

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3830 of 2024

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Bhola Ishwar Son of Late Madan Ishwar Resident of Village-Dashrathpur
P.O. and P.S. Mansurchak District- Begusarai at Present Assistant Professor in
the Subject of Vyakaran (Grammar), Shri Harihar Sanskrit College, Bakulhar
Math, Chanpatiya, District-East Champaran, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Department of Education, Government of Bihar, Patna.
4. Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga through its Registrar.
5. The Vice Chancellor, Kameshwar Nagar, Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
6. The Registrar, Kameshwar Nagar, Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
7. Shri Harihar Sanskrit College, Bakulhar math, Chanpatiya, District-East Champaran, Bihar through its Secretary.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.
For the Respondent/s : Mr. Sarvesh Kr. Singh, AAG13

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 02-04-2025

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for seeking
following reliefs:

*a. For issuance of an appropriate Writ
in the nature of certiorari quashing the order as
contained in Memo No. 3043 dated 10th of October
2022 as issued under the signature of the Director,
Higher Education, Department of Education,
Government of Bihar by which the consent of the*



State Govt. on the appointment of the Petitioner on the post of Assistant Professor in the subject of Vyakaran (Grammar), Shri Harihar Sanskrit College, Bakulhar Math, Chanpatiya, District East Champaran, Bihar has been refused on the ground that the appointment has been made in violation of section 35(2) of the Bihar State University Act 1976 and further a direction has been given to the University to take all necessary steps for cancelling the appointment of the petitioner and inform the Department and after quashing the aforesaid order, a direction may be issued to the Respondents to grant all consequential benefits to the Petitioner.

b. For any other relief/s for which the Petitioner is entitled in the eye of law and in the facts and circumstances of the case.

3. The brief facts of the present case is that the petitioner came across with an Advertisement published in Daily Newspaper dated 23.02.2013 by Shri Harihar Sanskrit College, Bakulhar Math, Chanpatiya, District - East Champaran, Bihar which has got Permanent Affiliation from the State Govt. The State Government use to give grant/full aid to the College for payment of its employees who are within the sanctioned strength/staffing pattern in the College. As per the aforesaid Advertisement as issued under the signature of the Secretary of the aforesaid college, Applications were invited from the eligible candidates for appointment on the post of Assistant Professor in the subject of Vyakaran (Grammar) in Shri Harihar Sanskrit College, Bakulhar Math, Chanpatiya, District East Champaran, Bihar. The Applicants were directed to submit their Application within the time frame as indicated in the



Advertisement. The Applicants were directed to participate in the Interview along with all the educational qualifications in original. The selection Committee was constituted by the University vide its letter no. 588/13 date 25.01.2013 for making appointment on the aforesaid posts.

4. Pursuant to the aforesaid Advertisement published in the Daily Newspaper, the petitioner since eligible for the post applied for the same and participated in the selection process and appeared before the Interview Board. The Merit list was prepared and the name of the petitioner was recommended by the Selection Committee to the Governing Body for appointment and subsequently the Governing Body of the college on the basis of the said recommendation of the Selection committee appointed the petitioner on the basis of which he gave his joining. Even the services of the petitioner has been approved by the Respondent-University and the services of the petitioner has been confirmed by the Governing Body of the College.

5. On the request as made by the college as well as by the petitioner, the university considered the matter of approval of the services of the petitioner on the post of Lecturer in the Department of Vyakaran in Shri Harihar Sanskrit College, Bakulhar Math, Chanpatiya, District East Champaran, Bihar and



the matter was placed before the Approval-Seniority and Pay Fixation Committee in its meeting dated 24.03.2018 and after the said approval of the aforesaid committee, the matter was placed before the Syndicate of the university and the Syndicate in its meeting dated 24th of March 2018 approved the services of several employees of several other Affiliated colleges including the petitioner. The aforesaid approval was granted after considering all the relevant statutes, the letter as issued by the Education Department of the state Government as well as the order passed by the learned Chancellor.

6. Thereafter, the Respondent-University issued a notification bearing Memo no. 626 dated 17th of April 2018 under the signature of the Registrar of the university in which the name of the employees whose services have been approved pursuant to the recommendation as made by the Approval Seniority and Pay Fixation Committee as well as by the Syndicate of the university, the name of the college in which the petitioner is employed is mentioned at serial number 11 in the said notification and it would appear from the said notification that the services of the petitioner on the post of Lecturer/Assistant Professor in the Department of Vyakaran in Shri Harihar Sanskrit College, Bakulhar Math,



Chanpatiya, District East Champaran, Bihar) has been approved with effect from the date of joining i.e. 09.07.2013.

7. Learned counsel for the petitioner submits that irrespective of the fact that the petitioner has been appointed in accordance with law and his services have been duly approved by the university and confirmed by the governing body of the college, the petitioner was not being paid his salary and as such the petitioner filed a writ petition bearing C.W.J.C. No. 16659 of 2019 before this Court for issuance of a writ in the nature of mandamus commanding the Respondents/Opposite parties to pay current as well as arrears of salary to the petitioner as the services of the petitioner on the post of Lecturer/Assistant Professor in the Department of Vyakaran in Shri Harihar Sanskrit College, Bakulhar Math, Chanpatiya, District East Champaran, Bihar) has been approved by the University by notification as contained in Memo No. 626 dated 17.04.2018 and the petitioner is continuously working on the vacant and sanctioned post in the Department of Vyakaran in Shri Harihar Sanskrit College, Bakulhar Math, Chanpatiya, District East Champaran, Bihar from the date of his initial Joining.



8. Thereafter, the C.W.J.C. No.16659 of 2019 was disposed of vide order dated 17.09.2019 with the following operative directions:

"Considering the aforesaid, the writ petition is disposed of with a direction to the State to take appropriate decision with regard to allotment of fund to the University as payment of salary to the teaching and non-teaching employees depends on the allocation of fund by the State and the State has onerous duty to provide fund in terms of the scheme of the Bihar State Universities Act".

"The Director, Higher Education is required to do the needful at the earliest preferably within a maximum period of 60 days from the date of receipt/production of a copy of this order so that the payment may be made to the petitioners by the University".

9. In view of the aforesaid direction passed in C.W.J.C. No. 16659 of 2019, the petitioner filed representation before the Principal Secretary as well as Director, Education Department (Higher Education), Government of Bihar and requested to make necessary payments of his salary in compliance of order dated 17.09.2019 passed by this Court in C.W.J.C. No.16659 of 2019. The University by letter dated 18.02.2020 & 12.09.2020 had requested the Education Department of the State Government for allocation of necessary fund for payment of current as well as



arrears of salary in favour of the Petitioner and other employees of the college. The petitioner has also filed Contempt Petition before this Court for non compliance of the order dated 17.09.2019 passed by this Court which is pending adjudication. Only after filing of the contempt Application by the petitioner, the Respondents took initiative and ultimately has erroneously rejected the claim of the petitioner.

10. Learned counsel for the petitioner further submits that the statutory committee of the university, which is approval seniority and pay fixation committee, after screening of all the process of appointment has given due approval and the same has been duly approved by the syndicate of the university and when clarification was sought by the state govt. from the university with regard to non compliance of the provision of section 35(2) of the bihar state university act 1976, it was specifically replied to the Education Department that the petitioner has been appointed on a vacant and sanctioned post and there is no requirement of any prior approval of the State Government. Even it is the precedence that for appointment on the vacant and sanctioned post which comes within the staffing pattern as per the resolution of the state government dated 18th of october 1976, no prior approval has been taken from the State Government before appointment and the



governing body of affiliated colleges after due process of appointment and after getting the same being approved by the university used to forward the budget for payment of the salary of those employees and the State Government has been continuously paying the salary to those employees who have been appointed by the governing body on its own on the vacant and sanctioned post. The State government has never raised any objection on any prior occasion with regard to non compliance of the section 35(2) of the Bihar State University Act, if the posts are vacant and sanctioned and comes within the staffing pattern as per the Resolution dated 18th of October 1976. The State Government has been releasing the fund for payment of salary to those employees but now in the recent appointment, such objections are being raised and that is being made a ground to hold the appointment to be illegal. The said objection as raised by the State Government is erroneous in the eye of law. Even in judicial proceeding, the state government has filed its specific Affidavit to the extent that the Governing Body of an Affiliated college is the competent authority to appoint a person on a vacant and sanctioned post.

11. The petitioner is continuously working on the vacant and sanctioned post in an affiliated College which is eligible for payment of salary and once the services of the petitioner has been



approved by the University and the necessary notification in this regard has already been issued by the University by letter dated 17th of April, 2018 and as such the respondent State can not withhold the salary of the petitioner. There is absolutely no valid reason for non payment of current as well as arrears of salary to the petitioner from the date of appointment.

12. 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”.

13. Para-21 of the said judgment read as follows “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”.

14. Para-22 of the said judgment reads as follow “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 crested 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”.

15. Para-25 of the said judgment reads as follow “in the present case also, in view of the inherent 'unworability' 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 of the said Act is interpreted in the provisions would be substantially complied with but the purpose also would be fulfilled”.

16. A counter affidavit has been filed on behalf of the University in which it is admitted that an advertisement was published by the Secretary of the College on 23.02.2013 inviting application for appointment on the post of Assistant Professor in the concerned College. Petitioner applied for appointment and he was called for interview to be conducted by the Selection Committee, after interview upon recommendation of Selection committee, Governing body considered the name of the petitioner in its meeting held on 02.07.2013 and, accordingly, petitioner was appointed on the post of Lecturer. In the meeting of the Approval, Seniority and Pay Fixation Committee of the University which



was held on 24.03.2018, appointment of the petitioner was considered and approval was granted subject to certain conditions.

17. Learned counsel for the University submits that since the salary of the petitioner was not started, petitioner filed writ petition bearing C.W.J.C. No. 16659/2019 for payment of salary. The same was disposed off with a direction to State authorities to release necessary fund. When the matter was placed before Education Department for compliance of order in writ petition, Additional Principal Secretary, Education Department has passed an order vide Memo No. 3043 dated 10.10.2022 (Annexure-1 to the writ petition), recording disagreement with the request of the University, on the ground that Section 35(2) of the Bihar State Universities Act, 1976 has not been followed in the appointment of the petitioner, since no prior approval of the appointment has been taken from the State Govt. In the same order University was directed to take steps for termination of the service of the petitioner. In light of direction of the Education Department, University has cancelled its approval given in the appointment of the petitioner and directed the Governing Body of the College vide letter No. 1231 dated 11.11.2022 to comply the order of the Education Department.



18. A counter affidavit has been filed on behalf of the Respondent Nos.2 & 3 in which it is stated that relevant clause of Section 35 of the Bihar State University Act 1976 deals with the creation of post in University and College and Section 35 (1)(i) provides that after commencement of this act no teaching or non-teaching involving financial liabilities shall be created without the approval of the State Government. Section 35(2) of the Act provides that notwithstanding anything contained in this Act, No college other than one mentioned in Clause (a) and (b) of Sub Section (1) shall after the commencement of this Act, appoint any person on any post without the prior approval the State Government. Section 35(3) further provide that any appointment or promotion made contrary to the provision of this Act, or Statutes, Rule or regulation made there under or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall be realized from the Officer making such appointment or promotion as a public demand under the provision of the Public Demand Recovery Act.

19. Learned counsel for the State submits that after perusal of all the records in respect of appointment of the petitioner it is found that the appointment of the petitioner has



been made contrary to section 35(2) of the Bihar State University Act 1976. There is no merit in this case and the writ petition is liable to be dismissed.

20. 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 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.

21. It is admitted fact that the service of petitioner was regular on sanctioned post. 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.



22. In view of the foregoing discussions, I set aside the impugned order contained in Memo No.3043 dated 10.10.2022 (Annexure-P/1) of the writ application.

23. The University as well as the State is directed to regularize the service of the petitioner and release the fund and pay all the consequential benefit to the petitioner within three months from the date of receipt/production of a copy of this order.

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

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2025
Transmission Date	NA

