

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1087 of 2023

Kamlesh Kumar Thakur, son of Late Nagendra Thakur, at present working as Laboratory Incharge, Department of Chemistry, Parwati Science College, Mahdepura, District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Bhupendra Narayan Mandal University Laloo Nagar, P.S. and District-Madhepura through its Registrar.
3. The Vice Chancellor, Bhupendra Narayan Mandal University, Laloo Nagar, P.S. and District-Madhepura.
4. The Registrar, Bhupendra Narayan Mandal University, Laloo Nagar, P.S. and District-Madhepura.
5. The Principal, Parbati Science College, Madhepura.
6. Sunil Kumar Yadav Parbati Science College, Madhepura.
7. B.N. Bibeka, Proctor, B.N. Mandal University, Laloo Nagar, Madhepura.
8. Arun Kumar Yadav, Inspector of College (Science), B.N. Mandal University, Laloo Nagar, Madhepura.
9. Ashok Kumar Singh, Nodal Officer, B.N. Mandal University, Laloo Nagar, Madhepura.
10. Anil Kumar, son of Sri Bindeshwari Prasad Yadav, resident of Village-Shakarpura, P.S. and District-Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Advocate
For the University	:	Mr. Ritesh Kumar, Advocate
For the Respondent No.10:	:	Mr. Amresh Kumar Sinha, Advocate
For the Respondent No.6 :	:	Mr. Onkar Kumar, Advocate
For the State	:	Mr. Amit Bhushan, AC to GP-17

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 31-08-2023

Heard learned counsel for the parties.

2. This writ application has been filed seeking a writ in the nature of a writ of certiorari to quash the order dated 24.10.2018 (Annexure- '7' to the writ application) passed by a



Committee comprising of respondent nos.6 to 9. The petitioner further prays for quashing of the consequential order dated 30.06.2021 (Annexure-‘9’ to the writ application) issued under the signature of Registrar of the University (respondent no.4) by which the service of respondent no.10 has been absorbed by respondent no.4.

3. The petitioner further prays for quashing the letter bearing no.GS-63/20-21 dated 26.04.2021 (Annexure- ‘8’ to the writ application) issued by the then In-charge Principal of the college (respondent no.5). The petitioner also prays for a writ of mandamus commanding the respondent nos.2 to 4 to pay his arrears as well as the current salary which have been withheld by the respondent University.

Brief facts of the case

4. It is the case of the petitioner that he was appointed as Laboratory In-charge in the Department of Chemistry/Zoology by the competent authority in the Parwati Science College, Madhepura vide Memo No.154 dated 29.10.1985. He joined on the said post on 30.10.1985.

5. The college in question was taken over with other 39 colleges in the erstwhile State of Bihar. A Three Men Committee was constituted for making verification of genuine and correct



teaching and non-teaching employees working in the college and the name of the petitioner was found working as Laboratory In-charge, Department of Zoology in place of Chemistry.

6. It is stated that due to some controversies as to how many sanctioned posts of teachers and non-teaching employees were there in the 40 colleges which were converted into constituent colleges pursuant to the sanction letter dated 19.08.1986 of the State of Bihar and how many would be entitled for absorption, the matter travelled to the Hon'ble Supreme Court of India in Civil Appeal No.6098 of 1997 and other analogous cases which arose out of the order passed by this Court in CWJC No.4021 of 1995. The Hon'ble Supreme Court was pleased to constitute Hon'ble Mr. Justice S.C. Agrawal Committee to examine the case of teaching and non-teaching staffs of the college made constituent in 4th phase. The said One Man Committee was authorized to examine and to report on the reference made by the Hon'ble Supreme Court.

7. It is stated that the Hon'ble Justice Agrawal Committee has examined each and every case of teaching and non-teaching staffs working in the college and while answering the term of reference, the Committee gave the three separate lists. The name of the petitioner is mentioned against R-1 post in



the report. Contrary to the said position of the petitioner, the name of respondent no.10 was neither found working against the sanctioned post “S” or R-1 post. The Hon’ble Supreme Court, later on accepted the One Man Committee report vide its judgment in the case of **State of Bihar & others Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh & others** reported in **(2005) 9 SCC 133**. In paragraph ‘73’ of the said judgment, the Hon’ble Supreme Court has accepted the Justice Agrawal Commission Report and rejected all the objections on the said report.

8. In the abovementioned background, this Court heard the matter on 22.08.2023. The submissions made on behalf of the parties have been recorded by this Court in its order dated 22.08.2023. From paragraph 3 to 18 of the order which are being extracted hereunder for a ready reference:-

“3. Mr. Subodh Kumar Jha, learned counsel for the petitioner has relied upon the judgment of the Hon’ble Supreme Court 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. Paragraph ‘73’ thereof under which the conclusions have been derived by the Hon’ble Supreme Court have been referred to. It is submitted that the case of the petitioner fell under Paragraph ‘4’ of the conclusions whereunder the University was directed to take a decision under Section 4(1)(14) of the Act in the



matter of absorption of appointees named in List (II) of the report of the Commission. Learned counsel submits that the name of the petitioner appeared as non-teaching staff in List (II) of the Hon'ble Justice Agrawal Committee and his name was also recommended by the University to the State within the cut off date in accordance with the decision of the State Government.”

4. Learned counsel submits that the petitioner was absorbed in service in the Department of Chemistry on 17.01.2006. It is his submission that for about six years there was no challenge to his absorption in the Department of Chemistry by the present Respondent No. 10. For the first time the Respondent No. 10 moved this Court in CWJC No. 1967 of 2012 which was disposed of vide order dated 31.01.2012 (Annexure '2' to the writ application). This Court while disposing of the said writ application directed the Vice Chancellor of the University to consider the representation of the petitioner and his claim in light of the report of Justice Agrawal Commission, as approved by the Hon'ble Apex Court and to pass an appropriate order in accordance with law.

5. Learned counsel submits that the representation of the petitioner was thereafter disposed of vide Annexure '3' to the writ application. It is submitted that from Annexure '3' it would appear that the claim of the Respondent No. 10 to absorb in service against



the R-1/second post of Laboratory In-charge in Chemistry which had fallen vacant due to death of late Mr. Kumar Krishnanand was not found sustainable in the light of the report of the Hon'ble Justice Agrawal Commission.

6. Learned counsel further submits that being aggrieved by the communication as contained in Annexure '3' the petitioner moved this Court in CWJC No. 15601 of 2015. During hearing of the said writ application, the University informed this Court that the University has set up a Committee to examine all aspects of the matter. On this information having been submitted to the Court, the writ petition was disposed of with liberty to the parties that in case they feel aggrieved by the outcome of the report of the Committee, they will be at liberty to take future course of action before appropriate forum. This order as contained in Annexure '5' to the writ application and this is said to be an order passed with consent of the parties.

7. A Letters Patent Appeal carried out before the Hon'ble Division Bench of this Court being LPA No. 1775 of 2018 was allowed to be withdrawn with liberty to the appellant-petitioner to pursue his remedy before appropriate forum. The petitioner and Respondent No. 10 both participated before the Committee even during pendency of the LPA.

8. Learned counsel for the petitioner has assailed the outcome of the report of the Committee



(Annexure '7') which has been accepted by the University (Annexure '9'). It is submitted that the absorption of the petitioner cannot be disturbed once it has been noticed that Respondent No. 10 was not recommended for absorption by the University and his name did not appear in the List (ii) mentioned in the judgment of the Hon'ble Supreme Court taking note of the report of Justice Agrawal Commission. It is submitted that at this stage, the Respondent No. 10 has been inducted in the Department of Chemistry by ousting the petitioner and this is in teeth of the judgment of the Hon'ble Supreme Court.

9. Learned counsel for the petitioner further submits that the petitioner has not been paid his salary since June, 2021.

10. Mr. Amresh Kumar Singh, learned counsel for Respondent No. 10 has opposed this writ application. It is submitted that the name of the petitioner was recommended by the University for absorption in the Department of Zoology. The petitioner was never appointed as Laboratory In-charge in Department of Chemistry and as per the observation of the Justice Agrawal Commission report which has been re-affirmed by Justice S. B. Sinha Committee the vacancy which occurred due to death of an employee who was earlier working in the Department of Chemistry was to be filled up by Respondent No.10 and not by the petitioner who was in



another department.

11. It is his further submission that the University was not competent to absorb the petitioner in the Department of Chemistry and that is against the mandate of the judgment of the Hon'ble Supreme Court. Learned counsel has further submitted that the petitioner has in course of hearing of CWJC No. 15601 of 2015 readily agreed to participate before the Committee which was constituted by the University, therefore, so far as the question of constitution of Committee is concerned, that cannot be agitated before this Court.

12. It is further submitted that the Committee has in its report (Annexure '7') recorded as a matter of fact that the petitioner had been absorbed on the death vacancy which occurred in the Department of Chemistry which is against the mandate of the judgment of the Hon'ble Supreme Court. It is pointed out that in Annexure '7' there is a categorical finding that the Respondent No. 10 was appointed in the Department of Chemistry as Laboratory In-charge on 14.03.1981 whereas this petitioner was appointed as Laboratory In-charge in the Department of Zoology on 29.10.1985 and it is also evident from the Three-Men Screening Committee report and from the affidavit filed in the Hon'ble Supreme Court. It is submitted that so far as the petitioner is concerned, admittedly he was recommended as Laboratory In-charge in



the Department of Zoology, therefore, the Committee in its report has rightly observed that it could have been changed and the petitioner would not have been appointed/absorbed against the vacancy which occurred due to the death of Late Mr. Kumar Krishnanand. It is his submission that the inquiry report is based on correct facts and needs no interference.

13. It is his submission that Respondent No. 10 has already attained the age of superannuation, however, he has not been paid his salary and the post retiral benefits. As a matter of fact, the Respondent No. 10 did not get any salary with effect from 28.02.2006.

14. Mr. Ritesh Kumar, learned counsel for the University has though opposed the writ application but it is admitted that the petitioner was appointed as Laboratory In-charge in the Department of Chemistry against the vacancy which occurred upon death of Mr. Kumar Krishnanand.

15. It is his submission that the petitioner was absorbed by Respondent No. 2 with approval of the syndicate in the light of the judgment of the Supreme Court with effect from 27.01.1987. It is further submitted that the petitioner has been absorbed by the University under Section 4(i)(ii) of the Bihar State Universities Act with approval of the syndicate and it is in compliance of the recommendation of the Hon'ble Supreme Court.

16. Learned counsel for the University has



submitted that the University has not stopped the salary of the petitioner, however, the Principal of the College has not disbursed the salary of the petitioner.

17. The Respondent No. 6 has endorsed the submission of learned counsel for Respondent No. 10.

18. The parties have concluded their submissions.”

Consideration

9. Having heard learned counsel for the parties and on perusal of the records, this Court is of the opinion that first of all judgment of the Hon’ble Supreme Court in the case of Bihar Rajya M.S.E.S. K.K. Mahasangh & Ors. (supra) is required to be taken note of. Paragraph ‘73’ of the said judgment records the conclusions arrived at by the Hon’ble Supreme Court, hence, paragraph ‘73’ is being reproduced hereunder for a ready reference:-

“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.

Conclusions

1. The judgment of the High Court, to the extent of the interpretation placed by it on the provisions of Section 4(1)(14) and Section 35 with the directions issued in paras 24 to 26 therein, is hereby confirmed for the reasons recorded by us above.

2. The report of the Commission of Enquiry of Hon'ble Justice S.C. Agrawal (Retired), is accepted and all objections filed against the said report are rejected.

3. The members of the staff in various affiliated colleges identified and named in List (i) being appointees against the sanctioned posts shall be absorbed and formal order to that effect shall be issued by the universities concerned.

4. The universities shall take a decision under Section 4(1)(14) of the Act in the matter of absorption of appointees named in List (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.

In considering the question of absorption of appointees named in List (ii) of the report of the Enquiry Commission, the universities concerned



shall rely on the contents of the report of the Enquiry Commission and the present judgment of this Court.

5. The appointees mentioned in List (iii), being the appointees against posts for which recommendations were sent by the universities to the State Government after the cut-off date or those working against 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 (iii) is accepted and the universities are directed to exclude all such appointees named in List (iii) from consideration for absorption.

6. 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.”

10. Keeping in view the aforesaid directions of the Hon’ble Supreme Court, the University had to take a decision under Section 4 (1)(14) of the Bihar Universities Act, 1976 (hereinafter referred to as the ‘Act of 1976’) in the matter of absorption of the appointees named in the list (ii) of the report of the Commission. It is not in dispute that the name of the petitioner appeared in the list (ii) as a non-teaching staff in Justice Agrawal Committee’s report, however, the bone of contention is that his name was shown as non-teaching staff in the department of Zoology but the University recommended him for absorption in the department of Chemistry. This is said to be against the mandate of the judgment of the Hon’ble Supreme Court.

11. The facts of this case as appearing from the pleadings on the record would show that the respondent no.10 did not take immediate step to challenge the recommendation of the petitioner in the department of Chemistry. It is also not denied that the name of the respondent no.10 did not find place in any of the list (i) and (ii) prepared by Justice Agrawal Committee and in the recommendation sent to the State Government within the cut-off date.

12. The respondent no.10 moved this Court for the first



time in CWJC No.1967 of 2012 and the same was disposed of by this Court with a direction to the Vice-Chancellor of the University to consider the representation of the petitioner and his claim in the light of the report of Justice Agrawal Committee as approved by the Hon'ble Apex Court. Here it is worth mentioning that in the order dated 31.01.2012 passed in CWJC No.1967 of 2012 the claim of the respondent no.10 has been categorically recorded. At the relevant time, in course of hearing of the said writ application it was admitted that the respondent no.10 does not find place in the Justice Agrawal Committee report. The claim of respondent no.10 was based on some observations in the report which according to him, is to the benefit of the respondent no.10 as he was working in the department of Chemistry as Lab In-charge against the 3rd post.

13. This Court finds from the order of this Court in CWJC No.1967 of 2012 (Annexure- '2') that even though this petitioner was made respondent no.6 in the said writ application, his appointment was either not challenged or in case it was challenged the said challenge was not pressed in course of hearing of the writ application because the order of this Court nowhere takes note of any challenge to the absorption of the petitioner. All that appears from the order as contained in



Annexure-'2' to the writ application is that the present respondent no.10 had enclosed his two representations contained in Annexure- '11' and '12' submitted before the authorities of the University. This Court issued directions to the Vice-Chancellor of the University to consider those representations.

14. The University considered the representations of the respondent no.10 vide Annexure- '3' to the writ application. The operative part of the order issued vide memo no.1557/12 dated 03.10.2012 under the signature of the Registrar of the University reads as under:-

“Your Name does not figure in the said and concerned Annexure No. IVB in any way, i.e. your service was not found eligible for absorption by the Hon'ble Commission treating you under category R-II/N.R. and as per conclusion No. 05 of the Judgement dated 12.10.2004, services of the employees under category R-II/N.R were not be absorbed. However, your service was absorbed vide Notification dated 28.02.2006 on the recommendation of the Syndiate's sub-committee and on approval of the Syndicate on the basis of figuring your name in State Govt.'s letter No. 25/c dated 12.02.1990 and with the condition that payment would be made on receipt of grant from the State Govt. On similar basis, you too have been asked to show-cause as to why not your such



absorption of service be treated irregular and illegal and why not your service be dispensed with. As per order of the Hon'ble High Court in some such Writ Petitions to maintain status-que/not to take coercive step, final decision on the matter of such show-case have not be taken. The matter of absorption of services of such categories of employees and payment of arrear salary etc. so many analogous matters are under consideration before the Hon'ble High Court and also before the Hon'ble Supreme Court.

In the circumstances stated above, your claim to absorb your service against the R-1 post of Laboratory Incharge in chemistry, fallen vacant due to death of late Kumar Krishnanand is not sustainable in the light of report of the Hon'ble Justice (Retd.) Agrawal Commission or in accordance with law, hence rejected.”

15. The respondent no.10 did not challenge the above order issued by the Registrar of the University as contained in Annexure '3' to the writ application for about three years. He, however, filed a writ application being CWJC No.15601 of 2015 in this Court with a prayer to quash Annexure-'3' to the writ application. When the said writ application was taken up for consideration, the learned writ Court was informed that a Committee has been set up by the University as communicated vide letter dated 28.02.2018 to look into all such aspects with regard to the college in question also where the parties have also



appeared before the Committee and decision is awaited. A prayer was made on behalf of the University to dispose of the writ application leaving it open to those aggrieved by the outcome to take recourse to any future course of action before the appropriate forum in accordance with law. The fact is that the learned counsel for the petitioner also agreed to the said proposal. The writ application was disposed of with the observation that the Committee shall go into all aspects of the matter without being inhibited by any previous order in favour of any person, including the order of the regularization of the year 2006 and subsequent rejection of the representation of the petitioner in the year 2012.

16. A challenge to the order of the learned writ Court in CWJC No.15601 of 2015 in LPA No.1775 of 2018 failed as it was found that the order in the writ was a consented order. The L.P.A. was permitted to be withdrawn with liberty to the appellant to agitate against the order passed by the Committee and consequential order before an appropriate forum.

17. In the aforementioned background the impugned order as contained in Annexure- '7' came to be passed. By this order, the Committee has taken a view that the vacancy caused by death of Late Kumar Krishnanand was to be filled up by way



of absorption of respondent no.10 and the absorption of the petitioner be passed.

18. A perusal of the impugned order as contained in Annexure- '7' would show on facts that the respondent no.10 was appointed in the department of Chemistry as Lab In-charge on 14.03.1981 whereas this petitioner was appointed as Lab In-Charge in the department of Zoology on 29.10.1985 and this is evident from the three men screening committee report and also from the affidavit filed in the Hon'ble Supreme Court but there is no consideration of the reasons earlier shown by the University in its reasoned order as contained in Annexure- '3' and relevant part of which have been quoted in the preceding paragraph. The name of the petitioner was designated on the recommended (R-1) post in the report of Justice Agrawal Committee as Lab In-charge in the department of Zoology, this, in the opinion of the Committee cannot be changed. The Committee has in this regard relied upon another report which came into existence on the direction of the Hon'ble Supreme Court, in the form of Hon'ble Justice S.B. Sinha (Retd.) Commission.

19. It is a matter of record that for scrutinizing certain controversies relating to 4th phase colleges employees arising in



course of compliances with Justice Agrawal Committee's report the Hon'ble Supreme Court constituted Justice S.B. Sinha (Retd.) Committee. One of the issues before the Commission was with regard to filling up of the posts felling vacant on account of superannuation or death of the incumbent of the said post. In this regard, Justice Agrawal Committee's report contains an observation to the following effect:- **“Moreover subsequent to the date of conversion of the college into a constituent college some vacancies would have arisen on account of retirement or death of teachers whose services are absorbed with effect from the date of conversion and teachers who had been working in the college on the date of conversion and are eligible for consideration for appointment against such vacancies could be considered for absorption against such vacancies.”** In view of the aforesaid observations present in the report of Justice Agrawal Committee, Justice S.B. Sinha (Retd.) Commission decided to consider all such cases at the time of hearing of the individual claimants. Annexure-R-10/7 is the order dated 11.09.2014 which contains the preliminary issues prepared by Justice S.B. Sinha (Retd.) Commission. One of the issues framed which is relevant for this case reads as under:-

“(i) What would be effect of filling up post on



superannuation or on death of concerned employee
in terms of para 162 of order dated 11 July 2014?”

20. Thereafter it is recorded that the Commission has in its order dated 11.07.2014 gone into some of the aforementioned questions keeping in view the Order of reference as also the report of Justice Agrawal Commission and the decision of the Hon’ble Supreme Court of India in the case of Mahasangh. The petitioner also lodged his claim with Justice S.B. Sinha (Retd.) Commission. In its order dated 11.09.2014 as regards this question the Commission observed that “the question cannot be finally decided by the Commission at this stage.”

21. The claim of the petitioner, however, came to be considered by Justice S.B. Sinha (Retd.) Commission vide order dated 25.01.2015. This order records that one post was sanctioned and one recommended for the post of Lab incharge in the department of Chemistry. The name of the claimant did not find place in the report of Justice Agrawal Commission, the name of Mr. Ram Narayan Yadav and Sri Kumar Krishnanand appeared in the list. After taking note of the case of the respondent no.10 and the present petitioner, Justice S.B. Sinha (Retd.) Commission came to the following conclusion:-

“In this case, as indicated heretobefore,
one Kamlesh Kumar Thakur was appointed as lab
in-charge in the Department of Zoology. He,



According to one of the Claimants, had been working as lab In-charge in the Department of chemistry. So far as Shri Kamlesh Kumar Thakur is concerned, he cannot be displaced on the ground that the Claimant is senior to him.

In any event, the said Kamlesh Kumar Thakur has not been impleaded as a party in these proceedings and, thus, no effective adjudication's possible in his absence.

For the reasons aforementioned, it may not be possible for this commission to direct absorption of the Claimant in the post of Laboratory In-charge in the Department of Chemistry on the vacant post of Sh. Kumar Krishnanand as submitted or otherwise.

It is, however, made clear that in the event the University passes any order pursuant to or in furtherance of the Judgment of the Hon'ble Patna High Court, this order shall not come in the way of the claimant."

22. The respondent no.10 seems to have filed a recall petition for recall of the order dated 25.01.2015 passed by Justice S.B. Sinha (Retd.) Commission and the recall petition was disposed of taking note of the statement at the bar that the University has already passed an order pursuant to the order of the Hon'le Patna High Court. This order dated 25.02.2015 is the order by which the recall petition was disposed of with liberty to the applicant to question the validity and legality thereof before an appropriate forum.



23. From the impugned order passed by the Committee as contained in Annexure-7 to the writ application it appears that the Committee constituted by the University has taken a view expressed by Justice S.B. Sinha (Retd.) Commission in respect of some of the non-teaching staffs and then it has been concluded that contrary to the precedent set by Justice S.B. Sinha (Retd.) Commission and stamped by the Hon'ble Supreme Court, Sri Kamlesh Kumar Thakur (present petitioner) was absorbed on the post on 17.01.2006.

24. To this Court it appears that the committee constituted by the University could not appreciate that the respondent no.10 had himself submitted his claim before Justice S.B. Sinha (Retd.) Commission and his claim was disposed of vide order dated 25.01.2015 (Annexure 'R-10/8' series to the counter affidavit of respondent no.10) for the reasons mentioned therein. No doubt the order dated 25.01.2015 states that in the event the University passes any order pursuant to or in furtherance of the judgment of the Hon'ble Patna High Court, this order shall not come in the way of the claimant but it must be kept in mind that in the order as contained in Annexure- 'R-10/8') the order dated 31.01.2012 passed in CWJC No.1967 of 2012 has been taken note of and it is with reference to the said



order that Justice S.B. Sinha (Retd.) Commission has recorded that in furtherance of the judgment of the Hon'ble Patna High Court if any order is passed, the same shall not come in the way of the claimant. At this stage, it is worth mentioning that in furtherance of the judgment of the Hon'ble Patna High Court in CWJC No.1967 of 2012 the University had already decided the representation of the respondent no.10 and his claim had been rejected vide order contained in Annexure-3 to the writ application which has not been interfered with by any competent court of law.

25. This Court is, in the circumstances, of the considered opinion that neither the decision of the University as contained in Annexure- '3' to the writ application was disturbed by any competent court of law nor there was any direction by the High Court to constitute a committee to take a fresh view of the matter. The University on its own decided to constitute a committee to revisit the matter and the same was informed to this Court in course of hearing of CWJC No.15601 of 2015. The University suggested that the writ petition be disposed of and if required those aggrieved by the outcome may take recourse to any future course of action before the appropriate forum in accordance with law. The petitioner agreed to the said



suggestion and then the writ application was disposed of with certain observations but leaving it open to the aggrieved party to challenge the decision of the committee, in accordance with law.

26. In the aforementioned background, this Court is of the considered opinion that the Committee was required to look into the earlier order of the University as contained in Annexure-‘3’ to the writ application and then the orders passed by Justice S.B. Sinha (Retd.) Commission as contained in Annexure- ‘R-10/8’ series as those orders have been passed on the application filed by respondent no.10 and the orders are binding upon the respondent no.10 to the extent indicated in those orders. By drawing analogy from the orders passed by the said Committee in respect of other individuals, case of the respondent no.10 could not have been considered. Moreover, even from the orders passed in respect of others by Justice S.B. Sinha (Retd.) Commission’s report it would be clear that those were not the contested cases and the simple question in those cases were as to whether the posts lying vacant on account of superannuation or death of an employee may be filled up by the claimant whereas in the present case it was a contested issue and vide Annexure- ‘3’ to the writ application the University had taken a view that the service of respondent no.10 was not found



eligible for absorption by the Hon'ble Commission and services of the employees under category R-11/N.R. were not be absorbed. In fact the absorption of R-10 vide Notification dated 28.02.2006 itself was questioned and he had been asked a show cause, thus these were important facts which required consideration.

27. In it's counter affidavit, the University has come out with a statement that the petitioner had been absorbed vide memo no.GS-110 dated 17.01.2006 and on the basis of the legal opinion and approval of the syndicate of the University he was absorbed as Laboratory In-charge, department of Chemistry (Recommended) in Parwati Science College, Madhepura on the vacancy caused due to death of Kumar Krishnanand with effect from 27.01.1987 under the provisions contained in Section 4(1) (14) of the Act of 1976.

28. It is the stand of the University that the petitioner was being paid his salary on the post on which he was absorbed till June, 2021.

29. From the submissions made at the bar it appears that the petitioner has not been paid his salary since June, 2020 whereas the respondent no.10 did not get any salary and he has attained the age of superannuation in the year 2022. The



petitioner is said to be still working.

30. In the circumstances, this Court is of the opinion that the impugned orders as contained in Annexure- ‘7’ and ‘9’ are liable to be set aside and those are accordingly set aside.

31. According to the University, the University has not sent any letter to the college for stopping the salary of the petitioner. The attendance of the petitioner has been marked in the college and it is the categorical stand of the University that the University releases the payment after receipt of the demand from the concerned college and it is the college who has stopped the payment of salary to the petitioner.

32. This Court, therefore, directs that the University as well as college shall ensure payment of arrears of salary to the petitioner within a period of two months from the date of receipt/communication of a copy of this order.

33. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	
CAV DATE	22.08.2023
Uploading Date	31.08.2023
Transmission Date	

