

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6549 of 2021

1. Sulekha Devi W/o Late Arun Kumar R/o Road No.1, Indra Nagar, Faudar Rai Gali No.3, R.M.S. Colony, Patna- 800020, P.S.- Kankarbagh, District- Patna. working on the Post of Peon, B.D. College, Patna, a constituent unit of earlier of Magadh University, now Patliputra University, Patna.
2. Kamaleshwar Singh @ Kamlesh Kumar Singh S/o Late Arjun Singh R/o Heran Bigha, P.S.- Bakhtiyarpur, District- Patna. working on the Post of Peon, B.D. College, Patna, a constituent unit of earlier of Magadh University, now Patliputra University, Patna.
3. Bisheshwar Pandit S/o Late Faguni Pandit R/o Bishunganj, Gaya, P.S.- Magadh Medical College, Gaya, District- Gaya. working on the Post of Peon, B.D. College, Patna, a constituent unit of earlier of Magadh University, now Patliputra University, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna.
3. The Additional Secretary, Higher Education, Deptt. of Education, Govt. of Bihar, Patna.
4. The Director, Higher Education, Deptt. of Education, Govt. of Bihar, Patna.
5. The Magadh University through its Chancellor at Bodh Gaya, Gaya.
6. The Registrar, Magadh University, at Bodh Gaya, Gaya.
7. The Finance Officer, Magadh University at Bodh Gaya, Gaya.
8. The Finance Officer, Magadh University at Bodh Gaya, Gaya.
9. The Principal, B.D. College, Mithapur, Patna (earlier known as B.D. Evening College, Mithapur, Patna) a constituent unit of the Magadh University and now of the Patliputra University, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Kumar Sinha, Advocate Mr. Arvind Kumar Sharma, Advocate Mr. Chetan Kumar, Advocate
For the Respondent/s	:	Mr. Jitendra Kumar Roy, SC 13 Mr. Hitesh Suman, AC to SC 8
For the University :		Md. Faiz Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 26-11-2024

The petitioners have invoked the extraordinary writ jurisdiction of this Court praying for the following reliefs:



“1. That the present writ application is being filed for issuance of appropriate writ or writs, in the nature of the writ of Mandamus directing and commanding the respondents particularly the State of Bihar and its authorities to act upon on absorption of the services of the petitioners in the light of the order dated 15.01.2016 (Annexure-10) passed by the Hon'ble Justice S.B. Sinha (Retd.) commission on the Claim Petition No. 197/2013, Claim Petition No. 195/2018 filed by the petitioners respectively, as taken and communicated by the registrar of Magadh University, respondent no. 7 to respondent-3 which has been accepted by the Hon'ble Apex Court in Civil Appeal No. 2703/2017 under the order dated 31.08.2017 (Annexure-11), in Para-18 and 20 thereof, directing the respondents to implement the said recommendation within the outer limits of 3 months and pay the consequential emoluments, i.e. the salary, arrears of salary



etc. admissible to the Post of Peon, and pending disposal of this writ application, the respondents may be directed to Pay the salary etc. to the petitioners.

That the petitioners are the citizen of India and working on the Post of Peon in B.D. College, Patna, represented by the respondent no. 9, the Principal, of the said college.”

2. The case of the petitioners in brief is that the petitioner no. 01 joined Group D post of B.D. Evening College, Patna on compassionate ground on 05th October 1985. Petitioner no. 02 and 03 were appointed in Group D post by the same College vide orders dated 18th October 1985. Both of them joined service on 29th October 1985.

3. Subsequently, as per the policy decision of the Government, the above-named College and other colleges were brought under the umbrella of the administration of Magadh University. It will not be out of place to mention that at present B.D. Evening College, Patna is under the administrative control of Patliputra University. When the colleges were taken over by the universities sometime in 1986, dispute cropped up regarding



absorption of the employees of the colleges. The matter went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court appointed one man Commission to decide the issue initially under the Chairmanship of the Hon'ble Justice S.C. Agarwal. After the decision being made by the Hon'ble Justice S.C. Agarwal Commission some employees were left unattended for consideration in respect of their absorption. They moved to Hon'ble Supreme Court once again and on the basis of the decision by the Hon'ble Supreme Court, another Commission under the chairmanship of Hon'ble Justice S.B. Sinha was set up. The petitioners submitted their claims for absorption vide a Claim Petition No. 197 of 2013, 198 of 2013, and 195 of 2013. The claims of the petitioners were disposed of by the Hon'ble Justice S.B. Sinha Commission *vide* an order dated 15th January 2016. The relevant portion of the said order, for the purpose of disposal of the instant writ petition, is reproduced below:-

“The university has filed a chart before this Commission showing that there are five vacancies occasioned by reason of superannuation of Shri Ramprit Ram, Shri Anand Mohan Thakur, and passing away of Shri Madan Lal, Shri Narendra



Bahadur Singh, and Shri Makhan Razak, which may be filled up, subject to the condition mentioned in the case of Shri Abhay Kr. Srivastava. The Claimants may also be adjusted against the vacancies arising out of death retirement category.

These Claim petitions are disposed of with the aforementioned direction.”

4. The report of the Hon’ble Justice S.B. Sinha Commission was tested by the Hon’ble Supreme Court in judicial side. The Hon’ble Supreme Court in batch matters being ***Civil Appeal No. 2703 of 2017*** with similar other appeals in ***Krishna Nand Yadav & Ors. Vs. Magadh University & Ors.*** examined the Hon’ble Justice S.B. Sinha Commission report and *vide* an order dated 31st October 2017 passed the following order:-

“22. It is observed, as prayed by the counsel for the appellants that the chart which has been submitted contains some errors. Therefore, the State Governments have to go by the recommendations made and not to treat the chart as final.”

5. Coming to the 4th objection raised by the learned counsel for the State with respect to the recommendations against the



vacancies created by death or superannuation, we find that Hon'ble Justice Sinha has taken meticulous care in this regard while making recommendations as to whether the incumbents were working before the cut off date or not at the relevant time. The factual scenario was bound to change including who held the post at the particular point of time, therefore, the recommendations made are appropriate and in accordance with law.

“22. It is observed, as prayed by the counsel for the appellants that the chart which has been submitted contains some errors. Therefore, the State Governments have to go by the recommendations made and not to treat the chart as final.”

6. Thus, the order of the Hon'ble Supreme Court makes it explicitly clear that recommendation of the Hon'ble Justice S.B. Sinha shall have to be given effect to. However, the University practically sat over the decision of the Hon'ble Justice S.B. Sinha Commission and rejected the claim of the petitioners on the following grounds:-

“S.No. 47, 48, 51,53, 54 Sulekha Devi, Kamleshwar Singh, Suresh Thakur, Nand Kishore & Bisheshwar Pandit, Peon, B.D. College, Patna.

Relooked the cases of above 05 claimants. In accordance with the direction of Hon'ble Justice S.B. Sinha Commission above 05



persons were to be adjusted against posts fallen vacant under DRT Category. Under DRT Category 05 posts fallen vacant against which three wards were appointed on compassionate ground. Hence, only two posts were available under DRT Category.

The posts available under DRT Category are as under.

1. Ram Prit Ram retired on 30.04.2009.
2. Anand Mohan Thakur retired on 31.01.2015.

The factual matrix of the above claimants is as under:

Name	Date of joining
Nand Kishor	17.06.1985
Suresh Thakur	04.10.1985
Bisheshwar Pandit	04.10.1985
Sulekha Devi	05.10.1985
Kameshwar Singh	29.10.1985

Hence, Nand Kishor may be adjusted against the post available due to retirement of Ram Prit Ram on 30.04.2009 w.e.f. 01.05.2009 and Suresh Thakur may be adjusted against the post available due to retirement of Anand Mohan Thakur on 31.01.2015.”

7. It is submitted by the learned Advocate for the petitioners that Hon’ble Justice S.B. Sinha Commission decided the claim of the petitioners on the basis of the documents filed by the University and on careful consideration of the vacancy position



due to death, retirement and transfer, the petitioners were recommended for appointment. The said report of the Commission was also considered by the Hon'ble Supreme Court. Subsequent to the decision of the Hon'ble Apex Court, the University in its administrative side cannot claim otherwise and deny absorption of the petitioners.

8. The learned Advocate appearing on behalf of the University, on the other hand, draws my attention to the counter-affidavit and supplementary counter-affidavit filed by the respondents no. 5 to 7 on behalf of the University. It is submitted by the learned Advocate appearing on behalf of the contesting respondents that in the year 1986 as many as 40 colleges were brought within the purview of different universities situated in the State of Bihar. After the bifurcation of the State, out of said 40 colleges 28 colleges are within the territory of Bihar and rest of the 12 colleges are within the territory of Jharkhand. Therefore, the issue relating to absorption of teaching and non-teaching staffs of the said colleges was a complicated issue for which the Hon'ble Supreme Court initially appointed the Hon'ble Justice S.C. Agarwal Commission. The Commission submitted its report in 2004-2005. The Agarwal Commission did not recommend the names of the petitioners, therefore, the petitioners did not come



within the scope of absorption in any of the colleges under the University. It is also submitted by the learned Advocate for the University that the petitioners are at present not working in the said college, therefore, the question of their absorption does not arise at all. The University duly considered the cases of the petitioners after recommendation of Hon'ble Justice S.B. Sinha Commission and on the basis of the said recommendation, two persons were absorbed on the basis of their seniority from the date on which the said post had fallen vacant. Therefore, the petitioners do not have any right to claim absorption.

9. After careful consideration of the submissions made by the learned counsels for the petitioners and the University, it appears from the record that admittedly the Hon'ble Justice S.C. Agarwal Commission did not recommend the names of the petitioners for absorption, for which the petitioners submitted their claim petition before the Hon'ble Justice S.B. Sinha Commission took into consideration the vacancy report submitted by the University and the claims of the petitioners and opined that the petitioners may be absorbed against the posts which fell vacant on DRT. The decision of the Commission was judicially scrutinized by the Hon'ble Apex Court in *Civil Appeal No. 2703 of 2017 (Krishna Nand Yadav & Ors. Vs. Magadh University & Ors.)* . The Hon'ble Supreme



Court did not find fault in the report of the Hon'ble Justice S.B. Sinha Commission.

10. Under such circumstances, the University authority had no scope to re-visit the matter on administrative side. The judicial order passed by the Hon'ble Apex Court of the country ought to have been implemented by the contesting respondents no. 5 to 7 at any cost.

11. For the reasons stated above, this Court is not in a position to accept the objection raised by the University and thus, directs the respondents to absorb the petitioners on the post of Peon within two months from the date of this order.

12. If the concerned College/University does not have any vacant post they will have to comply with the order of the Hon'ble Supreme Court by creating supernumerary posts for the petitioners. This order however, will not act as a precedence and the same is passed only on a peculiar facts and circumstances of this case.

13. The instant writ petition is thus disposed of on contest, however there shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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