

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17192 of 2022

Shivchandra Pratap S/o Late Kirtyanand Pracheta R/o- Village- Bagha, P.O.-
Suhrid Nagar, Block- Kankol, P.S.- Muffasil, District- Begusarai.

... .. Petitioner/s

Versus

1. Kameshwar Singh Darbhanga Sanskrit University Kameshwar Nagar, Darbhanga.
2. The Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
3. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
4. The Principal, Shri Shankar Sanskrit Upshashtri Mahavidyalaya, Shahpur, Begusarai.
5. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Vikas Bhawan, Patna.
6. The Principal Secretary, Education Department, Government of Bihar, Patna.
7. The Director, (Higher Education), Education Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Avanindra Kumar Jha, Adv
For the Respondent/s	:	Mr. Madhukar Mishra (AC to Sc16), Adv
For the University	:	Mr. Deepak Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 04-03-2024

Heard Mr. Avanindra Kumar Jha, learned counsel for the petitioner, Mr. Madhukar Mishra (AC to SC 16) learned counsel for the State as well as Mr. Deepak Kumar, learned counsel for the Kameshwar Singh Darbhanga Sanskrit University Kameshwar Nagar, Darbhanga.



2. The present writ application has been filed by the petitioner for grant of *inter alia* the following relief (s):-

(i) To hold and declare that, since the appointment of the Petitioner has been made on the sanctioned and vacant post of orderly, after following all the due process of appointment, hence, the order of the Respondent No. 7 as contained in Memo No. 1343 dated 02.06.2022, which has been communicated by the order of Vice Chancellor, under the signature of the Registrar of the respondent University, contained in Memo No. 638 dated 07.07.2022 (Annex-15 & 16 respectively), are illegal, arbitrary, discriminatory, malafide, bad in law, and as such violative of Article 14, 16 and 21 of the Constitution of India.

(ii) For issuance of an Order, Direction or a Writ in the nature a Certiorari for Quashing the order of the Respondent No. 7, contained in Memo No. 1343 dated 02.06.2022 and which has been communicated by the order of Vice Chancellor, under the signature of the Registrar of the respondent University, contained in Memo No. 638 dated 07.07.2022 (Ann - 15 & 16 respectively), whereby and where under, Respondents have declared the appointment of petitioner, in violation of section 35 (2) of the Bihar State Universities Act, 1976, and they have further directed the university / college authorities to terminate the services of the petitioner.



(iii) For issuance of an Order, Direction or a Writ in the nature of Mandamus for restoring the Petitioner's all due service benefits, including current and arrears of salary.

(iv) For grant of any other relief or relief(s) to which the Petitioner may be found entitled to, in the facts and circumstances of this case.

3. The short fact of the case is that, after all the due procedure of selection, including Advt. Dated 07.06.2006 (Annexure-1), petitioner, came to be selected and appointed as Orderly (Adeshpal) vide Letter No. 17/6 dated 19.10.2006 in the Shri Shankar Sanskrit Upshashtri Mahavidyalaya, Shahpur, Begusarai, an affiliated **{with finance (Deficit Finance)}** unit of the Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga. Pursuant to his said appointment, petitioner joined the service of the respondent university / the college in question, as Orderly(Adeshpal). Later on petitioner has been intimated vide Letter No. 6570 / 09 dated 27.08.2009, of the Registrar of the respondent university that his Services / Appointment has been approved by the Vice-Chancellor. Pursuant to the Approval of Services, payment order have been issued and Petitioner's Pay has also been fixed vide Letter No. 6776 dated 12.07.2010 read with Memo No. 3098 dated 18.03.2011 and came to be revised as per the 6th Pay



Revision. Accordingly, petitioner's name also finds place in the Budget Prapatra of the University. Petitioner was receiving salary on regular basis, as per his entitlement till the month of September, 2017. (Annexure- 5, 6, 7, 7/1 & 7/2). However, when the funds for Payment, for subsequent months (i.e. subsequent to September 2017) was received by the College Administration, it was found that, the funds were not adequate / available for making payment of salary to both the Class IV employees working in the college, on sanctioned posts, another class IV employee in the college is a Night Guard. Since, "the Shri Shankar Sanskrit Upshashtri Mahavidyalaya, Shahpur, Begusarai", is an affiliated (with finance) unit of the Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, the State Govt. of Bihar is obliged to release the funds for salaries of the staff of the college, in the prescribed Pay Scale, on month to month basis (not as grant in aid). And in fact, the State Govt. was releasing funds on regular basis for payment of salary to all the staff members, till Sep 2017.

4. That considering the importance and need of payment of salary to petitioner, the Principal of the College, upon considering the representations & requests of Petitioner, has had written several letters dated 23.03.2018, 16.04.2018.



12.05.2018, 21.05.2018 to the Vice-Chancellor & Registrar of the Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga. However, the efforts of the Principal of college has not yielded any positive results for Petitioner. When the efforts made by the Petitioner and the College Administration failed to achieve any positive response, the Counsel of the Petitioner, by way of Representation - cum -Legal Notice, dated 08.08. 2018, requested the Authorities concerned of the department of Education to take necessary steps for issuance of direction / release of funds for Payment of current as well as arrears of Salary to the Petitioner, namely, Shivchandra Pratap, who was discharging his duties as Peon (Aadeshpal) in the college in hand.

5. The Registrar of the University has also reminded the authorities concerned of the Education Department, vide his Memo No, 1120 dated 27.07.2018. However, even this effort at the level of university has also failed to achieve any positive result for the Petitioner (Annexure-11).

6. The said effort of the petitioner / his counsel also failed to achieve any positive result, and the petitioner was forced to work, since September 2017, without any payment of Salary. When all the efforts of the petitioner, failed to bring any



positive result for him, under the legal advice, the petitioner, filed his application before "Bihar Anudanit Shikshan Sansthan Pradhikar". unfortunately the application of the petitioner has been disposed of by complete misunderstanding, of "Bihar Anudnanit Shikshan Sansthan Pradhikar, Niymawali 2015", While disposing the application of the petitioner vide Order dated 22.11.2018 in Application No. 68 of 2018, completely contrary to the provisions of the ***Bihar Anudnanit Shikshan Sansthan Pradhikar, Niymawali 2015, the Pradhikar has held that, it does not have jurisdiction & power to direct the State Govt. Authorities for release of funds for salary.***

7. Feeling aggrieved by the order of the “Bihar Anudanit Shikshan Sansthan Pradhikar”, petitioner moved before this Court in C.W.J.C. No.7069 of 2019, for a direction to the respondent State Government authorities to release the funds for payment of salary to the petitioner.

8. During the pendency of the said writ petition, respondents released the funds for salary of few months and petitioner also started receiving the current salary on regular basis. Suddenly, the petitioner was served the order of the Director (Higher Education) Education Department, (Respondent No. 7) as contained in Memo No. 1343 dated 02.06.2022, communicated



by the Registrar of the respondent University as vide Memo No, 638 dated 07.07.2022, whereby & where under, Resp. No. 7 has declared the appointment of petitioner, in violation of section 35 (2) of the Bihar State Universities Act, 1976, and he has further directed the University respondents to terminate the services of the petitioner (Annexure-15 and 16).

9. The order of the Director Higher Education (Resp. No. 7) is without application of mind, completely contrary to the actual facts and law applicable in the case in hand, apart from being violative of the Principle of Natural Justice. Apart from quoting the provision of Section 35, of the Bihar State Universities Act, 1976, the order of the Respondent No. 7, does not indicate / speak as to which documents, in relation to sanctioning of post & approval, were perused and appreciated by him, so as to enable the judicial scrutiny, on the point of law & facts.

10. On the point of arbitrariness & discrimination of respondent No.7, with regard to the selection and approval of the services of the petitioner, it is pertinent to mention that, in the selection process in question, total six persons, four teaching and two non-teaching persons were selected. And later on services of all the six (6) persons was approved by a common order by competent authorities. And, in pursuance to said



approval of the services, salaries were released based on the budgetary demand and allocation of funds by the State Government, that too by a common order. There was nothing on record to show that at any stage or at any point of time of granting approval of services of all selected / appointed persons, any authority of the state govt. has made any objection with regard to any person so appointed in same transaction.

11. By the order of the Vice Chancellor of the University (Annex-16), which is only a consequential order of the Annex -15, goes on to show that, Vice Chancellor has not applied his mind with regard to the totality of the fact, and he has simply surrendered his wisdom / ordinary prudence, in relation to the fact of sanction of Post of peon, in the college in question as well as other colleges of upshastri level, on the basis of Staffing Pattern, affiliated with the university. And, as a consequence of such surrender, the Vice Chancellor of the respondent university cancelled the approval of appointment, and directed the Principal/Secretary of the college to terminate the services of petitioner.

12. The college in question is a very old institution. And, way back in the 1979, vide Memo No.3,130 to 3,452 dated 30.03.1979, the respondent university published the



categorization and staffing pattern of the various kind of institutions, and posts sanctioned within the policy frame work of the staffing pattern, so decided by the State Govt. of Bihar. A bare perusal of the details goes on to show that 13 Posts of Teaching Staff, 2 Clerks, 1 Typist, 1 Librarian, 1 Orderly, 1 Peon, 1 Gardener, 1 Night Guard, 1 Sweeper and 1 Ward Servant in Hostel on every 25 students, was sanctioned as per the Staffing Pattern. Subsequently on the basis of said staffing pattern, the Budget of the colleges & university was prepared from the year 1981 - 82 onwards (Annexure - 17 & 18).

13. Learned counsel for the petitioner relied upon the judgment of Full Bench of this Court passed in ***L.P.A. No.36 of 1994 Braj Kishore Singh And Ors. vs State Of Bihar And Ors.*** He submits that it is mentioned in para-9 that if the appointment of a person is found to be illegal for want of sanction of the posts by the State Government in view of the provisions of the Section 35 of the Universities Act, it would be appropriate at this stage to notice the relevant provisions as hereunder:-

Notwithstanding anything contained in this Act, no University or any College affiliated to such a University except such College-

(a) As is established, maintained or governed by the State Government; or

(b) As is established by religious or linguistic minority;



(i) After the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State Government;

(ii) Shall either increase the pay or allowance attached to any post, or sanction any new allowance;

Provided that the State Government may, by an order, revise the pay-scale attached with such post or sanction any new allowance;

(iii) Shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) Shall incur expenditure of any kind on any development scheme without the prior approval of the Government (2) Notwithstanding anything contained in this Act, no college other than one mentioned in Clauses (a) and (b) of Sub-Section (1) shall, after the commencement of this Act, appoint any person on any post without the prior approval of the State Government:

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by candidate possessing the prescribed qualification.

14. Para-21 of the said judgment by submitting that the point for that the point for consideration is whether appointments made by the College/University authorities against sanctioned posts, i.e., posts within the staffing pattern are to be accepted as



final. As noticed above, Section 35 of the Universities Act provides for prior approval both in the matter of creation of posts as also in the matter of appointment. Creation of post is the earlier stage, actual appointment comes next. As noticed above, there cannot be a College without the teachers and without teachers the College cannot be granted affiliation, the relevant part of, Section 35 requiring prior approval in the matter of appointment has to be read down to include 'post facto' approval otherwise the provision may become unworkable and lead to anomalous or absurd situations. One of the objects underlying Section 35 is that appointments are made of persons possessing necessary eligibility and qualifications and in accordance with law. This object can be achieved even without insistence on 'prior approval' in each and every case. In appropriate cases, appointment can be made subject to 'post facto' approval of that State Government after such scrutiny of the qualifications and the recruitment process as may be necessary and appropriate. Such appointments, made by the College/University authorities, should not be treated as final; they shall have legal effect and sanctity only after approval of the State Government.

15. Para-22 of the said judgment and submits that the above



discussion may be summed up in these words. By reason of the approval of the staffing pattern proposed by the Bihar Inter University Board non-teaching class III and IV posts will be deemed to have been created with the prior approval of the State Government i.e. sanctioned. Appointment can be made against those posts in accordance with the staffing pattern without seeking further approval regarding post (s). Merely on the ground that prior approval of the State Government was not obtained, the appointment cannot be said to be illegal. The College/University authorities are competent to make appointment of eligible and suitable persons against such posts. Ordinarily, this should be done with the prior approval of the State Government. In exceptional cases, in exigency of service of situation, provisional appointment can be made subject to approval of the State Government within the stipulated time-frame. It is open to the State Government to examine the eligibility and suitability of even those who have already been appointed against the sanctioned posts as per the staffing pattern.

16. Para-25 of the said judgment by submitting that in the present case also, in view of the inherent 'unworkability' of the impugned provisions regarding prior approval of the State



Government, the provisions can be read down in the manner indicated above. The soul of the provisions is not violated and the purpose is also achieved. The purpose in making these provisions is to pre-empt illegal and uncalled for appointments. Large scale illegal appointments without availability of posts have been made in different establishment/organisations in this State in recent times and the legislature thought it appropriate to intervene and make the provisions which would deter the College/University authorities from making illegal appointments because, more often than not, it is the State which was to bear the financial burden of the appointments. The purpose underlying the provisions, therefore, has not only to be lauded but also achieved. If Section 35 is interpreted in the provisions would be substantially complied with but the purpose also would be fulfilled.

17. He lastly submits that in view the judgment of the Full Bench of this Court, it is clear that the post of the petitioner was already a sanctioned post and petitioner was appointed on that basis only and he also got the payment of his salary but suddenly the payment of his salary was stopped and when he requested for release of his salary, the respondent no.3, on the direction of respondent no.7 terminated the services of the



petitioner. There is a violation of the natural justice because petitioner was regularised on the post and without hearing him, petitioner was dismissed through departmental proceedings and there is no requirement to take prior approval of the State Government. The provision can be drawn in a manner indicated above. The soul of the provision is not violated and purpose is also achieved.

18. A counter-affidavit has been filed by the learned counsel appearing on behalf of the respondent nos.5 to 7, in which he has stated that the petitioner claimed to have been appointed as Peon in view of letter dated 19.10.2006 in Sri Shankar Sanskrit Upshastri Mahavidyalaya, Shahpur, Begusarai after following due process of selection. Petitioner further claimed that his appointment was approved by the University itself on 27.08.2009 (Annexure-4).

19. He further submits that Section 35(2) of the Bihar State Universities Act provides that “Notwithstanding anything contained in this Act, no College other than one mentioned in Clauses (a) and (b) of Sub-Section (1), shall, after the commencement of this Act, appoint any person on any post, without the prior approval of the State Government. “Provided that the approval of the State Government shall not be necessary



for filling upon sanctioned post of a teacher for a period not exceeding six months, by a candidate possessing the prescribed qualification” From the perusal of the office order dated 18.03.2011 (Annexure-6 of the writ petition), it is apparent that the appointment of the petitioner, along with others was made in the year 2006 whereas the University has approved their service after about three years i.e. in the year 2009 with the condition that any order passed by Chancellor will affect the approval of appointment.

20. The University has filed the counter affidavit in C.W.J.C No.7069 of 2019 and stated that the University vide its letter no.1120 dated 27.07.2018 requested the State Government to release the fund for payment of one non-teaching employee. Thereafter, the Education Department called for a detailed report from the University in the matter vide letter no.1015 dated 06.05.2019 and letter no.2750 dated 15.12.2021. In pursuance of the letter of the Education Department, the University submitted its report on 08.05.2019 and 15.03.2022 vide letter no.520 and 271, respectively.

21. He further submits that on 18.05.2022, the Education Department held a meeting with the officials of the University and thereafter, the documents produced by the University were



examined and it was found that the appointment of the petitioner was made by the governing body of the College without any approval of the State Government in violation of Section 35(2) of the Bihar State Universities Act and accordingly, the proposal of the University has been rejected by the order as contained in memo no.1343 dated 02.06.2022 (Annexure-A of the Counter Affidavit filed by R.N. 5 to 7).

22. Learned counsel for the University submits that for affiliated colleges as per the budgetary provision, State Government allocates fund to the University and the University releases that fund in favour of the affiliated college. Since, the State Government was not releasing fund for payment to the petitioner, the University is constrained to release any fund.

23. He further submits that against two non-teaching employees, State Government was releasing fund for only non-teaching staff and hence, the senior most non-teaching staff was getting the salary. The University vide Memo No.1120 of 2018 dated 27.07.2018 requested the Director, Higher Education for release of fund for payment of salary to the petitioner. It was held in Education Department that on 18.05.2022 regarding appointment of the petitioner in which the Registrar and Law Officer of the University were present and after hearing them,



Education Department passed an order and observed that since Section 35(2) of the Bihar State University Act, 1976 has not been followed in appointment of the petitioner, therefore, his appointment is not valid. Education Department, further directed the University to terminate the service of the petitioner immediately and inform the Department.

24. He further submits that since the employer of the petitioner is Governing Body of the College, in light of the Direction of the Education Department University cancelled its approval given in the appointment of the petitioner and directed the Governing Body of the College vide Memo No.638 of 2022 on 07.07.2022 to comply the order of the Education Department.

25. Considering the arguments advanced on behalf of the parties as well as considering the clear direction passed in the Full Bench of this Court, as there is no requirement to take prior approval of the State Government, when the post is already sanctioned (Annexure 17 and 18) and petitioner was legally appointed because the post was advertised and he was appointed after facing interview. In view of the Full Bench judgment, the post facto approval of the State Government is not required after scrutiny of qualification.

26. It is admitted fact that the service of petitioner was regular



on sanctioned post, which is clear from Annexure-17 and 18 of the writ petition. Petitioner is entitled to participate in the domestic enquiry for the reason that the petitioner’s appointment was made without prior approval of the State Government, in violation of Sections 35(2) of Bihar State Universities Act. The Apex Court time and again held that even temporary employees are entitled for domestic enquiry, if the allegation are made against such temporary employees before termination of his/her service. At present, the petitioner is a regular employee in sanctioned post.

27. In view of the foregoing discussions, I set aside the Annexure-15 and 16 of the writ application.

28. The University as well as the State is directed to release the fund and pay all the consequential benefit to the petitioner.

29. With the aforesaid observations and directions, this writ application is disposed of.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.03.2024
Transmission Date	NA

