

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8364 of 2023

Namonath Thakur S/o Mayanand Thakur, Resident of Village - Sarara, P.O. Sonpatahi, P.S. - Babubarhi, 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, Sanskrit Mahavidalaya, Madeshwar Asthan, Madhubani.
7. The Principal, Adinath Paras Mani Sanskrit College, Rahua Sangram, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vikas Kumar

For the Respondent/s : Mr.Jitendra Kumar Roy 1 (Sc 13)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 25-02-2025

Heard learned counsels for the parties.

2. The petitioner prays for the following reliefs:

(i) For quashing of the order contained in Memo No.3228 dated 28.10.2022 and corrigendum contained in Memo No.3562 dated 23.11.2022, issued by the Respondent No.3 whereby and whereunder petitioners' appointment made way back in the year 1980 has been held illegal and request of the University to release the amount for payment of arrear of salary since June 2012 has been rejected.

(ii) For holding and declaring that respondent no.3 was not authorized and competent person to hold



the appointment of petitioner illegal and irregular particularly after the superannuation of the petitioner from service.

(iii) For direction to respondent authorities to make payment of arrear of salary from June 2012 up to date of retirement i.e. 30.11.2022.

(iv) For direction to the respondent authorities to fix pension of 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.

3. Learned counsel for the petitioner submits that the case of the petitioner is that he was appointed as Second Lecturer in Literacy subject after due process of selection in Sanskrit College Madneshwar Asthan Madhubani and in this regard on 16.08.1980 information was sent to the petitioner to submit his joining. He submitted his joining on 17.08.1980 in this regard to the Principal of Sanskrit College Madneshwar Asthan, Madhubani issued certificate vide Letter No.110 dated 17.08.1980 informing to the Registrar of the Kameshwar Singh Darbhanga Sanskrit University (hereinafter referred as 'the University') and Secretary Sanskrit College, Madneshwar Asthan.

4. The University gave its approval vide letter contained in Memo No.2784 dated 16.09.1982 for appointment of the



petitioner for three month on the pay scale of Rs.510-1155 for temporary basis. Time to Time extension was granted by the University on appointment of the petitioner. Lastly, vide letter contained in Memo No.727 dated 29.11.1983 the services of the petitioner was extended from 01.07.1983 till further order in the said Madneshwar Sanskrit College, Madhubani.

5. The University in its meeting held on 08.07.2000 made recommendation to absorb the services of several lecturer by the internal absorption Committee. In this regard letter was issued on 09.07.2000. The College of the petitioner became Constituent College of the University on 28.02.1982. Therefore, the university published a list of lecturer on 09.07.2000, as who were working in different Colleges, when those Colleges become Constituent. The aforesaid list indicated the name of College, name of Teachers, date of joining, date and number of letter by which post was sanctioned date of advertisement, etc. the name of Petitioner finds figures in the said list.

6. He further submits that as per the criteria and process of selection and absorption, petitioner was discharging his duties. He was transferred to several places by the University. While he was posted as Lecturer of Literature at Adinath Madhusudan Parasmani Sanskrit Maha Vidalaya, Rahua Sangram,



Madhubani, the University promoted the petitioner under time bond promotion after completion of ten years of service vide notification contained in Memo No. 1864 dated 24.02.2011 in the light of the recommendation made by University Selection Committee w.e.f. 01.04.1999 on pay scale of Rs. 3000 to 5000.

7. He was again transferred to Madneshwar Sanskrit College, Madneshwar Asthan, Madhubani and the headquarter was fixed at Rajkiyai Sanskrit College, Bhagalpur. Being the most senior teacher, petitioner was given the charge of In-charge Principal vide office order contained in Memo No.18775 dated 28.11.2011. Later on, the University revised the pay scale of the petitioner and benefit of 6th pay revision was given to him.

8. He further submits that the University vide notification contained in letter no.261/13 dated 11.01.2013 transferred the petitioner as In-charge Principal of Adinath Madhusudan Paras Mani, Sanskrit Maha Vidyalaya Rahua Sangaram, Madhubani.

9. The registrar of the University issued office order contained in letter No.3363 dated 15.06.2013 mentioning therein that in the light of recommendation and decision taken by University Selection Committee and keeping in mind of satisfactory services of temporary teachers their services are regularized / confirmed from the date given against their name.



In the said list name of petitioner is at Serial No.- 4 showing date of regularization / confirmation as 01.04.1981.

10. He further submits that the petitioner superannuated on 30.11.2022. Accordingly, Principal of the college concerned sent all the pension related documents to the University for fixation of pension and other retiral benefits.

11. He further submits that though the petitioner was discharging his duty on the place of his posting at several places, the salary of the petitioner from June 2012 till the date of his superannuation 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.

12. 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.

13. 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.

14. In compliance of the order passed in C.W.J.C. No.12290 of 2018, the Vice Chancellor of the University passed an order, where it was found that the service of the petitioner is legal, therefore, 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 made in the financial year 2021-2022.

15. He further submits that petitioner received impugned order dated 28.10.2022 and corrigendum dated 23.11.2022 contained in Memo No.3288 and 3562 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.

16. The University had already passed order and taken



decision in regard to the legality and irregularity of appointment of petitioner and other teachers and request was made to the State Government to release the fund for payment of salary and other benefits to the teachers of their constituent colleges but the State Government rejected the demand of the University vide impugned order.

17. 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.

18. 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.

19. 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.

20. 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 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.3228 dated 28.10.2022 and corrigendum contained in Memo No.3562 dated 23.11.2022, 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

