

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1222 of 2020

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Ranvijay Kumar Son of Late Ramdas Prasad Singh Resident of Village-
Bandeya, P.S.-Bandeya, District-Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Higher Education, Government of Bihar, Patna.
4. The Vice-Chancellor, Magadh University Bodh Gaya.
5. The Registrar, Magadh University Bodh Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Adv. Mr. Satyam Shivam Sundaram, Adv. Mr. Mukesh Kumar, Adv. Mr. Amit Anand, Adv.
For the State	:	Mr. Jitendra Kr. Roy 1, S.C.-13
For the Magadh University:	:	Md. Faiz Ahmad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 08-07-2024

Heard Mr. P.N. Shahi, learned senior counsel for the petitioner, Mr. Jitendra Kr. Roy 1, S.C.-13, learned counsel for the State and Mr. Faiz Ahmad, learned counsel for the Magadh University.

2. By filing the present writ application, the petitioner has prayed for issuance of an appropriate writ/writs, order/orders, direction/directions for the following reliefs:

*(i) To quash the order dated 09.01.2016
(Annexure-14) passed by the Vice-
Chancellor, Magadh University*



(Respondent No. 4) whereby absorption of the petitioner as Lecturer in the Department of Ancient India and Asian Studies in S.B.A.N. College, Darhetta Lari, Jehanabad was directed to be made on the post vacated due to superannuation of Shri Sheo Pujan Sharma i.e. with effect from 01.02.2009 instead of 16.04.1990/18.04.1990 on which date the University had initially absorbed the petitioner vide notification dated 08.05.2005 (Annexure-09).

(ii) To quash the consequential notification dated 18.09.2018 (Annexure-15) whereby his services has been absorbed with effect from 01.02.2009 instead of 16.04.1990 and for shifting back his date of absorption from 01.02.2009 to 16.04.1990.

(iii) To pay the arrears of salary due to the petitioner on account of shifting back his date of absorption.

3. Learned senior counsel for the petitioner submits that the petitioner was appointed as Lecturer in the Department of Ancient India and Asian Studies in S.B.A.N. College, Darhetta Lari, Jehanabad on 27.04.1984 (Annexure-1). He gave his joining on 01.05.1984. The said appointment was ratified by the Governing Body of the said college on 11.03.1985 (Annexure-2).

4. The college in question was taken over by the State Government on 19.08.1986. The name of the petitioner was included in the handover-takeover list. The cut off date for taking over the services of the employees of the college was



fixed as 30.04.1986.

5. A three member Screening Committee was constituted by Magadh University to examine the cases of employees regarding their absorption. One Shri Raj Kishore Singh (now dead) submitted a representation before the said Committee requesting for deletion of the name of the petitioner on account of lack of requisite qualification. By initial Report dated 24.11.1986 (Annexure-3 of the writ petition), the Committee removed the name of the petitioner without hearing him and included the name of Shri Raj Kishore Singh.

6. On learning about the same, the petitioner represented before the Vice-Chancellor, Magadh University on 01.12.1986 who directed for reconsideration of the case of the petitioner by the Screening Committee. Thereafter, by subsequent Report dated 30.01.1987 (Annexure-5 of the writ petition), the Screening Committee restored the name of the petitioner as Lecturer working in the College from 01.05.1984. The Registrar, Magadh University in his affidavit filed in the Supreme Court on 09.06.2003 in Civil Appeal No. 6098 of 1997 (*State of Bihar vs. Bihar Rajya M.S.E.S.K.K. Mahasangh*) decided on 12.10.2004 which is reported in



2005 (1)PLJR 464(SC) justified the subsequent Report of the Screening Committee dated 30.1.1987 (Annexure-5). However, in the Report of the Justice Agrawal Commission dated 19.12.2003, the name of the petitioner was not disclosed and the name of Sri Raj Kishore Singh was wrongly considered on the basis of the initial Report of the Screening Committee dated 24.11.1986, ignoring the subsequent Report dated 30.01.1987.

7. The petitioner had filed I.A. No. 151/2004 in the above-mentioned case before the Hon'ble Supreme Court. The Hon'ble Apex Court directed the concerned respondent to take an appropriate decision in individual cases with regard to the qualification of each employee as the Universities were bestowed with such power in terms of Section 4(1)(14) of the Bihar State Universities Act, 1976.

8. The Magadh University by notification dated 08.05.2005 (Annexure-9 of the writ petition) absorbed the services of the petitioner with effect from 16.04.1990 which was the date when the petitioner had acquired Ph.D degree and sent a compliance report to the Supreme Court.

9. However, in the year 2009, the Syndicate of Magadh University resolved that names of those Lecturers whose



name was not included in the list prepared by Justice Agrawal Commission be brought in R-2 category and thereafter the service of the petitioner was discontinued with effect from 09.07.2009.

10. Pursuant to a Calling Attention Motion in the Bihar Legislative Assembly, the Registrar, Magadh University submitted a report dated 16.03.2012 (Annexure-11 of the writ petition) wherein it was specifically mentioned that the petitioner was appointed before the cut-off dated (30.04.1986) while Shri Raj Kishore Singh was appointed after the cut-off date and affidavit to that effect had been filed in the Supreme Court by the Magadh University. Later, the State of Bihar thoroughly examined the matter and by order dated 07.05.2015 (Annexure-12 of the writ petition), the service of the Petitioner was directed to be restored.

11. Meanwhile, Justice S.B. Sinha Commission also considered the matter and by the order dated 10.09.2015 (Annexure-13 of the writ petition) directed the Vice-Chancellor of Magadh University to consider the matter afresh.

12. By the impugned order dated 09.01.2016 (Annexure-14 of the writ petition), direction for absorption of



the service of the petitioner has been given but from the date of retirement of Shri Sheo Pujan Sharma and by consequential notification dated 18.09.2018 (Annexure-15 of the writ petition), the service of the petitioner has been absorbed from 01.02.2009 instead of 16.04.1990.

13. A counter-affidavit has been filed on behalf of respondent nos. 4 & 5 stating therein that at the time of takeover of the college in question, there were six recommended post in the department concerned and as per the recommendation of Justice Agrawal Commission, the names of six other persons were there, who were found eligible for absorption. The name of the petitioner was not there in the report of Justice Agrawal Commission although he was absorbed in the services of the University vide Memo no. VC/Res/169/05 dated 08.05.2005. On the basis of his absorption, he got salary from December 1986 to 1999. At that time of takeover of the college, the petitioner did not have the requisite qualification since he did not have a high Second Class Masters Degree although he obtained the same by getting Ph.D. degree on 16.04.1990.

14. The petitioner filed objection before Justice Agrawal Commission since his name was not there in the report, but



the same was rejected. He approached the Hon'ble Supreme Court by filing objection, but it was not considered. The petitioner approached Justice S.B. Sinha Commission by filing Claim Petition No.588 of 2013, which was disposed of vide order dated 10.09.2015 with a direction to the Vice Chancellor of the University to hear the petitioner and one Dr. Raj Kishore Singh. It is pointed out here that the name of the other person, namely, Dr Raj Kishore Singh finds place in the report of Justice Agrawal Commission at serial no.5 having his date of eligibility as 09.05.1988, whereas the petitioner obtained his Ph.D. degree on 16.04.1990, therefore, he became eligible for consideration w.e.f. 16.04.1990, but no post was found vacant in the subject concerned in the college in question. Therefore, in the light of the order dated 10.09.2015 passed by Justice S.B. Sinha Commission, the petitioner has been absorbed in the services of the University w.e.f. 01.02.2009, after retirement of one Sri Shiv Pujan Sharma, whose name find place at serial no.6 in the report of justice Agrawal Commission.

15. The Vice Chancellor of the University after hearing the petitioner and Dr. Raj Kishore Singh has passed a detailed order considering each and every aspect and has



decided the inter se seniority between both the persons. The order passed by the Vice Chancellor is based on the documents and the report of Justice Agrawal Commission.

16. Learned counsels for the University further submits that the claim raised by the petitioner for absorption of his services w.e f. 16.04.1990 is not at all sustainable. As per the recommendation of Justice S.B. Sinha Commission in its report and the direction of the Hon'ble Supreme Court, the petitioner has been adjusted in service from the date the post has fallen vacant and the persons on whose place, the petitioner was absorbed, was also an employee of 4th phase College. By giving the benefits of absorption from the date he obtained the requisite qualification, would amount to giving the benefits of the same post twice and the state exchequer would be burdened with extra liability. It is further submitted that when some other employee was already working on the post and the petitioner has only been absorbed in his place meaning thereby that prior to his absorption on the post, someone else was working on the post, therefore, there is no question of the post being vacant to grant benefit of absorption against no post.

17. Having heard the submissions advanced on behalf



of the parties, it appears that Shri Raj Kishore Singh (now dead) was appointed after the cut off date, which is mentioned in the affidavit filed by Magadh University on 09.06.2003 before the Supreme Court as is evident from the letter dated 16.03.2012 (Annexure-11) issued by the Registrar, Magadh University and consequently, the impugned order dated 09.01.2016 (Annexure-14) holding that Shri Raj Kishore Singh was appointed before the cut off date is erroneous and non-sustainable.

18. It is also evident that the University itself having regularised the services of the petitioner with effect from 16.04.1990 vide notification dated 08.05.2005 (Annexure-9) and having taken consistent stand in the Supreme Court that subsequent Report dated 30.01.1987 (Annexure-5) of the Screening Committee including the name of the petitioner as Lecturer in the College is correct, is not justified in taking stand to the contrary.

19. In view of the aforesaid discussions and facts available on record, this writ application is allowed quashing the order dated 09.01.2016 (Annexure-14) as well as the consequential notification dated 18.09.2018 (Annexure-15). The concerned Authority is directed to absorb the service of



the petitioner with effect from 16.04.1990 in place of 01.02.2009 and grant all the consequential benefits treating his absorption from 16.04.1990.

20. With the aforesaid direction, this writ application stands allowed.

(Anjani Kumar Sharan, J)

divyanshi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2024
Transmission Date	NA

