

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8323 of 2022

1. Butai Rai, Son of Ramanand Rai, Resident of Bairiya, Motihari, P.S. - Bairiya, District - East Champaran.
2. Imam Mehdi, Son of Late Bhikari Miyan, Ward No. 2, Resident of Math Lohiya Ahirtoli, P.S. - Harsiddhi, District - East Champaran.
3. Shiv Shankar Prasad Yadav, Son of Raghunath Ray, Resident of Village and P.O. - Inarwa Phulwar, P.S. - Chiraiya, District - East Champaran.
4. Shatrudhan Singh, Resident of Village and P.O. - Mathiya Bhopat, Chiraiya, P.S. - Mathiya Bhopat, District-East Champaran
5. Bharat Sah, Son of Late Raj Narayan Sah, Resident of Paithanpatti, Post-Dariyapur, P.S. - Harsiddhi, District-East Champaran
6. Chandra Kishore Singh, Son of Rama Shankar Singh, Resident of Village and Post - Mathiya Bhopat, Chiraiya, P.S. - Mathiya Bhopat, District-East Champaran.
7. Prafull Kumar Sinha, Son of Ram Shankar Sinha, Resident of Ward No. 20, Block Road, Kripa Niketan, Bhawanipur Zirat, P.S. - Shastri Nagar, District East Champaran
8. Vijay Kumar Pandey, Son of Pahlad Pandey, Resident of Village-Mahuawa, P.O. - Mahuawa, P.S. - Mahuawa Chiraiya, District-East Champaran
9. Shyam Sundar Singh, Son of Bijli Singh, Resident of Ward No. 30, Sri Krishna Nagar, Motihari, P.S. - Motihari Town, District-East Champaran
10. Vishwanath Ram, Son of Punit Ram, Resident of Ward No. 15, Mathiya Zirat, P.S. - Motihari Town, District-East Champaran
11. Puja Prasad Pandey, Son of Saryug Pandey, Resident of Village-Satpipra Bhumihari Tola, Post - Ramgarhwa, P.S. - Ramgarhwa, District-East Champaran
12. Jawahar Ray, Son of Ramsarup Ray, Resident of Ward No. 06, Near Engineering College, Bairiya, P.O. - Engineering College, P.S. - Motihari Muffasil, District-East Champaran
13. Rahmat Ali Khan, Son of Walijan Khan, Resident of Ward No. 34, Near NCC Office, Raza Bazar, P.S. - Motihari Town, District-East Champaran
14. Shri Kant Pandey, Son of Lakshminarayan Pandey, Resident of Ward 09, Near Primary School, Sareya, P.S.- Manikpur, District-East Champaran



15. Vijay Kumar, Son of Late Kameshwar Prasad Singh, Resident of At - P.O
.Kiratpur Rajaram, P.S .- Bhagwanpur, District-Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary Science and Technology Department, Government of Bihar, Patna.
3. The Special Secretary, Science and Technology Department, Government of Bihar, Patna.
4. The Director, Science and Technology Department, Government of Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 12363 of 2022

1. Virendra Thakur son of Raj Sundar Thakur, resident of Ward No. 13, Rupoliya, P.S. Dhaka District - East Champaran Bihar 845427.
2. Shailendra Kumar son of Kapildeo Singh, resident of Hetimpur, P.S. Jamobazar District- Siwan.
3. Jyoti Narayan Jha son of Shankar Jha resident of MIT Campus, P.S. and District - Muzaffarpur.
4. Suresh Jha son of Mahabir Jha resident of ward No. 06 Paigambarpur, P.S. and District Muzaffarpur.
5. Rabindra Kumar Son of Gyan Datta Sharma resident of Village- Kespa, P.S. Alipur, District- Gaya.
6. Laxmi Narayan Thakur son of Dev Narayan Thakur, Resident of Village Mahuwa P.S. Chiraiya, East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Science and Technology Department, Government of Bihar, Patna.
3. The Director, Science and Technology Department, Government of Bihar, Patna.
4. Principal, MIT Muzaffarpur, Dist- Muzaffarpur.

... .. Respondent/s



with
Civil Writ Jurisdiction Case No. 15679 of 2022

1. Prakash Narayan Jha son of late Shyam Chandra Jha resident of Village-Kharaka Basant, P.S.- Nanpur, District- Sitamarhi.
2. Ravindra Nath Jha son of late Hem Nath Jha, resident of Zila School Road Near Micro wave Tower Suryoday Nagar, Purnea.
3. Shashi Shekhar Upadhyaya, son of Late Kanhaiya Upadhyay, resident of Upadhyay Tola, Goh, District- Aurangabad.
4. Bashishtha Narayan Jha, son of Sri Naresh Jha, resident of B.C.E. Campus, Sabour, District- Bhagalpur.
5. Lalit Mohan Jha, son of Parshuram Jha, resident of Engineering College, Bhagalpur, Sabour, District- Bhagalpur.
6. Satya Narayan Jha, son of Shashi Kant Jha, resident of Hanuman Nagar, Via- Kurson Nadiyaan, Gorkha, District- Darbhanga.
7. Surya Vanshi Mishra, son of Naresh Mishra, Ward No. 8, Tharhi, Andhra Tharhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Science and Technology Department, Government of Bihar, Patna.
3. The Director, Science and Technology Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 8323 of 2022)

For the Petitioner/s : Mr. Binodanand Mishra, Sr. Advocate

Mr. Avinash Kumar Sinha, Advocate

Mr. Sandeep Kumar, Advocate

Mr. Gunjan Kumar Jha, Advocate

Ms. Ankita Tripathi, Advocate

For the Respondent/s : Ms. Archana Meenakshee (GP-6)

Mr. Prabhat Ranjan, AC to GP-6



(In Civil Writ Jurisdiction Case No. 12363 of 2022)

For the Petitioner/s : Mr. Binodanand Mishra, Sr. Advocate

Mr. Sandeep Kumar, Advocate

For the Respondent/s : Mr. Ajay (GA-5)

Mr. Rakesh Kumar Ranjan, AC to GA-5

(In Civil Writ Jurisdiction Case No. 15679 of 2022)

For the Petitioner/s : Mr. Binodanand Mishra, Sr. Advocate

Mr. Shafiya Sanoj Ghani, Advocate

For the Respondent/s : Mr. Kumar Alok (SC-7)

Mr. Prem Ranjan, AC to SC-7

CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT

Date : 28-04-2025

Heard Mr. Binodanand Mishra, learned senior counsel appearing on behalf of the petitioners and Ms. Archana Meenakshee, learned GP-6; Mr. Ajay, learned GA-5 as well as Mr. Kumar Alok, learned SC-7 appearing on behalf of the State.

2. A common issue arises for determination in these batch of writ petitions. Accordingly, all the three writ petitions are being disposed of by this common order.

3. The petitioners in C.W.J.C. No. 8323 of 2022 were Class-III employees of Indian College of Engineering, Motihari and the petitioners in other two writ petitions i.e. C.W.J.C. No. 12363 of 2022 and C.W.J.C. No. 15679 of



2022 were the Class-III employees of Dr. Jagannath Mishra Institute of Technology and Indian College of Engineering, Motihari.

4. Both the above named engineering colleges, which were private engineering colleges, were taken over by the Government under the provisions of the Bihar Private Engineering College (Taking Over) Ordinance, 1986 which Ordinance later on became an Act (hereinafter referred to as the “Ordinance/Act”).

5. While taking over the aforesaid engineering colleges by the Government, the employees of both the engineering colleges, however, were not taken over, but a provision was made in the Ordinance/Act for their continuance of service on *ad hoc* basis till a decision under sub-Section 3 of the Section 5 was taken by the State Government.

6. As per the provisions of sub-Section 2 & 3 of Section 5, the State Government was required to set up a Committee of experts for examining the strength of the staff and staffing pattern and to submit a report to the Government for its decision, *inter alia*, regarding



absorption of the employees. The Government, in pursuance of Section 5, had constituted a screening Committee. The Committee recommended the petitioners for absorption from the date of joining, which the State Government accepted and accordingly, absorbed the petitioners from the date of their joining in the service.

7. The petitioners now claims that their date of absorption in the service should be counted from the date of taking over of the colleges as per the Ordinance/Act i.e. 09.12.1986.

8. The claim of the petitioners has been made on the basis of order dated 02.04.2019 (Annexure-8 of the writ petition), issued by the Special Secretary, Science and Technology Department, Government of Bihar, Patna, whereby, as many as 26 Class-III employees of the Indian College of Engineering, Motihari have been ordered to be absorbed in service from the date of taking over of the college i.e 09.12.1996.

9. On perusal of the order dated 02.04.2019, it appears that 26 Class-III employees of the Indian College of Engineering, Motihari have been absorbed in service from



the date of taking over of the college i.e. 09.12.1996 on the basis of orders passed by the Court.

10. Learned senior counsel appearing on behalf of the petitioners submit that the decision rendered on 06.05.1996 by the Court in ***Raghunath Singh & Ors. vs. State of Bihar & Ors. and other analogous cases*** (main case being C.W.J.C. No. 1316 of 1991) is the case on the basis of which 26 Class-III employees of the Indian College of Engineering, Motihari, named in the order dated 02.04.2019, have been absorbed on and from the date of taking over of the college.

11. Learned senior counsel for the petitioners have further submitted that the decision rendered in ***Raghunath Singh (supra)*** was challenged in L.P.A. which was dismissed and against the order of L.P.A. Court, an S.L.P. was also preferred in the Supreme Court, which was again dismissed and accordingly, the judgment rendered in ***Raghunath Singh (supra)*** has attained finality. Therefore, on the basis of the decision rendered in ***Raghunath Singh (supra)***, the order dated 02.04.2019 has been issued providing the date of absorption of 26 Class-III employees



named therein, to be from the date of taking over of the college by the Government.

12. Learned senior counsel, therefore, contends that since the 26 persons named in the order dated 02.04.2019 and the petitioners in all these writ petitions being Class-III employees of private engineering colleges, which had been taken over by the Ordinance/Act mentioned hereinabove are similarly situated persons and accordingly, the petitioners should also be given the same benefit as has been given to the 26 Class-III employees named in the order dated 02.04.2019.

13. Learned State counsel, on the other hand, by referring to the counter affidavit filed by the respondent nos. 1 to 4, have pointed out to a decision rendered by this Court on 05.09.2000 in ***C.W.J.C. No. 5024 of 1999 (Navo Nath Jha & Ors. vs. the State of Bihar & Ors.)*** to contend that the issue regarding the absorption of the employees of erstwhile private engineering colleges (Indian College of Engineering; Motihari, J.M.I.T., Darbhanga and Magadh Engineering College, Gaya) has been decided in the said judgment in the light of Section 5 of the Ordinance/Act, in



which this Court had rejected the contention of the petitioners in that writ petition for reckoning their date of absorption in the service from the date of taking over of the colleges i.e. 09.12.1986.

14. Learned State counsel further contends that the decision rendered in the aforesaid writ petition has been affirmed by the L.P.A. Court in L.P.A No. 1575 of 2000, against which, S.L.P. was preferred before the Supreme Court, which has also been dismissed vide order dated 19.11.2001 passed in Petition(s) for Special Leave to Appeal (Civil) No. 3043 of 2001.

15. Learned State counsel, therefore, submits that the decision rendered by this Court in C.W.J.C. No. 5024 of 1999 has attained finality, wherein, it has been held that the absorption of the employees of the erstwhile private engineering colleges after it was taken over by the Government by the above mentioned Ordinance/Act cannot be reckoned from the date of taking over of the college i.e. 09.12.1996.

16. Learned advocates appearing on behalf of the parties have been heard and materials placed on record have



been perused.

17. Insofar as, the status of the teachers and other categories of employees serving in the aforesaid private engineering colleges are concerned it was provided to be determined under Section 5 of the Ordinance/Act.

18. For better appreciation, Section 5 of the Ordinance/Act is extracted hereinbelow:

“(5) Determination of conditions of service of teachers and other categories of employees of the Private Engineering College – (1) All the staff employed in the Private Engineering College shall cease to be the employees of the concerned Private Engineering College from the date of vesting in the State Government under Section 3;

Provided that the employee shall continue to serve the concerned Private Engineering College on ad-hoc basis till a decision under sub section (3) is taken by the State Government.

(2) The State Government shall set up on or more Committees of experts and knowledgeable person who shall examine the strength of the staff and the staffing pattern and shall further examine the bio-data of each member of the teaching and other categories of employees of each of the Private Engineering Colleges and shall ascertain whether strength staffing pattern, appointment, promotion or



confirmation sanctioned and made by the Managing Committee of each of the Private Engineering College are proper in accordance with Universities Act, statues ordinance, rules or Government direction/ circular and shall take into consideration all relevant materials such as the requirements of the Private Engineering College, qualification experience and research degree etc. and submit its report to the State Government;

(3) The State Government on receipt of report of the Committee of Committees, as the case may be, shall determine the strength of teaching and other categories of employees and the staffing pattern and shall decide in respect of each member of the teaching and other categories of employees on the merit of each case whether to absorb him in Government service or to terminate his service or to allow him to continue on ad-hoc basis for a fixed term or on contract and shall where necessary redetermine the rank, pay allowances and her conditions of service.”

19. Section 5 of the Ordinance/Act provides that all the staffs employed in the Private Engineering College shall cease to be the employees of the concerned Private Engineering College from the date of vesting in the State Government. However, it has been provided that the



employees shall continue to serve the concerned Private Engineering College on ad-hoc basis till a decision under sub-Section (3) of the Section (5) is taken by the State Government.

20. On reading of Section 5(2) and (3) of the Ordinance/Act, it appears that the State Government is required to constitute one or more Committees of experts and knowledgeable persons for examining the strength of the staff and the staffing pattern, upon the report of which the State Government is required to take a decision in the matter.

21. It has not been disputed that pursuant to expert Committee constituted by the Government and report submitted thereof, the petitioners have been absorbed in the respective engineering colleges not from the date of taking over of the colleges but from the date of their joining in the engineering colleges after it was taken over by Government under the Ordinance/Act.

22. From reading of Section 5 of the Ordinance/Act, it appears that the conditions of service of the teachers and other categories of employees of the



Private Engineering Colleges after it has been taken over by the Government has to be determined by the Government on the basis of the report of the Committees of expert and knowledgeable persons constituted by the Government.

23. On perusal of decision rendered in the case of *Navo Nath Jha (supra)* enclosed in the counter affidavit filed by the respondent nos. 1 to 4, it appears that the scope of Section 5 of the Ordinance/Act has been determined in that case.

24. In the aforesaid case of *Navo Nath Jha (supra)*, eleven petitioners, whose services were notified under Section 5(3) of the Bihar Private Engineering College (Taking Over) Ordinance, 1986/Act, have been absorbed in the services with effect from the date of notification which is dated 31.01.1991. The petitioners had contended in the writ petition that as the engineering college was taken over on 09.12.1986, their services be absorbed from the date of taking over of the college.

25. Negating the contention of the petitioners, this Court has held as under:

“The submission that the



petitioners are entitled to reckon their absorption from before the date of take over of the college is in the teeth of the provisions of section 5. As indicated above, though the teachers and non-teaching staff ceased to be teachers/non-teaching staff of the colleges upon take over, they continued to serve the colleges on ad hoc basis, subject to decision to be taken in respect of their absorption etc. by the State Government under sub-Section (3). The proviso to section 5(1) which is relevant may be quoted as under:-

“Provided that they shall continue to serve the college on ad hoc basis till a decision under sub-Section (3) of this section is taken by the State Government”

Sub-section (3), as indicated above, empowers the State Government to fix the strength of the employees in accordance with the staffing pattern and also decide in respect of each teacher and non-teaching staff on the “merit of each case whether to absorb him in Government service or to terminate his service or to allow him to continue on ad hoc basis for a fixed term of contract and shall where necessary re-determine the rank, pay and allowances and other conditions of the service”. If the continuance of the teachers and non-teaching staff under section 5(1) itself is subject to the decision of the State Government under section 5(3) at which stage their



services can even be terminated, it is difficult to visualize how their substantive appointment can relate to the initial date of the take over of the College. While considering similar provisions contained in the Bihar Private Medical Colleges (Taking Over) Act, 1978 in State of Bihar v. Dr. Yogendra Singh, AIR 1982 Supreme Court 882, the Apex Court described the service of such persons continuing on ad-hoc basis as “precarious”. Having regard to the express provisions of section 5(3) I do not think the petitioners are entitled to reckon their absorption from the date of the take over of the College i.e. 9.12.86. Thus, I do not find any merit in their claim.”

26. Thus, from the decision rendered in the **Navo Nath Jha** (supra), I find that the contention of the petitioners to reckon their absorption from the date of taking over of the engineering colleges by referring to the provisions of Section 5(3) of the Ordinance/Act have been negated by holding that the continuation of the petitioners on ad-hoc basis under Section 5, is “precarious” and therefore, not entitled to reckon their absorption from the date of the take over of the colleges i.e. 09.12.1986.

27. The petitioners in these batch of writ petitions



are identically placed with the petitioners in the case of **Navo Nath Jha** (*supra*). Since, the decision rendered in the case of **Navo Nath Jha** (*supra*) has attained finality insofar as the scope of operation of Section 5 of the Ordinance/Act which provides for determination of the service condition of the employees of the Private Engineering Colleges taken over by the Government under the Ordinance/Act, I am of the view that the petitioners will also be governed by the decision rendered in the case of **Navo Nath Jha** (*supra*) and accordingly, the petitioners will also be not entitled to reckon their absorption from the date of taking over of the Engineering College.

28. The services of the petitioners, in the case of **Raghunath Singh** (*supra*), relied on by the petitioners, were terminated under-Section 5(3) of the Ordinance/Act on various grounds. When the termination order issued on various grounds were put to challenge, this Court on finding that the impugned termination orders were issued in violation of the principle of natural justice had allowed the writ petition directing the respondent authorities to take a decision under Section 5(3) of the Ordinance/Act after



providing each of the petitioners an opportunity of hearing within a period of four months from the date of receipt of copy of the judgment. It has further been provided that if the respondent authorities do not take a decision within the period prescribed, the petitioners will be entitled to be reinstated in service upon expiry of the period of four months. On such reinstatement, it was further provided that the petitioners, however, will not be entitled to the payment of back wages but their continuity in service must be maintained.

29. The order of the Court rendered in the case of ***Raghunath Singh (supra)*** for maintaining the continuity of service must be understood in the peculiar facts of the case of the ***Raghunath Singh (supra)*** in the context of direction that followed for reinstatement of the petitioners in the event of the failure of the authorities to take a decision within a period of four months with regard to the absorption of the petitioners under Section 5(3) of the Ordinance/Act. In the decision rendered in ***Raghunath Singh (supra)***, the power of the Government to take a decision in the matter of absorption of the employees of the colleges that were taken



over has not been disputed.

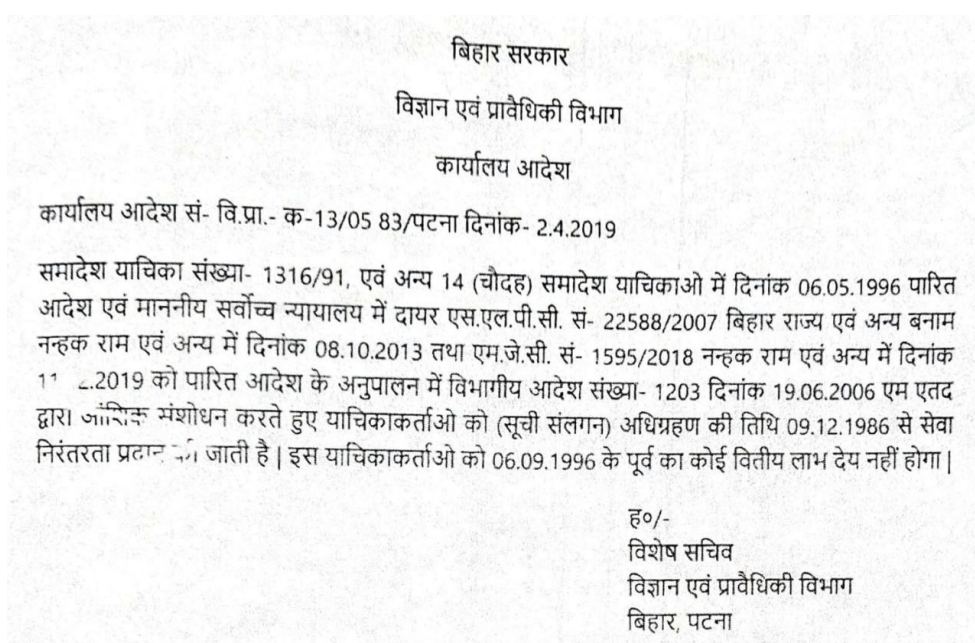
30. On the other hand, the decision rendered in ***Navo Nath Jha (supra)*** on the scope of Section 5(3) of the Ordinance/Act clearly lays down that absorption of the employees under Section 5 of the Ordinance/Act cannot be reckoned from the date of taking over of the college i.e. 09.12.1986.

31. In that view of the matter, I find that the order dated 02.04.2019 issued by the Special Secretary, Science and Technology Department, Government of Bihar, Patna, whereby 26 Class-III employees of Indian College of Engineering, Motihari have been absorbed in the service from the date of taking over of the college i.e. 09.12.1986 on the ground stated therein to be in clear violation of the law laid down in the case of ***Navo Nath Jha (supra)***. The respondent authorities in issuing the order dated 02.04.2019 appears to have clearly disregarded the law laid down by this Court in the case of ***Navo Nath Jha (supra)***.

32. Nonetheless, order dated 02.04.2019, issued by the Special Secretary, Science and Technology Department, Government of Bihar, Patna, whereby, 26



Class-III employees of Indian College of Engineering, Motihari have been absorbed in service from the date of taking over of the college i.e., 09.12.1986, may be examined for which, the order dated 02.04.2019 itself is extracted hereinbelow for ready reference:



33. Perusal of the order dated 02.04.2019, as extracted hereinabove, would go to show that 26 Class-III employees of Indian College of Engineering, Motihari have been continued in service from the date of taking over of the college on 09.12.1986 in compliance of the order dated 06.05.1996 passed in C.W.J.C. No. 1316 of 1991 [*Reghunath Singh (supra)*] and 14 other analogous writ petitions as well as order dated 08.10.2013 passed by the



Supreme Court in S.L.P.(C) No. 22588 of 2007 (State of Bihar & Ors. vs. Nanhak Ram & Ors.) and order dated 11.02.2019, passed in M.J.C. No. 1595 of 2018 (Nanhak Ram & Ors. vs. the State of Bihar & Ors.).

34. Thus, issuance of the order dated 02.04.2019 maintaining the continuity of service of 26 Class-III employees of Indian College of Engineering, Motihari from the date of taking over of the college on 09.12.1986, was the result of various orders passed by this Court as well as the Hon'ble Supreme Court in the fact and circumstances arising with regard to the 26 Class-III employees of Indian College of Engineering named in the order dated 02.04.2019. That, however, does not in any manner dilute the law laid down in the case of *Navo Nath Jha (supra)* that the absorption of the employees under Section (5) of the Ordinance/Act cannot be reckoned from the date of taking over of the college i.e. 09.12.1986.

35. In view of the discussions made hereinabove, I am of the view that the petitioners' claim for reckoning their date of absorption from the date of taking over of the college under the Ordinance/Act i.e. on 09.12.1986 cannot



be sustained in view of the similar prayer made by the petitioners in the case *Navo Nath Jha (supra)* having been rejected by this Court vide order dated 05.09.2000 passed in C.W.J.C. No. 5024 of 1999.

36. All the writ petitions, therefore, stand dismissed.

(Nani Tagia, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
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