

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6854 of 2023

Shiv Shankar Jha S/o Late Badrinath Jha, Gram Post-Lohana West Via Sarisabpahi, P.S.-Bhairavaasthan, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, , Department of Education, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, Patna.
4. The Vice Chancellor Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
5. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
6. The Principal Umesh Sanskrit Mahavidyalaya, Darbhanga.
7. The Principal Kalyani Mithila Sanskrit Mahavidyalaya, Deep, District-Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikas Kumar
For the Respondent/s : Mr. Jitendra Kr. Roy 1 (Sc13)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 25-02-2025

Heard learned counsels for the parties.

2. The present writ application has been filed for the following reliefs:-

(i) For quashing of order contained in Memo No.3193 dated 26.10.2022 and corrigendum contained in Memo No.3671 dated 29.11.2022 issued by the respondent no.3 whereby and whereunder petitioners' appointment made way back in the year 1979/1980 has been held illegal and the request of the University to release the amount for payment of salary of the petitioner and others including arrears of petitioner since June



2012 has been rejected.

(ii) For holding and declaring that respondent no.2 was not authorized and competent person to hold the appointment of petitioner illegal and irregular particularly after the superannuation of petitioner from service.

(iii) For direction to the respondent authorities to make payment of arrear of salary of the petitioner from June, 2012 to February 2013, June 2014 to October 2015 and October 2017 to July 2018 i.e. date of retirement of the petitioner.

(iv) For directing the respondent authorities to fix pension of the petitioner and also make payment of the same including arrears after retirement and gratuity to the petitioner at earliest.

(v) For direction to the respondent authorities to make payment of all retiral dues/benefits to the petitioner with interest.

(vi) For any other relief(s) for which the petitioner is found entitled to in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that the case of the petitioner is that, petitioner was appointed as Maithali Lecturer after due process of selection, in Umesh Sanskrit Mahavidyalaya, Tarauni vide Letter No.32 dated 22.12.1979. He submitted his joining in the said school on 02.01.1980, whereupon his joining was duly accepted. After appointment, he was continuously discharging his duty. On 02.12.1999, the Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga (hereinafter referred as 'the University') sent a detailed communication regarding five teachers including the petitioner in which every relevant details regarding the



petitioner was mentioned.

4. In December, 1999, petitioner was transferred from Umesh Sanskrit Mahavidyalaya to Mithila Sanskrit Mahavidyalaya, Deep Madhubani. The petitioner was promoted from Lecturer to Reader as per the time bound promotion after completion of ten years of service vide notification contained in Memo No.3375 dated 31.03.2011 in light of the recommendation made by the University Selection Committee w.e.f. 01.08.1995 on pay scale of Rs.3000-5000. On 24.03.2012, the University revised the pay scale of the petitioner and benefit of 6th pay revision was given to him as he was Teacher of Constituent College of the University.

5. He further submits that the Registrar of the University issued Office Order contained in Memo No.559 dated 07.03.2013 in light of the decision taken by the University Selection Committee that the regularization of the service of the petitioner is confirmed w.e.f. 01.08.1985. The University vide order contained in Memo No.827 dated 08.02.2014 appointed the petitioner on the post of “Vershar” in Kalyani Mithila Sanskrit Mahavidyalaya, Deep.

6. He further submits that though the petitioner was working as Assistant Professor (Maithili) in the Kalyani Mithila Sanskrit



Mahavidyalaya, Deep, the payment of salary for June 2012 to February 2013, June 2014 to October 2015 and October 2017 to July 2018 was not paid to him, therefore, he along with other similarly situated persons approached this Court in C.W.J.C. No.12290 of 2019 for direction of payment of the aforesaid salary.

7. That the Registrar of the University vide letter no.1067 dated 19.07.2018, informed the petitioner that he is going to attend the age of 65 years on 02.07.2018, therefore, as per the regulation, he is going to superannuate w.e.f. 31.07.2018. Therefore, request was made to submit all the documents with regard to post retiral benefit so that necessary formalities may be completed within time. The Principal of the University vide letter no.58/2018 dated 31.07.2018 sent all the pension paper to the University for Fixation of pension and other retiral benefits.

8. He further submits that the C.W.J.C. No.12290 of 2018 was heard and disposed of by this Court vide order dated 09.09.2019 with direction to the University to verify the record and after verification if it is found that there is no illegality and irregularity in appointment of the petitioners and the petitioners are regularly working, the University shall ensure payment of salary to the period the petitioners have actually worked.



Necessary decision in this regard may be taken by the respondent at earliest preferably within a period of 60 days from the date of receipt/production of a copy of this order.

9. He further submits that the University did not act upon the direction of this Court in the aforesaid writ application, therefore, the petitioner and others filed contempt application being MJC No.5075 of 2019 before this Court.

10. That the Principal of the concerned College vide letter no.27/20 dated 07.10.2020, issued a certificate stating therein that after completion of age of 65 years, petitioner has retired from service and before retirement, the salary for the period of June 2012 to February 2013, June 2014 to October 2015 and October 2017 to July 2018, has not been made due to non-availability of fund by the University.

11. He further submits that in compliance of the order passed by this Court in C.W.J.C. No.12290 of 2018, the Vice Chancellor of the University has passed order where it was found that the services of the petitioner and others are legal, therefore, the Registrar of the University vide letter No.7873 dated 21.01.2022, made request to the Director (Higher Education), Department of Education, Government of Bihar, Patna, for release of money so that the salary/pension of the



teachers may be done in the financial year 2021-2022.

12. He further submits that petitioner received impugned order dated 26.10.2022 and corrigendum dated 29.11.2022 contained in Memo No.3193 and 3671 respectively whereby and whereunder it was held that regularization and approval of petitioner was illegal and not in accordance with law thus the request of the university to release the money for payment of salaries of the petitioner and others vide letter No.73 dated 21.01.2022 was rejected.

13. The University made several communication to the State Government giving the relevant details related to the appointment of the petitioner and others, therefore, the salaries of the petitioner was being paid except the period mentioned in para-1 of the writ application. After retirement, petitioner is also entitled for pension and other retiral benefits but the respondent authorities have denied the aforesaid benefits too.

14. That as per the letter of the State Government, the appointment has been made in the college before one year of their becoming a constituent college of the University, their services were regularized as per direction of the State Government. The petitioner was appointed on 02.01.1980 as he submitted his joining on the said date and his college has



become constituent college of the University in the year 1982. Therefore, in view of the aforesaid, the petitioners' appointment is more than one year before his college became a constituent college of the University.

15. He lastly submits that the action of the respondent authorities rejecting the demand of the University to release the money for payment of salary and other benefits to the petitioner and others similarly situated teachers is totally arbitrary and illegal. The petitioner was also not given any notice before passing impugned order, therefore, the order is in complete violation of Principles of Natural Justice.

16. A counter affidavit has been filed on behalf of the State Government. It has been stated that the pursuant to the order passed by this Court in C.W.J.C. No.12290 of 2018, the University passed an order on 22.09.2020 and requested the State Government for release of fund. The State Government called for the report from the University vide letter No.1956 dated 13.07.2022 with request to attend the meeting on 19.07.2022. The report submitted by the University relating to the appointment of the petitioner and others were examined and it was found that in view of the order passed in C.W.J.C. No.12290 of 2018, the illegality and irregularity in the



appointment of the petitioner and others has not been examined by the University and further the appointment of the petitioners were made without prior approval of the State Government as contemplated under Section 35(2) of the Bihar State Universities Act. The Section 35(2) of the Bihar State Universities Act, 1976 states that:-

“35. No post for appointment shall be created without the proper sanction of the State Government. 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 a 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 to 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) 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 a candidate possession the prescribed qualification.

(3) Any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules of Regulations 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 provisions of the Public Demands Recovery Act, 1914.

17. Learned counsel for the State submits that the Division Bench of this Court in a Judgment reported in 2001 (2) PLJR 817 (Dr. Shiv Narain Yadav & Ors. Vs. State of Bihar & Ors.) held that only mode of appointment of teachers of affiliated college is on the basis of recommendation by the commission. The statutory provision with regard to the mode of appointment cannot be given go bye on the basis of a provision which is neither permissible under Act nor has the Statutory sanction in the sense of competency in the authority concerned to issued such instruction.

18. He further submits that the service of the petitioner was not regularized by the University under any of the three statutes as referred in the Dr. Shiv Narain Yadav (Supra) case. In view of the judgment passed in the abovementioned case no regularization of a teacher can be made thereafter.



19. The State Government sanction and release grants to the Universities for payment of salary and pension to the employees validly appointed and working against the sanctioned post. The request of the University for allotment of funds for payment of salary to 43 teachers including the petitioner has been considered by the State Government and the same has been rejected vide order as contained in Memo No.2157 dated 21.09.2019 and the Education Department had directed the University to remove 43 teachers including the petitioner from service in compliance of the letter of the State Government dated 19.09.2019.

20. He further submits that the impugned order is in consonance with the provisions contained in Section 35(2) of the Bihar State Universities Act, 1976.

21. A counter affidavit has also been filed on behalf of the University. The University has submitted that the University has approved temporary appointment of the petitioner but appointment of the petitioner but appointment of the petitioner is without recommendation of College Service Commission. That for regularization of the services of the temporary teachers like the petitioner, the Chancellor has approved three statutes and the service of the petitioner was not regularized under those



three statutes.

22. He further submits that since the Education Department has rejected the request of the University for release of grant, University is unable to make payment of arrears of salary to the petitioner as the University is fully dependent on State Government for release of grant.

23. In view of the foregoing discussions and in view of the order passed in the ***Braj Kishor Singh & Ors. Vs. The State of Bihar & Ors 1997(1) BLJR 625***, admittedly, there is no requirement to take prior approval of the State Government, when the post is already sanctioned and the petitioner can be said to be legally appointed as the post was advertised and he was appointed after facing the interview for daily wages. In view of the Full Bench judgment, Braj Kishore Singh (supra) ‘post facto’ approval of the State Government is not required.

24. In the result, I set aside the memo no.3193 dated 26.10.2022 and corrigendum contained in Memo No.3671 dated 29.11.2022, passed by the respondent no.3.

25. The Authorities concerned are directed to pay the monthly pension to the petitioner and also pay the arrears of pension, if any, within two months from the date of production of a copy of this order.



26. It is made clear that the respondent no.3 will be held responsible for non-compliance of the order within the stipulated period.
27. With the aforesaid directions, this writ application stands allowed.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2025
Transmission Date	NA

