

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12106 of 2018

Dr. Pramod Kumar Sinha Son of Late Deo Charan Sinha at present Principal, D.N. College, Masaurhi, Post and Police Station - Masaurhi, District - Patna presently resides at In front of Telephone Exchange Office, Mohalla - Jay Prakash Nagar, GOP, Phulwari, Patna - 800001.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Higher Education, Govt. of Bihar, Patna.
3. The Vice Chancellor, Magadh University, Bodh Gaya.
4. The Magadh University through its Registrar, Bodh Gaya.
5. The Vice Chancellor, Patliputra University, Patna.
6. The Patliputra University through its Registrar, Patna.
7. The Governing Body/Ad hoc Committee through its Secretary, D.N. College, Masaurhi, District - Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Advocate.
For the Respondent/s	:	Mr. AC to AAG-15
For the M.U.	:	Mr. Siddhartha Prasad, Adv.
		Mr. Shashi Shekhar Kumar Prasad, Adv.
For the Patliputra University		Mr. Rana Vikram Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 5 12-12-2024 1. Heard learned counsel for the petitioner, learned AC to AAG-15, learned counsel for the Magadh University and the learned counsel appearing on behalf of the Patliputra University.
2. The learned counsel for the petitioner submits that the respondents had sought four weeks time for filing counter affidavit when the case was taken up on 19.09.2024 but no counter affidavit has been filed on behalf of the State and the



Patliputra University though a counter affidavit has been filed on behalf of the respondent nos.3 and 4 i.e. Magadh University but then in the nature of prayer made in the writ application and with changed circumstance, the Magadh University has become a formal party.

3. The writ application has been filed for issuance of an order, direction or writ in the nature of mandamus commanding the respondent state to either make the college in question a constituent unit of the Patliputra University or to declare the institution a deficit grant college, entitled for all the benefits granted by the state to such similarly situated institution, which were granted affiliation by the State Government prior to 09.12.1982 i.e. the date on which Vitt Rahit Shiksha Niti of the State Government was notified. Further, for issuance of an order, direction or writ in the nature of mandamus after declaring the institution to be deficit grant college, pay all the arrears of admissible dues to the teaching/non-teaching employees of the college as also to make the payment of current salary. Further, to quash the decision of the State Government to make the various colleges in the State of Bihar constituent colleges' post 09.12.1982 popularly known as 4th Phase constituent colleges as the same was in teeth of Vitt



Rahit Shiksha Niti.

4. The learned counsel for the petitioner submits that Dwarka Nath College, Jatti Chak, Masaurhi was affiliated to the erstwhile Magadh University, Bodhgaya, the college presently is under the newly created Patliputra University and is also recognized by the University Grant Commission. It is next submitted that college was established in September, 1979 and was granted permanent affiliation and on basis of permanent affiliation, the college was registered under section 2f and 12B of the U.G.C. Act, 1956. It is submitted that on the basis of recommendation of the Magadh University, the college was granted affiliation vide Memo No.965 dated 06.12.1982 (Annexure-1) by the State Government for B.A. & I.Sc level. The said affiliation by the State Government was granted prior to the policy of Vitt Rahit Shiksha Niti which was notified on 09.12.1982, under Vitt Rahit Shiksha Niti, the government had taken a decision not to provide any financial aid in form of salary to any teaching and non-teaching employee of any affiliated college, granted affiliation after 09.12.1982, as would manifest from Memo No.1065 dated 09.12.1982 (Annexure-2).

5. The learned counsel submits that the Education Commissioner vide Memo No.316 dated 30.01.1979



(Annexure-3) issued direction regarding sanction of post of teachers in affiliated colleges, thereafter, vide Memo No.1138 dated 31.07.1998 (Annexure-4), the college in question was granted affiliation up to Honours level in all the faculties i.e. Arts, Science and Commerce from 1997-98 session under Vitt Rahit Shiksha Niti policy.

6. It is submitted that the college in question got affiliation by the State Government on 06.12.1982 i.e. prior to 09.12.1982 but while granting the affiliation, the State Government did not issue the order of sanction of the first post of lecturer in affiliated subjects of Science and two posts of Lecturer in the affiliated subject of Arts in violation of the Memo dated 30.01.1979 (Annexure-3), further, the government subsequently vide its Memo No.1721 dated 30.09.1981 (Annexure-5) issued guidelines to this effect.

7. The learned counsel submits that it would not be out of place to submit here that U.G.C. vide its letter dated 03.05.2012 (Annexure-6) addressed to the Registrar, Magadh University, declared the college eligible to receive central assistance under section 12B of the U.G.C. Act, 1956.

8. The learned counsel submits that prior to 03.05.2012, 36 colleges were made constituent colleges of



different universities in the year 1987 known as 4th phase constituent colleges. Further apart from the 36 colleges, five more colleges were taken up for consideration for being made constituent colleges including the college in question under the 4th phase constituent college scheme, as such, the total colleges considered for being made constituent colleges were $36+5=41$ colleges.

9. It is submitted that apart from the 36 colleges, which were made constituent colleges of different universities in the year 1987, the case of the aforesaid five colleges including the college in question was also taken up by the State Government but four colleges apart from those 36 colleges were made constituent college of the university but final order with regard to the college in question was not issued, as the file relating to the college in question became traceless, accordingly, the question regarding the same was issued in the legislative council when Aswathan Samiti of the State Legislative Council recommended the case of the college in 2006, as would manifest from the proceeding annexed as Annexure-7 to the writ application. It is submitted that thereafter even the opinion of the learned Advocate General was sought and the learned Advocate General opined in favour of granting constituent



college status to the college in question, as would manifest from Annexure-8 series to the writ application.

10. It is submitted that the Education Department, accordingly, gave its go ahead and approval of Finance Department was sought, which sat on the matter, as would manifest from Annexure-9 series to the writ application, it is submitted that when no action was taken, the matter was again raised in the State Assembly, in the year 2013, when the Education Minister accepted that recommendation has already been made for grant of constituent status and the matter is pending before the Cabinet, but then recommended that the college in question should take its case before the Hon'ble Justice S.C. Agrawala Commission, which was constituted in pursuance of the order of the Hon'ble Supreme Court in S.L.P. No. 12591/2010, as would manifest from the proceeding of the Assembly, annexed as Annexure-10 series to the writ application.

11. The learned counsel submits that way back in 1987-88, the State Government intended to make the college in question a constituent college, but the matter remained pending while similarly situated colleges were made constituent, as such, the recommendation of the Education Minister to move before



the Hon'ble S.C. Agrawala Commission was uncalled for.

12. It is next submitted that the petitioner vide his letter dated 11.12.2017 (Annexure-11) requested respondent no.6 to issue necessary order, in view of Memo dated 30.01.1979 (Annexure-3) and 30.09.1981 (Annexure-5), wherein there was a direction that while granting affiliation to each subjects, the post must be sanctioned, further the petitioner vide his letter dated 15.12.2017 (Annexure-12) addressed to the respondent no.1 requested that the college was granted affiliation on 06.12.1982 i.e. prior to 09.12.1982 by the State Government but in the letter dated 06.12.1982, it was inadvertently recorded that financial burden will not be upon the State Government, hence necessary corrections be made. The learned counsel thus submits that in view of the facts, as stated herein-above, what is not in dispute rather stands admitted is that the college in question, based on the recommendation of the university, was granted affiliation by the State Government on 06.12.1982 i.e. prior to Vitt Rahit Shiksha Niti came into existence w.e.f. 09.12.1982, it is submitted that despite the college in question qualifying in all respect till date has not been made a constituent unit of the Patliputra University, as such the teaching and non-teaching employees of the State are suffering.



13. The learned counsel for the petitioner thereafter draws the attention of the Court to an order dated 27.03.2018 in C.W.J.C. No.8120/2016 (Janardan Prasad Vs. The State of Bihar & Ors.) to submit that the issue raised in C.W.J.C. No.8120/2016 was identical to the one, which has been raised in the instant writ application and a learned Co-ordinate Bench while disposing of C.W.J.C. No.8120/2016 by an order dated 27.03.2018 had directed the respondents authorities to work out the financial assistance admissible to the petitioner institution within a maximum period of six months from the date of receipt/production of a copy of the order, on the ground that the college in question in C.W.J.C. No.8120/2016 was granted affiliation up to intermediate level w.e.f. 09.09.1981 i.e. prior to the cut off date of 09.12.1982, when Vitt Rahit Shiksha Niti was introduced but the case of the college in question in C.W.J.C. No.8120/2016 was not considered on the ground that one another college namely Sanjay Gandhi Mahila College was held not entitled to the benefit of financial assistance, accordingly it was submitted that Sanjay Gandhi Mahila College was granted affiliation after 09.12.1982 and the college in question in C.W.J.C. No.8120/2016 was granted affiliation up to intermediate level by the State Government on 09.09.1981 i.e.



prior to the cut off date of 09.12.1982, as such, the learned Co-ordinate Bench had held that by the same analogy the respondents were required to consider the case of the petitioner institution, which was granted affiliation before the cut off date of 09.12.1982, and thereafter, the aforesaid direction was passed.

14. The learned counsel for the petitioner thereafter draws the attention of the Court to an order dated 29.08.2024 in C.W.J.C. No.19683/2018 (Chandra Shekhar Jha & Ors. Vs. The State of Bihar & Ors.) and C.W.J.C. No.19784/2018 (Sanjay Kumar Jha & Ors. Vs. The State of Bihar & Ors.) to submit that the issue raised in C.W.J.C. No.19683/2018 and the analogous case was similar to the issue raised in the instant writ application and C.W.J.C. No.19683/2018 along with C.W.J.C. No.19784/2018 were disposed of by a common order dated 29.08.2024 with a direction to the respondents authorities to take steps to calculate the financial assistance payable to the petitioner under deficit grant, after making necessary deduction of the amount, which was paid under Vitt Rahit Shiksha Niti introduced in the year 2008 and other payments made to the petitioner from the resources of the college. Further, the admissible amount was directed to be paid to the petitioner



within a period of five months. It is also submitted that while disposing of C.W.J.C. No.19683/2018, the learned Co-ordinate Bench had taken note of the order dated 27.03.2018 in C.W.J.C. No.8120/2016.

15. The learned counsel appearing on behalf of the Patliputra University and the State are not in a position to make any submission for want of counter affidavit. However, the learned counsel appearing on behalf of the State submits that the writ application can be disposed of with a direction to the petitioner to file a representation before the respondent no.1, annexing the order dated 27.03.2018 in C.W.J.C. No.8120/2016 and the order dated 29.08.2024 in C.W.J.C. No.19683/2018 and C.W.J.C. No.19784/2018 and if it is found that the issue raised in the instant writ application is similar, to the issue raised in the the aforesaid writ applications, then the Principal Secretary, Department of Education, Government of Bihar will pass order in accordance with law.

16. After hearing the learned counsel for the parties and without going into the merits of the case, the writ application is disposed of with a direction to the petitioner to file a detailed representation, annexing the orders of this Court along with other relevant documents and order before the



respondent no.1 on or before 31.12.2024. In the event, if any representation is filed on behalf of the petitioner on or before 31.12.2024, the respondent no.1 i.e. Principal Secretary, Department of Education, Government of Bihar, shall consider and dispose of the representation of the petitioner by a reasoned order in accordance with law within a period of three months thereafter.

17. The writ application is disposed of with aforesaid direction.

18. It goes without saying that in the event, if the Principal Secretary, Department of Education, Government of Bihar, finds that the petitioner institution is eligible for the relief sought for, in the instant writ application, in that event, the consequential benefit must follow within a further period of three months, from the date the decision is taken on the representation of the petitioner.

(Satyavrat Verma, J)

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