

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7684 of 2023

Md. Khaliquzzaman Khan Son of Late Badiuzzaman Khan, Resident of
Pathan Toli, Aurangabad, P.S. Aurangabad, District Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education Directorate, Govt. of Bihar, Patna.
4. The Vice Chancellor, Magadh University, Bihar, Bodhgaya.
5. The Registrar, Magadh University, Bodhgaya, Bihar.
6. The Finance Officer, Magadh University, Bodhgaya, Bihar.
7. The Principal, Ram Lakhan Singh Yadav College, Aurangabad, Bihar.
8. The Zonal Manager, Bihar and Jharkhand, Central Bank of India, Bihar, Patna.
9. The Branch Manager, Central Bank of India, Bodh Gaya, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sushil Kumar Singh, Advocate
For the State	:	Mr.Madhaw Pd. Yadaw (Gp23)
		Ms. Meera Singh, AC to GP 23
For the M.U.	:	Md. Faiz Ahmad, Advocate
For the Bank	:	Mr. Vibhuti Ranjan, Advocate
		Mr. Anup Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-09-2023

Heard Mr. Sushil Kumar Singh, learned counsel
appearing on behalf of the petitioner; Mr. Madhaw Pd. Yadaw,
learned GP – 23 for the State; Md. Faiz Ahmad, learned counsel
for the Magadh University and Mr. Vibhuti Ranjan, learned
counsel for the Bank.

2. Petitioner has prayed for following reliefs:-

“(I) For issuance of a writ in nature of
certiorari or any other appropriate writ for quashing of
order contained in Ref:-Fin/Pen/120/22 dated
02.03.2022 issued under signature of Finance Officer,



Magadh University, Bodh Gaya, whereby the payment of pension to the petitioner, to be transferred in A/C No.2004448705, C.B.I. Aurangabad, IFSC Code CBIN0283162, has been stopped and further the Bank has been directed that pension will be recovered from his account from 01.02.2021 till date and the same shall be deposited in Magadh University Pension & Gratuity Fund Account.

(ii) For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the respondent concerned to restore the regular payment of monthly pension as well as to make payment of arrear of pension along with admissible interest.

(iii) For holding that action of respondents Commission and other authorities taken against petitioner in view of State government vide letter No.15/D 1-02/2022-332 dated 23.02.2022 is wholly illegal, unreasonable, invalid arbitrary and beyond the jurisdiction.”

3. Learned counsel appearing on behalf of petitioner submitted that petitioner had joined on the post of peon on 28.11.1980 in the Ram Lakhan Singh Yadav College, Aurangabad and thereafter the aforesaid college became constituent unit of Magadh University in fourth phase. The State Government had decided to absorb the services of the employees in the fourth phase constituted colleges including the aforesaid Ram Lakhan Singh Yadav College, Aurangabad, with respect to teaching and non-teaching staffs who were appointed against sanctioned / recommended post till 30.04.1986 (the cut-



off date). In light of the aforesaid decision, the State Government had constituted a committee under the chairmanship of Prof. Damodar Thakur for verification of the documents of non-teaching employees of the colleges.

4. The State Government vide letter No.25/C dated 12.02.1990 published a college-wise list of non-teaching employees of fourth phased constituent college, who have been found appointed and posted against sanctioned / recommended post till 30.04.1986 in which name of the petitioner had figured at serial number 33 and appropriate steps were taken for making payment of salary to the petitioner and similarly situated employees.

5. It is further submitted that in pursuance of order passed by the Hon'ble Supreme Court in Civil Appeal No.6098 of 1997 (**State of Bihar v. Bihar Rajya MSES KK Mahasangh**), reported in **(2005) 9 SCC 129** in light of the report of Hon'ble Justice Agrawal Commission, the Vice-Chancellor of Magadh University took steps for absorption of the services of non-teaching employees of IVth phase constituent college under the power conferred on him under Section 4(1)(14) of Bihar University Act, 1976 with approval of syndicate of the University vide notification contained in Memo



No.170 dated 08.05.2005 issued under the signature of Registrar, Magadh University, in which name of petitioner has been placed at serial number 32 under the category of Class IV employees of aforesaid college.

6. It is further submitted that the petitioner superannuated on 31.01.2008 and thereafter his pension was also sanctioned on 18.04.2008. After retirement, the University issued notification in view of decision of C.A. No.6098 of 1997 by the Hon'ble Supreme Court, whereby the service of the petitioner has again been absorbed.

7. It is further submitted that Magadh University communicated a list of employees to the Principal of the college on 18.05.2009 after approval of pay fixation in meeting of committee held on 14.05.2009, of those whose services have been absorbed under S & R-1 category of IVth phase constituent college, in which petitioner's name has been found at serial number 63. In the meantime, the Director, Higher Education, Bihar issued a direction to Vice-Chancellor, Magadh University vide letter dated 23.02.2022 to take action against the teaching and non-teaching employees of IVth phase constituent college, who belongs to R-2 & NR category and whose services were not properly absorbed in view of provision contained in the



University Act, 1976. Pursuant to the aforesaid letter, Finance Officer, Magadh University, Bodhgaya vide its letter dated 02.03.2022 directed the bank not to make payment of pension to the petitioner. He further directed the Bank that the amount of pension will be recovered from the account of the petitioner from 01.02.2021 till date and amount will be deposited in Magadh University Pension & Gratuity Fund Account which is contrary to the provisions of the Bihar University Act.

8. *Per Contra*, learned counsel appearing for the University submitted that the petitioner belongs to R.L.S.Y. College, Aurangabad (IVth Phase Constituent College) which was converted into constituent unit in the year 1986 along with the other 35 colleges in Bihar. It is further submitted that the controversies were arisen with regard to the absorption of teaching & non-teaching employees of IVth phase constituent colleges, which travelled from Hon'ble High Court, Patna to the Hon'ble Supreme Court of India vide C.A. No.6098/97(**State of Bihar v. Bihar Rajya MSESKK Mahasangh, (200) 9 SCC 129**). The Hon'ble Supreme Court had constituted an enquiry commission known as Hon'ble Justice S. C. Agrawal Commission which had submitted its report wherein the name of the petitioner was not mentioned.



9. It is further submitted that the University had notified the absorption list wherein the name of the petitioner was shown with the other similarly situated persons vide Memo No. VeRes/170/05 dated 08.05.2005.

10. It is next submitted that pursuant to the direction of the State Government, the University had constituted a fresh committee who had examined all records and thereafter a rectified absorption notification vide Memo No. GSID/229/09 dated 09.07.2009 was issued and name of the petitioner has not figured in that absorption list issued vide aforementioned notification.

11. It is next submitted that while granting funds to the University under the head of salary and pension, a review has been conducted and it has come to the knowledge of the State Government that some persons are getting pensionary benefit despite not being recommended as per Hon'ble S. C. Aggarwal Commission list. Thereafter, the University has been directed vide letter No.332 dated 22.02.2022, issued by the Director, Higher Education, Government of Bihar, that those persons whose names have not figured in the report of Hon'ble S. C. Aggarwal Commission are not entitled for any claim including pre and post retiral benefits. The Apex Court had



already decided the issue in the case of **State of Bihar and Others vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and others, reported in (2005) 9 SCC 129** and declared those persons in dismissed category and held them not entitled for pre and post retiral benefit.

12. Heard the parties.

13. Petitioner has claimed to have been appointed on the post of peon in the Ram Lakhan Singh Yadav College, Aurangabad prior to conversion of the college into a constituent unit of Magadh University. The genesis of the 4th phase constituent colleges lies way back in mid-1986 when 44 colleges were made constituent unit under different Universities in undivided Bihar wherein State government vide its notification contained in letter no. 1095 dated 19.08.1986 took a decision to convert 36 affiliated colleges into constituent unit under different Universities with certain terms and conditions, followed by letter dated 03.07.1987, few more colleges were decided to be converted into constituent colleges. Total 40 colleges were made constituent commonly known as '4th Phase Constituent Colleges' out of which 8 colleges under Magadh University Bodhgaya were converted into constituent colleges.

14. The Magadh University was instructed to prepare



the list of employees working on sanctioned post, working on recommended post, sent to the State government for creating additional post and granting affiliation received up to 30.04.1986 (cut-off date with the government). The State government issued letter No. 181/C dated 18.12.89, 36/C dated 24.02.90 notifying formal absorption of teachers and letter No. 25/C dated 12.09.90 notifying formal absorption of non-teaching employees.

15. At this juncture, Mahasangh filed writ application being CWJC No. 4021/95 which was finally decided on 31.01.97; reported in 1997 (1) PLJR 533, giving specific direction in paragraph no. 24, 25 and 26 thereof, directing the Universities to take decision in the light of observation in accordance with the provisions of Section 4(1)(14) of the Universities Act. Against the order/judgment dated 31.01.97 passed in CWJC No. 4021/95, the State government preferred SLP(C) No. 10452/1997, subsequently converted as CA No. 6098 of 97. The Apex Court vide its order dated 12.10.2001, appointed one member commission (Hon'ble Mr. Justice S.C. Agrawal), so as to identify the alleged bogus appointees in various affiliated colleges who sneaked into the services of the erstwhile affiliated colleges in connivance with authorities of



various colleges and Universities of the State of Bihar. The Apex Court, asked the Commission to go into the various controversies with regard to absorption of employees of the erstwhile affiliated colleges in the service of the converted constituent colleges by formulating terms of reference. That one-member commission examined the controversies as per terms of reference after hearing the concerned parties submitted its report before the apex court on 19.12.2003. That the Apex Court vide its order dated 12.10.2004, while disposing of CA No. 6098 of 1997, in its paragraph no. 73, reported in (2005) 9 SCC, directed the University to take a final decision based on the report of Enquiry Commission.

16. From the submissions made in the present writ petition, it is clear that pursuant to the recommendation of the Agrawal Commission, the University had notified the absorption list wherein, the name of the petitioner was shown along with other similarly situated persons vide Memo No. VeRes/170/05 dated 08.05.2005 (Annexure 5). As per the averment made by the respondent no. 4 to 6, in para no. 10 of their Counter Affidavit, the State Govt. had raised objection and asked the University to notify the names of only those persons whose names were figured and recommended in the report of



Hon'ble Justice S.C. Agrawal Commission. Pursuant to the direction of the State Govt., the University constituted a fresh committee and published a rectified absorption notification vide Memo No. GSID/ 229/09 dated 09.07.2009, in which the name of petitioner did not figure.

17. The Finance Officer, Magadh University, Bodh Gaya vide letter dated 02.03.2022, directed the Bank not to make payment of pension to the petitioner who is a Class IV employee, and further directed the recovery of the pension amount from the account of the petitioner from 01.02.2021 till date. This order of the Finance Officer was made after lapse of nearly fourteen years since the date the petitioner superannuated, i.e., 31.01.2008. The petitioner claims that his case may be considered in the light of the judgment of the Apex Court passed in the cases of *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors. Reported in (2015) 4 SCC 334* and *Thomas Daniel Vs. State of Kerala reported in 2022 SCC Online SC 536*.

18. It is to be noted that still matters regarding absorption of employee of the Universities of Government of Bihar are *sub-judice* before the Hon'ble the Supreme Court in **CONMT. PET. (C) No.1188 /2018 in C.A. No.2703 /2017**



(Baidya Nath Choudhary Versus Dr. Sree Surendra Kumar Singh), wherein, by order dated 11.07.2019, it is categorically directed as follows:-

“Until and unless entire information is submitted before this Court, we direct that no further disbursement of the amount to any of the employees be made by both the States, University or Institution, notwithstanding any order which might have been passed earlier by this Court. We stay the orders passed by this Court with respect to release of payments.”

19. In view of the above-mentioned civil contempt petition regarding the issue in the matter of absorption of employees of the colleges taken over by the State of Bihar, which is pending before the Apex Court and considering the direction issued by the order dated 11.07.2019, which is in force till date, I think it proper to not go into the merits of the present writ petition.

20. The petitioner, being a Class IV employee, if so advised, may file a detailed representation before a competent authority.

21. The Additional Chief Secretary, Government of Bihar, all the competent authority concerned and the Vice-Chancellor of the University, are directed to undertake the exercise of considering the case of the petitioner against the



order of recovery dated 02.03.2022 in respect of the petitioner has been passed by the Finance Officer, Magadh University, after fourteen years from the date of retirement, i.e., 31.01.2008 of the petitioner, a class IV employee, in accordance with the law laid down in the cases of *Rafiq Masih (Supra)* and *Thomas Daniel (Supra)*.

22. With aforesaid observations, the present writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.10.2023
Transmission Date	NA

