

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4579 of 2020

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Om Prakash Singh, son of Shri Sheo Pujan Prasad, resident of Ward No. 10,
Chanakaya Colony, Dighi Khurd, Hajipur, District- Vaishali, Pin - 844102.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Tilka Manjhi Bhagalpur University, Bhagalpur through its Registrar.
3. Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
4. Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
5. Principal, Marwari College, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava, Advocate
For the Respondent/s	:	Mr.Subash Chandra Mishra (Sc16)
For the University	:	Mr.Ashhar Mustafa, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 17-12-2024

1. Only issue involved in the instant writ petition is as to whether the writ Petitioner is entitled to a declaration and consequential order thereof that he ought to be treated as absorbed on the post of Assistant of Tilka Manjhi Bhagalpur University, Bhagalpur, Bihar on the basis of certain factual developments and departmental orders.

2. Factual matrix involved in the instant writ petition is as follows:-

On the basis of a letter, dated 26th of November, 1982, issued by the Education Department, Government of Bihar,



University Authority was informed and empowered for creation of different non-teaching post in the college under the university on the basis of sanction order issued by the concerned department of the Government. Subsequently, by letter, dated 27th of December, 1990, the Principal, Marwari College, Bhagalpur informed the Petitioner that he had been provisionally appointed as a Steno-cum-Typist on a daily wage basis in order to meet the requirement of the college. By the said letter, the Petitioner was directed to join his service in the aforementioned college by 15th of January, 1991. The Petitioner, accordingly, joined his service on the post of Steno-cum-Typist and started discharging his duties in accordance with law. Subsequently, on 15th of May, 1991, the Principal wrote a letter to the concerned authorities in the university seeking approval to regularize the services of the Petitioner against the post of Steno-cum-Typist in the said college in prescribed pay-scale. Subsequently, by office order dated 20th of May, 1991, the Petitioner's service in the said college was regularized w.e.f. 1st of June, 1991 in the pay-scale of Rs. 1500-2750/-. After such regularization, the Principal of the Marwari College, Bhagalpur, requested the authorities in the university in writing to grant approval with respect to the appointment of the Petitioner



against the said post of Steno-cum-Typist. The Vice-Chancellor of Tilka Manjhi Bhagalpur University, Bhagalpur by a letter dated 21st of June, 1993, granted approval to the appointment of the Petitioner against the post of Steno-cum-Typist of the college in the pay-scale approved by the State Government with other monetary benefits and allowances.

3. Matter of dispute between the Petitioner and the respondent authorities started from this juncture. Upon superannuation of the erstwhile Assistant of the college, the Principal, Marwari College, Bhagalpur, by office order dated 30th of May, 1998, promoted the Petitioner against the sanctioned vacant post of Assistant w.e.f. 1st of June, 1998, considering his efficiency and competence in discharging his functions. Subsequently, on 16th of December, 1998, the Principal of the said college requested the university to grant approval to the promotion of the Petitioner on the post of the Assistant of the said college. Similar letter of request was made by the Principal to the Vice-Chancellor of the University on 6th of April, 1999. While the Petitioner was discharging his duties as Assistant of the said college, he was transferred by office order dated 19th of April, 2002 issued by the authorities under the university of Tilka Manjhi Bhagalpur College, Bhagalpur, on



administrative ground. The Petitioner duly joined his new place of posting and while working as Assistant of Tilka Manjhi Bhagalpur College, Bhagalpur, an office order was issued on 18th of December, 2003 by the university, by virtue of which he was transferred to the university office and entrusted to discharge his function as In-Charge of the Legal Section of the university with immediate effect. While the Petitioner was working as Assistant in the university office, an office order was issued on 31st of March, 2007, on the basis of which he was transferred from the post of Assistant in the establishment branch of the university of the college. Subsequently, by an order, dated 23rd of January, 2010, the Petitioner was deputed in the university office with immediate effect along with other employees. While the Petitioner was working as Assistant in the university on deputation pursuant to the office order dated 23rd of January, 2010, he was subsequently posted as Personal Assistant to the Vice-Chancellor of the University on 20th of March, 2012. He joined his new assignment as Personal Assistant to the Vice-Chancellor of the said university and had been discharging his work. On 14th of September, 2013, with the approval of the State Government, a roster was prepared by the university in respect of the employees on 11th of May, 2006, in



which the Petitioner was deemed to be absorbed in the university office on the post of Assistant and he was entitled to the benefits of the services as may be available to the staff of the university service. It is alleged by the Petitioner that in spite of his absorption in the services of the university, by an order, dated 2nd of May, 2014, he was transferred from the office of the Vice-Chancellor to his parent place of posting at Marwari College at Bhagalpur. Against the said order, the Petitioner submitted his representation alleging that the said order is highly arbitrary, unreasonable and in plain disregard of the concerned authority under the university contained in office order dated 14th of September, 2013. When the university authority did not pay any heed to his representation, the Petitioner filed C.W.J.C. No. 12116 of 2014 before this Court, which was disposed of by an order, dated 5th of September, 2017, directing the concerned authorities in the university to dispose of the representation, dated 2nd of March, 2014, by a reasoned order within a period of 6 weeks. The concerned authorities in the university disposed of the representation filed by the Petitioner by a purported reasoned order, dated 9th of April, 2018, under the signature of the Vice-Chancellor of the University. The Petitioner's representation was rejected and the



office orders, dated 2nd of March, 2014 and 10th of May, 2014, passed by the university, were held to be proper and valid.

4. Under such factual backdrop, the Petitioner has filed the instant writ petition for following reliefs:-

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing reasoned order dated 09/04/2018 bearing memo no. 80/14/277-279 passed by the Vice-Chancellor of Tilka Manjhi Bhagalpur University, Bhagalpur (hereinafter referred to as "the University"), by which in the most illegal and arbitrary manner, while disposing of the representation submitted by the Petitioner, office orders dated 02/03/2014 and 10/05/2014 issued by the University, by which, in effect, absorption of the services of the Petitioner in the University office had been cancelled, were held to be just and proper;

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing that part of the office order dated 02/03/2014 issued from the University, by which the Petitioner was transferred from the post of Assistant, Vice Chancellor's office to the post of Assistant at Marwari College, Bhagalpur (hereinafter referred to as "the College") indicating the same to be the parent place of his posting;



(iii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the office order dated 10/05/2014 issued by the University, by which the office order dated 14/09/2013 issued by the University, by which, inter alia, the services of the Petitioner had been absorbed in the University Office on the post of Assistant, has been cancelled with effect from the date of its issuance in the most arbitrary and illegal manner without affording any opportunity of being heard to the Petitioner;

(iv) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the University to take steps towards posting the Petitioner against the post of Assistant in the University Office in view of his services having been absorbed in the University Office in accordance with law by an office order dated 14/09/2013 issued by the University;

(v) Any other relief/reliefs that the Petitioner may be found to be entitled to in the facts and circumstances of the present case.”

5. The State/respondents as well as the university filed two separate counter affidavits denying and disputing the case of the Petitioner. The State/Respondents pleaded that the university being the custodian of the records of its employees is



competent to answer the issue relating to the Petitioner's absorption in the university services.

6. It is also contended on behalf of the State/respondents that the Petitioner's service was absorbed in Marwari College, Bhagalpur. Therefore, he was essentially an employee of the college. He might be directed to serve the university on deputation but he cannot claim absorption on such deputation post.

7. The Tilka Manjhi Bhagalpur University, Bhagalpur, Bihar, in its counter affidavit stated that the Petitioner prayed for the similar relief in C.W.J.C. No. 12116 of 2014 except the prayer for quashing the reasoned order, dated 9th of April, 2018.

8. It is contended on behalf of the university that by virtue of the order impugned, the Petitioner was repatriated to his parent department, i.e., Marwari College, Bhagalpur by cancelling the order dated 14th of September, 2013, by virtue of which the Petitioner was deemed to be absorbed in university service.

9. It is also contended on behalf of the university that the order of "Deemed Absorption" dated 14th of September, 2013, was found to be improper, as the Petitioner was on deputation at university office, therefore, he was repatriated to



his parent cadre/department.

10. I have heard Mr. Abhinav Srivastava, learned Advocate on behalf of the Petitioner, Mr. Subash Chandra Mishra, learned Advocate for the State and Mr. Ashhar Mustafa, learned Advocate for the University.

11. I have also perused the documents filed by the Petitioner as annexures in the instant writ petition.

12. At this stage, it would be profitable for us for the purpose of adjudication of the case to reproduce the impugned reasoned order, dated 9th of April, 2018, which has been challenged by the Petitioner to ascertain as to whether the said order is highly arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution of India as well as the provisions contained under Bihar State Universities Act, 1976 and the Statutes framed therein.

13. The aforesaid order (Annexure 21) is reproduced below:-

*“Tilka Manjhi Bhagalpur University,
Bhagalpur-812007*

Letter *No.*
Date

REASONED ORDER

*In compliance of respective order dated
05.09.2017 passed by the Hon'ble High Court*



of Judicature at Patna in CWJC No. 12116 of 2014 titled as "Om Prakash Singh vs. The T.M.B. University, Bhagalpur & Ors." I have called for each and every records which are related to the case of Om Prakash Singh and from the perusal of record it has been found that it is not in dispute that Sri Om Prakash Singh was provisionally appointed as a stenographer-cum-typist w.e.f. 15.01.1991 and was later on regularized we.f. 01.06.1991 vide office order dated 20.05.1991. Subsequently, the University approved the regularization of Sri Om Prakash Singh.

It is also undisputed that Sri Om Prakash Singh was promoted to the post of Assistant w.e.f. 01.06.1978 vide office order dated 30.05.1998 and further in the year 2010, he along with other employees was posted on deputation as "Assistant" in the University office vide office order bearing no. 18/2010 dated 23.01.2010 and later on vide office order dated 20.03.2012 he was posted as personal Assistant to Vice Chancellor; Further it is also not in dispute that the service of the Petitioner was absorbed at University office vide office order no. 274/2013 dated 14.09.2013 at the post of "Assistant". In the said order services of Sri Om Prakash Singh was deemed to have absorbed in the University office consequent upon acquiescence of the State Government to



the roster prepared by the University vide letter no. 1 व 3-212/06 उ०शि० 681 dated 11.05.2006.

It is pertinent to mention here that immediately, after the deemed absorption of service of the Petitioner in the University Office, the order dated 14.09.2013 was scrutinized and on finding the fact that the Petitioner was on deputation at University Office, he was subsequently repatriated to his parent cadre/department i.e. Marwari College vide Office Order bearing no. 57 of 2014 dated 02.03.2014. Subsequently thereafter, on coming to the conclusion that the proceedings adopted for absorption of Sri Om Prakash Singh at University Office was against the rules and regulations and was further violative of directions of HRD and Raj Bhawan, the earlier order dated 14.09.2013 was cancelled vide an Office Order bearing no. 127 of 2014 dated 10.05.2014.

On further scrutiny of records, it has been found that Sri Om Prakash Singh thereafter challenged the Office order bearing no. 57 of 2014 dated 02.03.2014 and Office Order bearing no. 127 of 2014 dated 10.05.2014 in a writ petition being CWJC No. 12116 of 2014 before the Hon'ble High Court of Judicature at Patna, which was later on disposed of by the Hon'ble High Court of Judicature at Patna, vide its order dated



05.09.2017 with a direction to the Registrar of the University to dispose of the representation of the Petitioner dated 12.03.2014 with a reasoned order within a period of six weeks from the date of receipt production of a copy of this order, meeting the contentions raised by the Petitioner.

I have gone through the representation dated 12.03.2014 made by Sri Om Prakash Singh, Assistant, Marwari College, Bhagalpur wherein he has requested the Registrar of T.M. Bhagalpur University, Bhagalpur to post him at any post within the University office and on perusal of said representation of Sri Om Prakash Singh, it seems that the main grievances of Om Prakash Singh is that as his service has been absorbed vide office order bearing no. 273/13 memo no. B/17726-760 dated 14.09.2013 as Personal Assistant of Vice Chancellor at University office, he could not be transferred to Marwari College, Bhagalpur not being his parent Department. In the said representation he further submits that at the time when roster was being prepared he was posted at university office and his name has been included in the Roster approved by the Government. His further grievances is that at the time when he was transferred to Marwari College, the post of Assistant thereat was not vacant as the service of daily wages employee



was absorbed at that post. Appertaining to the above fact, I would like to mention here that as per DOPT guidelines, the period of deputation service shall be subject to maximum of three (3) years in all cases except for those posts where a longer period of tenure is prescribed in the recruitment rules. However, the period of deputation may be extended by parent department beyond this limit subject to approval of higher authorities of State or concerned department.

Further, once the period of three (3) years expires, the deputationist is liable to be reverted back to his parent cadre/Department. Even as per the Human Resource Development Policy for Corporation/Bodies/Societies established under the Rules/Law of Government of Bihar, the services of deputationist shall be reverted back to his/her parent department on termination of period of deputation and there is no scope of retention/absorption of the deputationist at the borrowing department.

However, as per DOPT guidelines, if the borrowing organisation/department wishes to retain an officer/employee beyond the said prescribed tenure of three years, it shall initiate action for seeking concurrence of lending organisation/department, individual concerned etc. six months before the date of expiry of tenure.



Hence, in no case an employee should be retained beyond the sanctioned terms unless prior approval of the competent authority to grant further extension has been obtained or concurrence of retention by lending department individual concerned etc. has been obtained before expiry of tenure of deputation.

Coming to the case of Sri Om Prakash Singh, it is undisputed fact that he was an employee of Marwari College, Bhagalpur and when Om Prakash Singh was posted on deputation vide order dated 23.01.2010, the salary was being paid by Marwari College, Bhagalpur i.e. parent department. In view of above facts and circumstances, it is a settled position that Marwari College, Bhagalpur is the parent department of Sri Om Prakash Sharma and not the University Office and thus his reversion to Marwari College, Bhagalpur i.e. to his parent department vide office order bearing no. 57 of 2014 dated 02.03.2014 is just and proper.

As far as the office order dated 14.09.2013 is concerned, the absorption of Sri Om Prakash Singh was not proper and found to be violative of rules and directions HRD etc. and hence the same was cancelled vide another office order dated 10.05.2014.

Further, as far as the request of Om Prakash Singh in his representation for posting



him at any post in University office is concerned it can not be done as posting to department other than parent department wholly depends upon the recruitment rules. However, Sri Om Prakash Singh, as an alternative, can be posted on deputation at University Office as per the requirement but can not be absorbed thereat.

Thus, the office order bearing no. 57 of 2014 dated 02.03.2014 vide which Shri Om Prakash Singh was repatriated to his parent department i.e. Marwari College and further Office Order bearing no. 127 of 2014 dated 10.05.2014 vide which the earlier order dated 14.09.2013 of absorption of Sri Om Prakash Singh at University Office was cancelled are just and proper as before retaining the service of Om Prakash Singh, proper procedure for retention was not followed.

Hence, the representation dated 12.03.2014 by Sri Om Prakash Singh is disposed of accordingly.

Let a copy of this order be sent to Shri Om Prakash Singh.

Sd/-

07.04.18

Vice Chancellor

*Memo No. Legal 80/14/277-279 Dated:
09.04.2018*

Copy forwarded to:



1. Shri Om Prakash Singh, S/o Shri Sheo Pujan Prasad, Resident of Ghulam Ali Chowk, Post-Anandpur camp, P.S.-Bihta, District-Patna.

2. Mr. Ashar Mustafa, Advocate, Patna High Court, Patna.

3. Liaison Officer, T.M. Bhagalpur University Patna, for information & the needful.

Sd/-

09.04.2018

Registrar”

14. It is contended by the Mr. Srivastava, learned Advocate on behalf of the Petitioner that the said “reasoned order” was passed by the appropriate authority in the university following the “DOPT Guidelines”. The Department of Personnel and Training (DOPT) guidelines are applicable in case of the Central Government Employees. The said guideline has no manner of application in respect of either the employees of the university or the college. Secondly, the reasoned order says that the order dated 14th of September, 2013, absorbing the Petitioner in the university service was not proper and found to be violative of rules and directions of Human Resource Department. There is also no HRD in the State of Bihar. Thus, the primary objection raised on behalf of the Petitioner is that



the reasoned order is not supported by the statute operative in the field.

15. It is further contended by the learned Advocate for the Petitioner that in terms of the provisions contained in Bihar Universities Act, 1976, the Vice-Chancellor of the university is the competent authority to take decision with respect to appointment, transfer, posting etc., of the non-teaching employees working in the services of the university and in view of the fact that by an office order no. 274/2013, dated 14th of September, 2013, pursuant to the order passed by the Vice-Chancellor of the University, the services of the Petitioner was absorbed in the capacity of the Assistant in the university office, the successor in office of the Vice-Chancellor is bound by the order dated 14th of September, 2013. Therefore, subsequent order, dated 2nd of March, 2014, transferring the Petitioner to his parent post as Assistant of the Mrwari College, Bhagalpur was untenable in law.

16. This Court is of the considered view that the above submission made by the learned Advocate for the Petitioner cannot be considered at this stage because of the order passed in C.W.J.C. No. 12116 of 2014, dated 5th of September, 2017.

17. In the aforesaid writ petition, the order dated 2nd of



March, 2014 was under challenge and a Coordinate Bench disposed of the writ petition directing the Respondent No. 3 (The Registrar of the University) to dispose of the representation of the Petitioner with a reasoned order within a specified period of time. The said reasoned order is under challenge in the instant writ petition.

18. It is not in dispute that vide letter dated 21st of June, 1993 (Annexure 5) issued by the university, the service of the Petitioner on the post of Steno-cum-Typist was confirmed. Thereafter, the Petitioner was promoted to the sanctioned vacant post of Assistant by the order of the Principal, Marwari College, Bhagalpur, vide Annexure – 6, w.e.f., 1st of June, 1998. The said order of promotion issued by the Principal, Marwari College, Bhagalpur was sent to the university for approval.

19. From the writ petition, no formal order of approval of the Petitioner on the post of Assistant by the university is found. Annexure – 11 states that the Petitioner, who at the relevant point of time, was working as the Assistant, TMB College, Bhagalpur, was transferred to the university office and deputed to work with Md. Hisaruddin, In-Charge, Legal Section, w.e.f. 18th of December, 2003, Thus, he joined Tilka Manjhi Bhagalpur University, Bhagalpur, as Assistant on



deputation. Again on 31st of March, 2007, he was transferred from the establishment branch of university to Marwari College, Bhagalpur vide Annexure 13. Again by virtue of officer order dated 23rd of January, 2010, the Petitioner was transferred to the office of the university until further order. It was further directed that his salary would be paid by his parent place which clearly means that the Petitioner was entitled to draw his salary from Marwari College, Bhagalpur.

20. Petitioner has claimed his absorption in the establishment of Tilka Manjhi Bhagalpur University, Bhagalpur, on the basis of Annexure – 15 which runs thus:-

*“Tilka Manjhi Bhagalpur University,
Bhagalpur-812007*

Office Order No. 274/2013

Consequent upon acquiescence of the State Govt, to the roster prepared by the University vide letter no. 1/ व 3-212/06 उ.शि. 681 dated 11.05.2006, Sri Om Prakash Singh whose name appeared at Sl.No.74 on page 14 and whose services were regularized w.e.f. 1.6.1991 at Marwari College, Bhagalpur and approved by the University vide this office letter no. RR/97/93 dated 21.06.1993 shall be deemed to have been absorbed in the University office on the post of Assistant and shall be entitled to benefits of the service as may be available to



the staff of the University service.

By order of the V.C

Registrar

Memo No. 3/17726-760 dated:

14/09/2013

Copy forwarded to;

*01. Sri Om Prakash Singh, P.A. to V.C.,
T.M.B.U., Bhagalpur,*

*02. Principal, Marwari College,
Bhagalpur & T.N.B. College, Bhagalpur,*

03. S.O.'s Estab./Accounts,

*04. All Statutory/Non-statutory
Officers,*

*05. P.A.'s to V.C., P.V.C . and Registrar
and*

*06. Assistant, In-charge Office Order,
T.M.B.U., Bhagalpur for information and the
needful.*

Registrar”

21. Subsequently, by an order, dated 2nd of March, 2014, he was again transferred to Tilka Manjhi Bhagalpur University, Bhagalpur being his parent place of transfer.

22. In view of such circumstances, the entire dispute evolves upon the interpretation and construction of office order no. 274/2013, dated 14th of December, 2013 (Annexure 15).

23. The close reading of the order suggests that the



service of the Petitioner was regularized w.e.f., 1st of June, 1991, at Marwari College, Bhagalpur. The order of regularization was approved by the university office letter dated 21st of June, 1993. Therefore, he was deemed to be absorbed in the university office on the post of Assistant.

24. It is contended by the learned Advocate for the Petitioner that if the Petitioner is deemed to be absorbed in the university office, there cannot be any justification for reverting him back to Marwari College, Bhagalpur by placing the impugned order.

25. It is needless to say that appointment on deputation means appointment from outside the cadre or from outside the direct line of promotion for a limited period by the end of which he will have to revert to his parent cadre. In such a case, he is known to be on deputation or on short term contract in the office or establishment where he has deputed. The previous orders issued in respect of the Petitioner on 18th of December, 2003, 31st of March, 2007 and 23rd of January, 2010 clearly suggest that his service was utilized for limited period of time on different occasions on condition that he would render his service in the university but his salary would be paid by his parent place of posting/college.



26. It is not clear in office order no. 274/2013, dated 14th of September, 2013 (Annexure – 15) as to whether the Petitioner was absorbed in the cadre of university service or not. The Petitioner is also silent in this regard. The university authority has also not come up with the averment as to whether he was absorbed in the cadre of the employees of the university. The term absorption connotes under the peculiar facts and circumstances of this case as follows:-

“When an employee, working outside the cadre or outside the direct line of promotion, is regularly absorbed in the post/grade, the post is treated as having been filled by the method of absorption.”

27. However, it is clear that the Petitioner was initially joined the establishment of the university on deputation. Deputation refers to the temporary transfer of an employee from his parent organization to another organization for a specific period. Here it is for administrative reason. Absorption involves permanently incorporating an employee from one organization into another organization's work force.

28. In the instant case, the reasoned order did not disclose as to whether the Petitioner was absorbed in the working force or the cadre of university vide order no.



274/2013, dated 14th of September, 2013. When the said office order no. 274/2013 (Annexure – 15) was passed by the Registrar of the University, the subsequent Vice-Chancellor cannot discard the said order by passing impugned order saying that the said office order (Annexure – 15) was wrongly or inadvertently passed.

29. Therefore, this Court is of the considered view that the Vice-Chancellor should be directed to consider as to whether by virtue of office no. 274/2013 dated 14th of September, 2013 (Annexure – 15), the Petitioner was included in the work force of the university or not. If he is included in the work force of the university, he would be regarded as an employee of the university and he is entitled to get all consequential benefits of an employee of the university.

30. In view of such discussion, I have no other alternative but to quash the reasoned order, dated 9th of April, 2018, bearing Memo No. 80/14/277-279, passed by the Vice-Chancellor of Tilka Manjhi Bhagalpur University, Bhagalpur and direct the Vice-Chancellor to take decision with regard to the claim of the Petitioner on the basis of his finding as to whether the Petitioner was included in the cadre of the employee of the university when he was “deemed to have



absorbed” in the office vide office order no. 274/2013, dated 14th of September, 2013.

31. Since the Petitioner has already superannuated, the university authority, Respondent Nos. 3 and 4 are directed to take final decision in this regard within a period of 4 weeks from the date of communication of this order.

32. With the above direction, the instant writ petition is disposed of, on contest.

33. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

uttam/-

AFR/NAFR	N.A.F.R.
CAV DATE	05.12.2024
Uploading Date	17.12.2024
Transmission Date	N/A

