

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9750 of 2015**

Dr. Satya Prakash son of Late Shri Kumar Narayan Sinha, Resident of  
Probhunath Nagar, P.S.- Mofussil, District- Chapra.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department,  
Bihar, Patna
2. J.P. University, Chapra through its Registrar
3. Vice Chancellor , J.P. University, Chapra
4. Registrar , J.P. University, Chapra.
5. Purvottar Railway College, Sonapur, Chapra through its Secretary
6. Principal , Purvottar Railway College , Sonapur, Chapra.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Abhinav Srivastava  
For the Respondent/s : Mr.Yogendra Pd. Sinha

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**CAV JUDGMENT**

**Date : 24 -10-2024**

1. The petitioner has preferred the present writ application for a direction to the respondent authorities for adjustment / shifting of his services against the first sanctioned deficit grant post of Lecturer in Physics at Purvottar Railway College, Sonapur, Chapra (hereinafter referred to as “Railway College”) along with all consequential benefits. The petitioner has further prayed for quashing of the letter dated 03.09.2014 issued by the Director, Higher Education, Government of Bihar addressed to the Registrars of all the Universities communicating the disapproval of the State Government with respect to any kind of



shifting and adjustment against vacant sanctioned posts in deficit grant College.

2. The relevant facts giving rise to the present writ application is that the Railway College was initially established in the year 1977-1978 and it is an affiliated unit of Jai Prakash University, Chapra as a deficit grant College. The Railway College was granted affiliation by the State Government at Intermediate level in the year 1979 and at Degree level in the year 1981. Permanent affiliation was granted in the year 1990. Subsequent to grant of affiliation to the Railway College at Intermediate level in 1979, the State Government vide its letter no. 2539 dated 24.12.1979 sanctioned altogether thirteen posts in different subjects including one post in the subject of Physics with financial liability. It is pertinent to mention here that against this one sanctioned post with financial liability in the subject of Physics services of one Shri Anand Mahto was approved / absorbed with effect from 24.12.1979. The petitioner was initially appointed by the Governing Body of the Railway College on a temporary post as a Lecturer in Physics on 19.06.1981 following which the petitioner gave his joining against the said post on 25.06.1981 and started discharging his duties.



3. In the meantime, Department of Education, Government of Bihar vide letter no. 1034 dated 13.10.1987 sanctioned and approved altogether twenty five posts of Lecturers in different subjects including two posts in the subject of Physics without any financial liability. Thereafter, the petitioner continued to discharge his duties as Lecturer against the second post in the subject of Physics and his service was extended from time to time by the concerned authorities under the erstwhile Bihar College Service Commission. Thereafter, vide letter dated 12.03.1997 issued by the Governor's Secretariat, on the recommendation of the Absorption Committee, the Hon'ble Chancellor absorbed the services of altogether fourteen temporary Lecturers working in the Railway College including the petitioner with effect from the date of sanction of the post by the State Government following which the Registrar of the Jai Prakash University, Chapra vide its letter dated 03.12.1998 communicated to the Secretary of the Governing Body, Railway College informing therein that Syndicate of the University in its meeting dated 30.08.1998 approved the services of altogether thirteen Lecturers of the Railway College in the light of the Governor's Secretariat letter dated 12.03.1997. From the letter issued by the Registrar of the University it is evident that in the



subject of Physics altogether two teachers were absorbed. One Shri Anand Mahto was absorbed against the first post (vitta sahita post) with effect from 24.12.1979 and the petitioner was absorbed against the second post (vitta rahit post) with effect from 13.10.1987.

4. It is the case of the petitioner that after superannuation of Sri Anand Mahto on 31.03.2014 the Governing Body of the Railway College in its meeting dated 20.03.2014 decided to shift / adjust the services of the petitioner on the first sanctioned post (vitta sahita post) with effect from 01.04.2014. Subsequently, the Secretary of the Governing Body of the Railway College vide his letter dt: 15.04.2014 requested the Registrar of the Jai Prakash University to take steps towards payment of the salary to the petitioner as he has been shifted against the first post of Lecturer in Physics after retirement of Shri Anand Mahto.

5. The Registrar of the Jai Prakash University in turn wrote to the Director, Higher Education, Government of Bihar vide letter dated 25.06.2014 apprising about the decision taken by the Governing Body of the College regarding shifting of the petitioner on the first sanctioned post and requesting therein to grant approval with respect to such shifting. The Director,



Higher Education, Government of Bihar thereafter issued letter dated 03.09.2014 to Registrars of all the Universities informing them about the disapproval of the State Government with any kind of shifting and adjustment of vacant posts in deficit grant college. The petitioner filed various representations from time to time before the concerned respondents in the Education Department but no decision was taken in this regard.

6. Mr. Abhinav Shrivastava, learned counsel appearing for the petitioner argued that the action on the part of the concerned respondent in the Education Department of the State Government in not taking steps towards granting its approval for shifting of the petitioner against the first sanctioned post of Lecturer in Physics in the Railway College in relation to which deficit grant was made available by the State Government notwithstanding the fact that the said post was lying vacant subsequent upon retirement of its incumbent Dr. Anand Mahto on 31.03.2014 is highly arbitrary, unreasonable and is in blatant disregard to Article 14 of the Constitution of India. He further submits that approval of adjustment / shifting of the petitioner against the first sanctioned post (vitta sahit post) of Lecturer in Physics in the Railway College would not create any additional financial liability upon the State Government. He next argued



that action on the part of the concerned respondent authorities in issuing the impugned letter dated 03.09.2014 by which the Registrar of different Universities within the State of Bihar have been communicated regarding the disapproval of the State Government with respect to shifting against the vacant posts in deficit grant colleges is highly arbitrary and unreasonable as each case is to be decided on the basis of its own merit and blanket ban of any kind is clearly impermissible in the eye of law.

7. On the other hand, learned counsel for the respondent /State argued that the post against which the petitioner was appointed / absorbed was vitta rahit post and shifting the petitioner on the vitta sahit post cannot be allowed as it would put additional burden on the State exchequer and is in violation of Section 35 of the Bihar State Universities Act, 1976. He relies upon a Co-ordinate Bench decision of this Court passed in CWJC No. 9911 of 2015 and submits that shifting of the petitioner on a vitta sahit post without holding any process of appointment will amount to violation of Articles 14 & 16 of the Constitution of India. He next submits that in compliance of the order passed in CWJC No. 9911 of 2015 the Additional Chief Secretary, Education Department, Government of Bihar passed



the order dated 12.10.2019 by which the shifting of the services from vitta rahit post to vitta sahit post of Lecturer from the same Railway College was rejected and in the light of the same the petitioner case is fit to be rejected.

8. On the other hand, learned counsel for the Jai Prakash University submitted that the post of petitioner was sanctioned by the State Government and the petitioner was absorbed in regular service by the order of the Hon'ble Chancellor of Universities of Bihar vide Governor's Secretariat memo no. 913/GS dated 12.03.1997 with the condition that the effect of absorption will be from the date of appointment of the petitioner or from the date of sanction of the post by the State Government, whichever is later. Relying upon Statute 12 of the Bihar State Universities Act, 1976 regarding regularization of the services of purely temporary Lecturers, as approved by the Chancellor dated 18.11.1980 in reference to clause 1(c) learned counsel submits that a purely temporary Lecturer, who is in the service of the University or of a College admitted to it as a Lecturer shall be appointed by the Syndicate or the Governing Body, as the case may be, in the regular service of the University or the College concerned if he fulfills the following condition:-

“ (c) the post on which the Lecturer concerned is



working is duly sanctioned by the competent authority or where the question of sanction of the post is under consideration of the Government in the Education Department;

N.B.-: If the question of creation of post has been referred to by the University and has been under the consideration of Education Department, such persons will be entitled to regularization, if the posts held by them are subsequently sanctioned by the Education Department”

9. I have heard learned counsel for the parties and have gone through the relevant materials on record. Undisputedly the petitioner was appointed by the Governing Body of the Railway College on a temporary post as Lecturer in Physics on 19.06.1981 and started discharging his duties. The Education Department, Government of Bihar vide letter no. 1034 dated 13.10.1987 sanctioned and approved altogether twenty five posts of Lecturers in different subjects including two posts in the subject of Physics without any financial liability. The petitioner continued to discharge his duties as a Lecturer against the second post in the subject of Physics and his service was extended from time to time by the concerned authorities under the erstwhile Bihar College Service Commission. The Governor's Secretariat vide its letter dated 12.03.1997 has absorbed the services of altogether fourteen temporary Lecturers



working in the Railway College including the petitioner with effect from date of sanction of post by the State Government. Admittedly, the State Government sanctioned the post on 13.10.1987. From perusal of the letter dated 12.03.1997 of the Governor's Secretariat it is clear that the Hon'ble Chancellor absorbed the services of two teachers in the subject of Physics. One, Sri Anand Mahto, who was absorbed against the first post (vitta sahit post) with effect from 24.12.1979 and the petitioner was absorbed against the second post (vitta rahit post) with effect from 13.10.1987.

10. After superannuation of Sri Anand Mahto, who was working on the first post of Physics on 31.03.2014 the Governing Body of the Railway College decided to shift the services of the petitioner on the first sanctioned post (vitta sahit post) with effect from 01.04.2014. It is the specific case of the University that grant in aid policy was abolished on 28.02.1982 and the petitioner was appointed prior to the cut off date on 19.06.1981. The post of the petitioner was sanctioned by the State Government and in continuation of the appointment of the petitioner he was absorbed in regular service by the order of the Hon'ble Chancellor. It is not the case of the parties that appointment of the petitioner was illegal or irregular and in



violation of Articles 14 & 16 of the Constitution of India.

11. The contention of the respondent / State is that shifting from without financial aid (vitta rahit post) to deficit grant post (vitta sahit post) would be in violation of Articles 14 & 16 of the Constitution of India as also Section 35(3) of the Bihar State Universities Act, 1976 taking into consideration the nature of vitta sahit post being different.

12. From perusal of the aforesaid facts it is clear that the petitioner was duly appointed as Lecturer in accordance with law. He was having requisite qualification for appointment as Lecturer and there is no dispute regarding his eligibility. The petitioner has also worked for a long period of time i.e. for more than thirty years at least from the date of absorption of his services with effect from 13.10.1987. The petitioner was duly absorbed by the order of Hon'ble Chancellor along with the teacher appointed on the deficit grant post by a common notification dated 03.12.1998. It appears that at the time of appointment of the petitioner due process of appointment was followed and on the recommendation of the Absorption Committee and the decision of the Syndicate of the Jai Prakash University the services of the petitioner was permanently absorbed on the second post. As per the Statute and the relevant



laws, the power of absorption on the sanctioned post is with the University and / or the Hon'ble Chancellor. The State Government has already sanctioned three posts in the subject of Physics in the said College and after retirement of the incumbent of the first post, the petitioner was the next senior most teacher working in the Railway College in the subject of Physics.

13. The respondent-State did not produce any contrary Statute / law / regulation which debars the shifting of senior most teacher in an affiliated College from unaided post to deficit grant post. The practice of shifting of teachers from sanctioned post without financial aid to sanctioned post with financial aid is being followed in the State in other institutions including the minority institutions and in the present Railway College also three teachers were shifted earlier from without financial aid to financial aid post, as such, the contention of the respondent / State that shifting from without financial aid to financial aid post shall be violative of the Articles 14 & 16 of the Constitution of India is rejected.

14. Insofar as objection of Section 35 of the Bihar State Universities Act, 1976 as taken by the State respondent is concerned, the same is preposterous inasmuch as Section 35 of



the Bihar State Universities Act, 1976 is not applicable in the facts of the present case. This provision basically is to the effect that no post for appointment shall be created without prior sanction of the State Government; nor the pay, allowances attached to any post or sanctioned strength shall be increased without any prior approval of the State Government. Section 35 is not applicable to the controversy in hand.

15. Considering the aforesaid discussions and the conspectus of facts and law discussed hereinabove, in my considered view, the petitioner has rightly been shifted from the second unaided post to the first aided post after retirement of the incumbent of the first post as the petitioner was the senior most Lecturer in Physics working in the Railway College at the relevant point of time. The blanket denial of approval of shifting by the State respondent is completely arbitrary and unreasonable as the respondent / State failed to support its decision by cogent reasons. The argument of learned counsel for the petitioner is accepted that if the petitioner is adjusted / shifted against the 1<sup>st</sup> sanctioned post of Lecturer in Physics, the same would not create any financial liability upon the State Government.

16. Accordingly, I hold that the shifting of the petitioner from second post to first post with effect from 01.04.2014 from



unaided post to deficit grant post after retirement of the incumbent of the first post is valid and there was no need to make fresh appointment on the post.

17. The impugned order dated 03.09.2014 (Annexure-9) insofar as the petitioner is concerned is quashed.

18. In the result, this writ application is allowed.

19. The respondents including the State respondent are directed to pay arrears of salary to the petitioner treating him to be working on the first financially aided post (vitta sahit post) with effect from 01.04.2014 with all consequential and monetary benefits within a period of three months from the date of receipt / production of copy of this judgment.

**(Anil Kumar Sinha, J)**

praful/-AFR

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| AFR/NAFR          | AFR        |
| CAV DATE          | 02-09-2024 |
| Uploading Date    | 24-10-2024 |
| Transmission Date | NA         |

