have filed a contempt petition in the High Court of Judicature at Patna. By an order dated 25th July, 2018, notice has been issued to the Magadh University to file its reply to the show cause notice to explain the circumstances in which the Principal who has been allowed to perform the routine work on day-to-day basis has been removed.

We are further informed that against the order passed by the learned Single Judge on 25th July, 2018, an LPA being No. 1114 of 2018 has been filed, which is still pending.

We direct for the time being that the



parties will maintain status quo for a period of one month, i.e., until 30th September, 2018.

During this period, if any party is aggrieved by the Select List of the third selection process, he is at liberty to challenge the third Select List.

We request the High Court to take up the LPA No. 1114 of 2018 along with the challenge to the third Select List, if made.

We request the Chief Justice of the High Court of Judicature at Patna to take up the proposed writ petition (if any) before the Division Bench rather than before a learned Single Judge so that it can be taken up with LPA No. 1114 of 2018.

We make it clear that the order of status quo passed by us today will subsist only till 30th September, 2018. However, the High Court may vary, modify or continue the order of status quo after hearing learned counsel for the parties.

If no writ petition is filed by 30th of September, 2018 and no interim order is passed by the High Court of Judicature at Patna, the third Select List will be given effect to subject to any orders that may be passed in LPA No. 1114 of 2018.

The original record in a sealed cover has been handed over to Mr. S.W.A. Qadri, learned counsel appearing for the Magadh University.

The appeals stand disposed of.

Pending application, if any, also



stands disposed of.”

18. It was held that the direction of fresh selections with a fresh advertisement was unwarranted and contrary to the directions already issued on 06.05.2011 by the Supreme Court earlier. Accordingly, the respondent University was directed to declare the results. In the event any parties are aggrieved, the said results of the 3rd Select List was left open to challenge.

19. This is how the two writ petitions that have been heard by us came to be instituted, but no orders were passed by the High Court and the appointments were not made. The Contempt Application which was filed was proceeded with against which L.P.A. No. 1114 of 2018 was filed. These two writ petitions and the Letters Patent Appeal No. 1114 of 2018 were clubbed together as per the directions of the Apex Court vide judgment dated 21.08.2018 and heard by us, whereafter interim orders were passed on 6th December, 2018 directing that the Select List of the 3rd selection shall be given effect to by allowing the selected candidates to join in the respective institutions except six candidates against whom Vigilance Inquiry was pending, one Shri A.Q. Ansari whose eligibility was also under challenge and one Dr. Majumdar who had superannuated. Further proceedings in the contempt matter was



stayed.

20. The contempt application being M.J.C. No. 60 of 2018 giving rise to L.P.A. No. 1114 of 2018 was dismissed on 9th January, 2019 that has been noticed in the second interim order passed by us on 21st of February, 2019. It may also be noticed that against the interim order passed by us on 6th December, 2018, Special Leave Petition (Civil) Diary No. 3065 of 2019 was filed and the same was dismissed on 8th February, 2019 by the following order:-

“Permission to file the Special Leave Petitions is granted.

The Special Leave Petitions are dismissed.

Pending applications, if any, stand disposed of.”

21. We have noted the arguments that were advanced by the learned counsel in our order dated 06.12.2018 and again reproduced in our order dated 21.02.2019. The submissions advanced on behalf of the petitioners by the learned counsel Shri Sunil Kumar Singh and Shri Navin Prasad Singh are that the Selection Committee for the selections was not constituted as per the relevant statutes. The Government nominee was an officer of a very low rank, namely, a Regional



Deputy Director, Education. The senior most head of the Department had to be the member of the Selection Committee, whereas, a Professor of the Psychology Department, who was not the senior most head, participated in the selection process.

22. The second ground of challenge is that no combined select-list was prepared so as to gather the status of the merit of the petitioners or other such candidates. The maintaining of this secrecy, therefore, vitiated the action of the respondent University.

23. The third ground taken is that the selection was held in a haste within five days for interviewing a very large number of candidates which was not humanly possible within the time constraints. Thus, the interview was a mere farce as the selections were almost pre-determined.

24. The reservation provided for a Scheduled Tribe candidate was offered to a Scheduled Caste candidate, which was not permissible.

25. Coming to the selection of individual candidates, it was urged that six of the candidates, namely, Dr. Satish Chandra Singh, Dr. Md. Shamshul Islam, Dr. Satyendra Prajapati, Dr. Meera Kumari, Dr. Jitendra Rajak, Dr. Vijay Rajak were facing a Vigilance inquiry and a First Information Report



had been lodged in respect of their participation and manipulated selection in the second round of selections. The University could not have entertained these candidates when a Vigilance Inquiry was pending against them.

26. One of the candidates Dr. A.Q. Ansari, who was appointed as a Curator, which is a Class-III post, was through dubious methods projected as a teacher having teaching experience and who did not possess the minimum qualifications, has also been reflected as one of the selected candidates.

27. Dr. Kumar Rajiv Ranjan at the time of having moved the application in the year 2008 was not possessed of the research paper which was subsequently acquired by him and on the said basis the Select Committee had awarded him marks which was impermissible as the selections were to be made on the basis of the qualifications possessed by the candidates on the date of the advertisement. Accordingly, an ineligible person, whose application itself ought to have been rejected, has been selected.

28. Counter affidavits have been filed by the contesting respondents and on behalf of those candidates against whom vigilance inquiry is pending, we have heard Shri Rajendra Narayan, Senior Advocate. Shri Shivendra Kishore,



learned Senior Counsel assisted by Shri Ritesh Kumar has been heard for the respondent-University, Shri Hemendra Prasad Singh, learned senior counsel has been heard for Dr. A.Q. Ansari, Mr. Anjani Kumar, learned Senior Counsel has appeared for the Vigilance Department along with Shri Samir Kumar and Shri Amit Bhushan for the State, Dr. Anand Kumar has appeared for the Patliputra University and Kumar Ravi Shankar has also appeared on behalf of some of the respondents.

29. Shri Narayan, learned Senior Counsel contends that the pendency of the vigilance inquiry cannot be an impediment for the selection process that was directed to be concluded under the orders of the Apex Court as well as this Court and the candidates who had applied under the original advertisement, their interest was secured by allowing the selection process to continue amongst the said candidates. There was no vigilance inquiry pending as on date when the candidates had applied and it was only after the outcome of the second selection process which was finally quashed by this Court that a vigilance inquiry was set up.

30. We had called upon Shri Anjani Kumar, learned senior counsel for the Vigilance Department to apprise us about the progress in the investigation, who, on the basis of



instructions stated that no police report/charge-sheet has been filed in the vigilance case. A copy of the preliminary inquiry of vigilance has been placed on record after we had impleaded the Vigilance Department and the same has also been filed along with an affidavit of the respondent University.

31. Shri Narayan further contends that since no charge-sheet has been filed, no criminal prosecution can be said to have commenced so as to non-suit such of the candidates against whom the vigilance inquiry report is said to have been obtained. Even otherwise, the same has no effect now as the entire selection process in the second round has already been quashed and upheld up to the Apex Court. It is the third round of selections which was held under the directions of the Apex Court that have to be considered now. He, therefore, submits that the vigilance inquiry with regard to the second round of selections is of no consequence, that too even without any charge-sheet having been filed in the said case. Shri Narayan, therefore, contends that if after scrutiny of the third round of selections it is found that these candidates are otherwise eligible and successful, their appointment should not be withheld merely on account of the pendency of a vigilance inquiry, which is inconclusive and practically ineffective.



32. To this argument, learned senior counsel for the University Shri Shivendra Kishore has urged that in view of the preliminary inquiry report the selection of such candidates by the University may not be otherwise unlawful, but in the event the Court finds it expedient, then the sealed cover method, as laid down in the case of **Union of India and others Vs. K.V. Jankiraman and others**, reported in (1991) 4 SCC 109 may be adopted till the conclusion of the vigilance inquiry.

33. Shri Hemendra Prasad Singh, learned senior counsel for Dr. A.Q. Ansari has urged that the definition of the word “teacher” and a person holding a teaching post has been elaborately dealt with by a Full Bench of this Court in the case of **Kamla Kant Roy and others Vs. The State of Bihar & Ors.**, reported in 1985 PLJR 77 and with the nature of duties and responsibilities entrusted to Mr. Ansari, he was performing a teaching job and was also designated as an Assistant Professor both by the University as well as by the State Government. Having acquired this status and acknowledged as such, the claim is further fortified by the fact that Mr. Ansari was granted the pay-scale of a Lecturer even though he had been appointed as a Curator in the museum of the Ancient History Department. Thus, for all practical purposes, apart from holding the post of



Curator he also held a teaching post and performed his teaching duties and consequently he has the eligibility of teaching experience apart from his academic qualifications that fulfills the criteria for appointment as a Principal of a constituent college. He has invited the attention of the Court to the various documents in support of the aforesaid contention and has urged that the selection of Dr. Ansari does not suffer from any infirmity, much less a legal infirmity.

34. Shri Shivendra Kishore, learned senior counsel for the University and the learned counsel for the petitioners have opposed the argument of Shri Singh contending that the post of Curator is a Class-III post and is not a teaching post. Dr. Ansari has been extended the benefit of benevolence by the then Vice Chancellor of the Magadh University and any conferring of status as Assistant Professor either by the University or by the State Government is not in accordance with any rule or regulation. Consequently, any such certification that has been obtained is of no legal consequence so as to enable Dr. Ansari to claim that he was holding a teaching post. The contention in short is that Dr. Ansari was never appointed against a teaching post, and even if he was given the pay-scale of a Lecturer, his original appointment and continuance as Curator does not entitle



him to claim any benefit of teaching experience under the relevant statutes and the regulations governing the procedure of appointment of Principals. They contend that there are only three categories of teaching post recognized in the Universities and its constituent colleges, namely, Professors, Readers and Lecturers who have now been re-designated as Professors, Associate Professors and Assistant Professors. Mr. Ansari was never appointed against any such post nor has he faced any Selection Committee in accordance with the relevant statutes and regulations governing the selection process against a teaching post. The obtaining of certificates or of pay-scale from the Government in the scale of Lecturer or even a nomenclature of Assistant Professor in no way converts his status to that of an employee holding a teaching post. Dr. Ansari continues to hold his lien on the post of Curator and any benefit extended to him unlawfully through certification without following the procedure of law cannot enure to his benefit. Learned counsel have taken the Court through relevant regulations and the law relating to the subject.

35. Learned counsel for the petitioners have also assailed the selection of Dr. Kumar Rajiv Ranjan, as already noted above, that has been defended by the University



contending that the selection does not suffer from any infirmity.

36. Taking up the first question raised about the constitution of the Selection Committee, the response given by the respondents is that a Regional Deputy Director, Education is an officer of a Government and there is no element of ineligibility of his participation as a member of the Selection Committee. We entirely agree with this submission, inasmuch as, no provision has been shown to us under which it can be construed that the Regional Deputy Director, Education was incompetent to represent the Government in the Selection Committee. An ancillary argument was raised that he was an officer of a law rank. This argument is not substantiated by any material and, therefore, the constitution of the Selection Committee cannot be questioned merely because a very high ranking officer has not participated as a nominee of the Government. The respondents have come up with a case that it is either the Joint Secretary of the Department or a senior officer like the Regional Deputy Director, Education do participate in the Selection Committees and consequently there is no infirmity unless any *mala fide* can be shown in this regard. We have not been able to gather any averment on record which may allege any *mala fide* with regard to the participation of the Regional



Deputy Director, Education.

37. One of the other arguments raised was that the senior most amongst the head of departments of the University had not been allowed to participate in the Selection Committee. This has been clearly controverted by the respondents and no material has been brought on record by way of any rejoinder to demonstrate the violation of the seniority rule.

38. The question with regard to combined select-list has also been answered by the contesting respondents and the entire list is on record. The petitioners in the two sets of writ petitions are candidates of the general category. They have not been able to demonstrate as to how any of the selected candidates of that category are lower in merit than them. In the absence of any such material, this plea is a bald allegation without any basis.

39. The third ground raised is with regard to interview being held in haste. The allegation is that in five days 360 candidates were interviewed. The petitioners have nowhere been able to demonstrate by any material on record as to how the petitioners have been prejudiced when they themselves have faced the Selection Committee. They have nowhere stated that they were not given ample time for facing the interview or that



grant of lesser time has resulted in any prejudice so as to vitiate the selection process. This allegation being also bald and without any basis, has no merit.

40. The question of appointing a Scheduled Caste candidate against the post of Scheduled Tribe candidate does not affect the petitioners as they are of general category candidates. Even otherwise, the counter affidavit of the contesting respondents categorically states that since there was no Scheduled Tribe candidate available, therefore, the offer was made to a Scheduled Caste candidate. Thus, this allegation as well has no legs to stand.

41. There is a particular allegation with regard to one Dr. Kumar Rajeev Ranjan, the Respondent No. 10 in the 1st Writ Petition being C.W.J.C. No. 20763 of 2018, where in Paragraph 33 the petitioners have raised the objection coupled with Paragraph 4 of the supplementary affidavit filed by them on 29th October, 2018. The allegation is that the research papers were published later on and were not possessed by the Respondent No. 10, which is evident from the application form filed by the said respondent i.e. blank against the marks which he was entitled to receive on account of research papers. Similar allegations have been made in Paragraph 25 of the second writ



petition being C.W.J.C. No. 20981 of 2018.

42. In this regard, suffice it to produce Paragraph 33 of the reply given by the Respondent No. 10 in the first writ petition, which is as follows:-

“33. That the contents of paragraphs 33 of the writ petition are baseless, totally false and hence denied. It is submitted that it passes comprehension of the answering respondents as to how come petitioners have come to know as what marks have been awarded by the Selection Committee for the candidates for Research Papers and therefore the averments made by the Petitioners in this regard is totally baseless being their mere ipse dixit. It is submitted that the following Research Papers of the answering Respondent No. 10 had been published in reputed international journals much prior to 25.10.2008 and which had been submitted by him along with his application for appointment to the post of Principal:

- i. Title of Research Paper-Visual Interpretation of FCC image for land use and land cover mapping: An expert system approach. Published in Journal SICE DOI:



10.1109/SICE.2002.1195718

published by IEEE ISSN-0018-9219-Volume 4, Page No. 2093-2098 published in the year 2002.

- ii. Title of Research Paper- AMRAPALIKA: An expert system for the diagnosis of pests disease and disorder in Indian mango. Published in Journal-Knowledge Based System. Published by ELSEVIER ISSN-0950-7051.DOI:

10.1016/j.knosys.2005.08.001-Volume 19, Page No. 9-21 Published in the year 2006.

- iii. Title of Research Paper- Using ESTA to develop expert system for natural resource management. Published in Journal-Map India, 2003.- Geospatial.net/images/pdf/66.pdf, Published in the year 2003.

- iv. Title of Research Paper- KISAN: An expert system for soil and nutrient management. Published in Journal-CAB DIRECT. Record No. 20033017931, PP No. 346-353 Published in the year 2002.

It is clarified that only three



best research papers were required to be submitted at the time of interview. These papers were published between 2002 to 2006 besides several other papers which were published in different journals. The respondent is giving particulars of 4 papers as he is not sure as out of the aforesaid 4 papers he had submitted three or four.

It is submitted that any person can check about the aforesaid research papers of the answering respondent no. 10 by logging in to www.google.com and this fact can also be verified from the records of the Magadh University for the Third Selection Process. Here it is also pertinent to mention that answering Respondents were also selected in the Second Selection Process and marks were duly awarded to them in that process as well for academic achievements.”

43. A similar reply with more specifics have been given in Paragraph 25 of the counter affidavit filed by Respondent No. 10 in the second writ petition, which is as follows:-

“25. That the contents of paragraph 25 of the writ petition are wrong and denied. The Petitioners are making



reckless allegations without even verifying the record as well as making proper enquiry. It is clarified that as in 2009 the Kumar Rajeev Ranjan i.e. the answering Respondent No. 12 herein was absent in the interview and that is the reason no marks are mentioned in the Chart showing Academic Marks in the row containing his name. The academic qualifications of the answering Respondent No. 12 are as under:

A. Matriculation- BSEB, Patna, in 1980 First Division with 60.1% marks.

B. I.Sc. Ranchi University, Ranchi, in 1982, First Division with 64% marks.

C. B.Sc (Physics Hons)- M.U. Bodhgaya-1984, First Division with Distinction 60.05%

D. M.Sc. (Physics) M.U. Bodhgaya-1986, First Class with 70% marks.

E. Ph.D., LNMU, Dharbhanga,



in 1993- Awarded.

Moreover, the following Research Papers of the answering Respondent No. 12 had been published in reputed international journals much prior to 25.10.2008 and which had been submitted by him along with his application for appointment to the post of Principal:

- i. Title of Research Paper- Visual Interpretation of FCC image for land use and land cover mapping: An expert system approach. Published in Journal SICE DOI: 10.1109/SICE.2002.1195718 Published by IEEE ISSN-0018-9219-Volume 4, Page No. 2093-2098 Year 2002.
- ii. Title of Research Paper- AMRAPALIKA: An expert system for the diagnosis of pets disease and disorder in Indian mango. Published in Journal-



Knowledge Based System.

Published by ELSEVIER ISSN-

0950-7051.DOI:

10.1016/j.knosys.2005.08.001-

Volume 19, Page No. 9-21. Year

2006.

iii. Title of Research Paper- Using

ESTA to develop expert system

for natural resource management.

Published in Journal-Map India,

2003.- Geospatial.

net/images/pdf/66.pdf, Year 2003.

iv. Title of Research Paper- KISAN:

An expert system for soil and

nutrient management. Published

in Journal-CAB DIRECT. Record

No. 20033017931, PP No. 346-

353. Year 2002.

It is clarified that only three best research papers were required to be submitted at the time of interview. These papers were published between 2002 to



2006 besides several other papers which were published in different journals. The respondent is giving particulars of 4 papers as he is not sure as out of the aforesaid 4 papers he had submitted three or four.

It is submitted that any person can check about the aforesaid research papers of the answering respondent no. 12 by logging in to www.google.com and this fact can also be verified from the records of the Magadh University for the Third Selection Process. Here it is also pertinent to mention that answering Respondents were also selected in the Second Selection Process and marks were duly awarded to them in that process as well for academic achievements.

However, it needs to be clarified that publication of Research Papers is not a mandatory requirement for being selected as a principal. Per contra, it is just an additional achievement/requirement to



score more marks so that one can steal
march over others.”

44. No material has been filed by the petitioners to controvert the aforesaid averments contained in the counter affidavit of the Respondent No. 10. The University has supported the aforesaid claim of the Respondent No. 10 and has not controverted the same. The aforesaid averments are, therefore, self explanatory and it, therefore, cannot be said that the said respondent was not possessed of the research publications on the basis whereof he could be awarded marks. The categorical averments of possessing the said eligibility prior to the date of averment have not been controverted by the petitioners, the same has to be accepted. The argument, therefore, by the petitioners on that count also does not have any merit.

45. Having cleared the aforesaid cobweb, we may further point out that the Patliputra University represented by Dr. Anand Kumar has said that all these selections which were carried out by the Magadh University have to be dealt with accordingly and the Patliputra University has no role to play in it. With the bifurcation of the University and keeping in view



the directions issued by the Court from time to time, the same will have to be complied with the Patliputra University as well. Consequently, this decision shall bind the Patliputra University for executing the appointments in respect of the colleges which have now fallen within its territorial jurisdiction if the need so arises.

46. The two most contentious issues that were argued on the previous occasions and have been noted in our orders relate to six candidates which were facing a vigilance inquiry and one Dr. A.Q. Ansari whose appointment has been questioned as he does not have a teaching experience having not been appointed as a teacher.

47. Coming to the first set of contentions relating to the pendency of a vigilance case, we may put on record that this vigilance case is in relation to the incident of the year 2011 when the second round of selections had been held and that came to be quashed by this Court and was upheld by the Supreme Court. Since an observation had been made by the Division Bench in appeal while quashing the second round of selections to conclude the inquiry, the matter appears to have been taken up once again. The inquiry had been conducted in the year 2013 and it runs into 44 pages. It is dated 12th of



November, 2014 and has been filed along with an affidavit of the University that was tendered to it during the pendency of this writ petition on the directions given by the Court.

48. It appears that on the strength of such an inquiry, a First Information Report came to be lodged just two days before the interviews were to be held in the third round of selections as per the direction of the Supreme Court. The F.I.R. was lodged on 22nd January, 2015 and registered as Vigilance P.S. Case No. 006 of 2015 under Sections 193/409/420/466/467/471/120B of the Indian Penal Code read with Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The respondents who are affected by the said vigilance case have come up contending that firstly no charge-sheet has been filed till date and secondly mere pendency of an investigation does not take away the right of the answering respondents to be considered for selection. We find from the record that on 23rd of January, 2015 a Division Bench in L.P.A. No. 1461 of 2014 and other connected matters had passed the order referring to the First Information Report and allowing the candidates to participate in the ensuing interviews irrespective of the lodging of the First Information Report and they were further given protection from arrest or any disability from



appearing in the interview. However, the fact remains that the Court has been informed that for quashing of the First Information Report, Cr.W.J.C. No. 694 of 2018 (**Dr. Md. Shamsul Islam and others Vs. The State of Bihar and others**) has been filed and is pending before this Court. Similarly, Cr.W.J.C. No. 581 of 2015 in relation to a different set of selections of the same University is also pending before this Court, but that is with regard to a different P.S. Case No. 39 of 2015 and does not concern the present proceedings. In the present case, it is only P.S. Case No. 06 of 2015 in respect whereof Cr.W.J.C. No. 694 of 2018 has been filed. The fact, however, remains that no charge-sheet is stated to have been filed as yet in the said case relating to the incident of the year 2011, the First Information Report of which was lodged on the basis of a vigilance inquiry in 2015. There is no statutory provision either shown by the petitioners or by the respondent University which may debar these candidates from being considered for appointment. The fact, however, remains that the criminal case has been instituted which remains almost unattended without the filing of a police report. In the above background, we are of the considered opinion that the selection and appointment of these six candidates shall be kept in a sealed



cover and the Vigilance Department shall take appropriate steps for filing of a police report or otherwise within a period of one month from today. In the event no such police report is filed then in that event the aforesaid six candidates shall also be permitted to join on the post for which they have been selected subject to the final outcome of the investigation or inquiry and it shall be open to the University to pass an appropriate order in this regard as and when the consequences ensue. The said six candidates, namely, Dr. Satish Chandra Singh, Dr. Md. Shamshul Islam, Dr. Satyendra Prajapati, Dr. Meera Kumari, Dr. Jitendra Rajak and Dr. Vijay Rajak shall be governed by the aforesaid direction.

49. The rest of the appointments which have been made pursuant to the select-list under the interim orders passed by us on 06.12.2018 and the order dated 21.02.2019 are hereby confirmed. We make it clear that Patliputra University has filed an affidavit clearly stating therein that the bifurcation of the University will not be an impediment as the Patliputra University has no role to play in the matter of selections and appointments. The Patliputra University would be obliged to carry out the selection process and the appointments, the reason being that this entire selection process has undergone a litigation



that has travelled up to the Supreme Court and the selections have been held as per the directions of the Supreme Court, as referred to hereinabove.

50. Coming to the case of Dr. A.Q. Ansari, we do not find his appointment to be that against a teaching post. Admittedly, he was appointed on daily wage way back in the year 1983 and then against the post of a Curator on an advertisement made in 1987. These facts are admitted to him in his counter affidavit filed in C.W.J.C. No. 20763 of 2018 and also in the second writ petition C.W.J.C. No. 20981 of 2018. The first document filed along with this counter affidavit is with regard to the appointment on the post of Curator (wrongly spelt as Quarator) in the P.G. teaching museum of the Post Graduate Department of Ancient Indian and Asian Studies, Magadh University.

51. We fail to understand as to what is a teaching museum but nonetheless the post was that of a Curator and the eligibility qualification was Diploma in Archaeology with three years Under Graduate or Post Graduate teaching experience coupled with high second class Masters Degree. The pay-scale was indicated as Rs. 700-1600/- as admissible to the Lecturers of the University. Thus, the post was not that of a Lecturer. The



said respondent came to be appointed on 7th June, 1987 as a Curator and he was regularized in the pay-scale of Lecturer on 6th July, 1987. The University Grants Commission had also sanctioned the post of one Curator, which is evident from the sanctioned letter dated 27th May, 1987. The U.G.C., however, extended the pay-scale of Rs. 700-1600/- which is evident from the letter of the U.G.C. dated 21st January, 1988.

52. It is, thus, evident that he was appointed as Curator and given the pay-scale of a Lecturer. The selection and appointment as required to be processed for a teaching post, namely, a Lecturer, a Reader or a Professor was not the foundation of the appointment of the said respondent. As a matter of fact, there was no post of Lecturer and, therefore, he was granted the pay-scale of a Lecturer.

53. Thereafter, certain certificates have been filed from the Professors of the University to support the claim of teaching experience. In view of the classifications of teachers that existed, there were only three classes of teaching staffs, namely, Professors, Readers and Lecturers.

54. Learned counsel for the Respondent No. 21 Shri Singh taking the help of the Full Bench judgment in the case of **Kamla Kant Roy** (supra) has urged that the meaning of



the word “teacher” is of a very wide import. It is no doubt true that the word “teacher” has been made quite inclusive in the aforesaid Full Bench judgment, but in the present case, we find that the Respondent No. 21 was never appointed as a Lecturer or against any teaching post after following the due process of selection and appointment. He may have been assigned certain duties which by itself does not confer on him a right to claim the teaching experience of a Lecturer or any of the qualifications of the post referred to above.

55. Strangely enough, we find that the Director, Higher Education vide his communication dated 14th December, 2015 conferred on the Respondent No. 21 the designation of Assistant Professor with retrospective effect. We fail to understand as to under which provision of law has the Director, Higher Education conferred such status on the Respondent No. 21. This has been followed by an office order of the University dated 14th February, 2017. Apart from this, the aforesaid two orders are of no avail, inasmuch as, here the selections are being held on the basis of the advertisement in the year 2008 and it is the qualifications possessed by the Respondent No. 21 as on that date which has to be seen. We, therefore, find that the petitioners are right in their contention that Dr. A.Q. Ansari was not



qualified or eligible not having the teaching experience of either a Professor, Reader or Lecturer, which are the only three designated class of teaching staff recognized under the Bihar State University Act and the regulations framed thereunder. These three categories have now been redesignated as Professor, Associate Professor and Assistant Professor. The designation given to Dr. A.Q. Ansari in the year 2015 or 2017, therefore, will not come to his aid as he was a Curator when the advertisement was issued against which he had applied.

56. We find that Dr. A.Q. Ansari was himself contesting his position and also claiming promotion in respect whereof he filed C.W.J.C. No. 20397 of 2014 that was disposed of on 6th September, 2018 by a learned Single Judge treating the word “teacher” to be widely inclusive. We do not find any discussion with regard to the status of the Respondent No. 21 and his activities and the writ petition was disposed of with the observation that if the petitioner otherwise fulfills the condition for grant of promotion as a Reader or Professor then a necessary decision be taken by the University in this regard. The learned Single Judge has referred to the amendments made in the year 2012. The same would not apply in the present case as the advertisement was of the year 2008, much prior to the



amendment. The documents which have been filed along with the supplementary affidavit clearly indicate that the post held by Dr. A.Q. Ansari is a Class-III post for which the budgetary sanction has been claimed in the same grade for the year 2017-18.

57. Consequently, for all the reasons aforesaid, the ratio of the Full Bench decision in the case of **Kamla Kant Roy** (supra) would not apply on the facts of the present case so as to make the Respondent No. 21 to be eligible for appointment as a Principal. We find that the appointment of Dr. A.Q. Ansari cannot be sustained.

58. The writ petition is, therefore, partly allowed subject to above and the selection and appointment of Dr. A.Q. Ansari, Respondent No. 21 is hereby quashed. The appointments that have been given effect to under our orders dated 06.12.2018 and 21.02.2019 shall also be deemed to be finally adjudicated upon and shall be given effect to. The appointment orders have already been issued and some of the candidates have also joined.

59. The University shall endeavour to ensure the joining of all the other selected candidates subject to the directions in respect of the six candidates referred to



hereinabove whose selections shall be governed by the directions given above.

60. Both the writ petitions, therefore, stand disposed of accordingly. Consequently, no further orders are required to be passed in L.P.A. No. 1114 of 2018, which also stands disposed of.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	15.03.2019
Transmission Date	

