

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16835 of 2021

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Rabindra Narain Singh Son of Late Nareshwar Prasad Singh, Resident of Village - Jaiprabha Nagar, Kaiyasth Tola, Police Station - Saharsa, District - Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through, Secretary, Department of Science and Technology, Government of Bihar, Patna.
2. The Director, Department of Science and Technology, Government of Bihar, Patna.
3. The Joint Director (Admin), Department of Science and Technology, Government of Bihar, Patna.
4. The Assistant Director (Admin), Department of Science and Technology, Government of Bihar, Patna.
5. The Principal, Government Polytechnic, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh, Sr. Advocate.
Mr. Sumit Kumar, Advocate.

For the Respondent/s : Mr. Pratik Kumar Sinha, AC to GA-5.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 05-08-2025

Heard Mr. Rajesh Kumar Singh, learned senior counsel along with Mr. Sumit Kumar, learned counsel appearing on behalf of the petitioner and Mr. Pratik Kumar Sinha, learned AC to GA-5 for the State.

2. The petitioner in paragraph no. 1 of the present writ petition has sought, *inter alia*, following relief(s),



which is reproduced hereinafter:-

“1.(a) That the above named petitioners are filing the present writ petition before this Hon'ble Court for issuance of writ of certiorari for quashing/setting aside the memo no. 497 dated 10.02.2021 issued by Respondent No.3 (Joint Director, Department of Science & Technology, Government of Bihar, Patna) by which petitioner has not been found fit for promotion to the post of Lecturer (Selection Grade) on the ground that petitioner does not possess Ph.D. degree which is essential in view of clause 3.5 of memo no. 02 dated 02.01.2003 issued by Department of Finance and clause 43 of notification dated 04.01.2016 issued by AICTE.

1.(b) That the abovenamed petitioners are further praying before this Hon'ble Court for issuance of writ of mandamus for directing/commanding the respondent authorities to grant the petitioner his due promotion to the post of Lecturer (Selection Grade) w.e.f. 25.02.2001) under Career Advancement Scheme with all consequential benefits in view of Item-10 of the clarification issued by AICTE as contained in letter no. FD/PSSC/clarify/2003/1 dated 10.09.2003 and as has been held in order dated 24.01.2017 passed in MJC No. 1438 of 2015.

3. The petitioner is aggrieved for having not been promoted on the post of Lecturer (Selection Grade) w.e.f. 08.03.2002 the date he became entitled after completion of five years from 08.03.1997 on which date he was granted Lecturer (Senior Scale).

4. The Finance Department, Government of Bihar came out with a Notification dated 02.01.2003. The said notification was clarified by the All India Council for Technical Education (AICTE) in respect of Item No.10 by a clarificatory notification dated 10.09.2003 giving retrospective effect to the notification dated 02.01.2003. In respect of the clarification,



learned senior counsel submitted that a writ petition was filed by Shiv Shankar Prasad Singh and others and against the order passed by the learned Single Judge, said Shiv Shankar Prasad Singh preferred L.P.A. No. 720 of 2006 before this Court and against the final judgment passed by the Division Bench, said Shiv Shankar Prasad Singh and others preferred MJC No. 1438 of 2015. The Division Bench of this Court vide order dated 24.01.2017 had noticed the clarificatory notification dated 10.09.2003 issued by the AICTE made in respect of Item No. 10, particularly Sub Clause 3.5(ii) of the Notification dated 02.01.2003. Learned counsel placed reliance on the said clarification made by the Division Bench in its order passed in M.J.C. No. 1438 of 2015 dated 24.01.2017. In the background of the admitted position, learned counsel contended that the petitioner became entitled for Lecturer (Selection Grade) w.e.f. 08.03.2002 keeping in view Kalavadhi of five years as stipulated in the said Notification. The petitioner having not been paid the required pay scale applicable for Lecturer (Selection Grade) was forced to file C.W.J.C. No. 16508 of 2017. The said writ petition was disposed of vide order dated 16.05.2019 giving liberty to the petitioner to file representation before the respondent no.2 to be considered and disposed of



within a period of eight weeks thereafter. Learned senior counsel further submitted that the petitioner filed his detailed representation dated 02.07.2019 (Annexure-4) giving all the details relating to his service particulars and the interpretation made by the Central Government in respect of Item No.10 vide AICTE notification dated 10.09.2003 before the Director, Science and Technology Department, Government of Bihar, who after delay of nearly two years passed the impugned order contained in Memo No. 497 dated 10.02.2021 (Annexure-5) rejecting the claim of the petitioner from 08.03.2002 on the ground that as per item no. 43 of the subsequent notification which came into effect from 04.01.2016, the minimum qualification of Ph.D. is an essential qualification for upward movement to the Lecturer (Selection Grade). Learned senior counsel asserted that the Notification dated 04.01.2016 has its prospective effect and in absence of any clear stipulation in the said notification in respect of its retrospectivity, denial of pay scale applicable to the Lecturer (Selection Grade) to the petitioner w.e.f. 08.03.2002 till the Notification came into effect on 04.01.2016 being against the clarification dated 10.09.2003 cannot sustain in the eye of law. Learned counsel further submitted that the judgment relied by the respondent rendered in



the case of **The Secretary, All India Shri Shivaji Memorial Society (AISSMS) & Ors. Vs. The State of Maharashtra and Ors. (Special Leave Petition (Civil) No(s). 7058-7061 of 2019** is not applicable in the case of the petitioner. In this regard, learned counsel has clarified that in the present case, petitioner is seeking his promotion in Selection Grade having appointed in the year 1985 i.e. prior to the effective date of 01.01.1996, which has been prescribed by the AICTE vide its Notification dated 10.09.2003. Therefore, the case of the petitioner is entirely different from the facts of the **The Secretary, All India Shri Shivaji Memorial Society (supra)** where the case of the teachers who were aggrieved was related to the appointments made between 1995 to 2009.

5. *Per contra*, Mr. Pratik Kumar Sinha, learned counsel appearing on behalf of the State submitted that the Joint Director, Science and Technology Department, Government of Bihar vide its Letter No. 497 dated 10.02.2021 has passed a speaking order and the said order cannot be interfered in any manner in accordance with law. Learned counsel further submitted that in view of the Clause 3.5 (ii) of the Notification dated 02.01.2003 issued by the Department of Finance, Government of Bihar and clarification to the same vide AICTE



Notification dated 10.09.2003 in view of the terms stipulated in Item No. 43 of the AICTE Notification dated 04.01.2016, petitioner is entitled for promotion to the post of Lecturer (Selection Grade) and the order impugned cannot be interfered in any manner by this Court.

6. Heard the parties.

7. The issue involved in the present writ petition is, as to whether, the petitioner is entitled for Lecturer (Selection Grade) pay scale and secondly, whether the AICTE Notification dated 04.01.2016 has retrospective effect which mandates the teacher to have Ph.D. degree for being entitled for promotion to the post of Lecturer (Selection Grade)?

8. The petitioner was appointed on 22.02.1985, thereafter, he was given time bound promotion in the year 1997 on the post of Lecturer (Senior Scale) after having performed 12 years of service. The Department of Finance, Government of Bihar came out with Notification dated 02.01.2003 mandating five years of service as Lecturer (Senior Scale) having Masters Degree for promotion to the post of Lecturer (Selection Grade).

9. I find it proper to reproduce Item No. 10 of the Clarificatory Notification dated 10.09.2003 issued by the All India Council for Technical Education (AICTE):



“Item No. 10. Anomaly in AICTE recommended pay scales for teachers of diploma level technical institutions (polytechnics)

Decision taken:

The committee had discussed the issue at length and it was decided that the teachers who have been recruited prior to 1.1.1996, should be governed by the existing Recruitment Rules(RR's). So, the committee recommends relaxation of qualification for such teachers to consider them for CAS in the grade of Lecturer (i.e., from Lecturer to senior grade & from senior grade to selection grade) and also for those who were promoted before the implementation of revised AICTE pay scales & service conditions. (From the date of AICTE notification to the date of implementation of the same by the concerned State Govt/Union Territory).”

10. In respect of the clarification of the said Notification, the Division Bench of this Court had occasioned to reconsider the said notification and clarification made by the AICTE vide order dated 19.04.2010 passed in L.P.A. No. 720 of 2006 (Shiv Shankar Prasad Singh & Ors. Vs. The State of Bihar & Ors.), against which order, MJC No. 1438 of 2015 was filed. The Division Bench vide order dated 24.01.2017 passed in MJC No. 1438 of 2015 had noticed the clarification made by the AICTE which is a Central Agency in respect of Item No.10 which has been clearly observed as under:

“We would like to say, enough is enough. State cannot behave like Shylock or make a citizen fight for every inch of his rights. An apex body like AICTE, having clarified the matter by its own regulations, we do not think it lies with the State, which is the implementing authority, to challenge the legality of the clarification by the parent apex



body. It is there to implement the orders of the AICTE and not to deny or challenge that. The clarification is categorical and be quoted:

“Item No 10: Anomaly in AICTE recommended pay scales for teachers of diploma level technical institutions (polytechnics)

Decision taken:

The committee had discussed the issue at length and it was decided that the teachers who have been recruited prior to 01.01.1996, should be governed by the existing Recruitment Rules (RR's). So, the committee recommends relaxation of qualification for such teachers to consider them for CAS in the grade of Lecturer (i e, from Lecturer to senior grade & from senior grade to selection grade) and also for those who were promoted before the implementation of revised AICTE pay scales & service conditions. (From the date of AICTE notification to the date of implementation of the same by the concerned State Govt/Union Territory).”

Keeping in view the clarification as given by the principal apex body, the AICTE, as quoted above, clearly DPC and the State are wrong in depriving the petitioners of their right to be considered for promotion. We do not approve of the manner in which State has consistently created obstacles to deprive the consequential benefits to the petitioners. We do not approve of such a legalistic attitude of the State to defeat the legitimate rights of citizens.

We, thus, have no option but to hold that the stand of the State in this regard is not bona fide. Clarification having been made by the AICTE about its own regulations and also communicated it to all parties including the State, State, being subordinate in that respect to AICTE, must fall in line.

We, accordingly, direct the State to take a decision appropriate to the clarification supplied by AICTE, as noted above within a period of three weeks from today and needless to repeat yet again, as we have repeated several times earlier; give consequential relief and benefit to the petitioners. If the same is not done, we would expect the Principal Secretary, Department of Science and Technology to be personally present on the next day to answer Rule of Contempt.

11. It is well settled law that the Central Legislation is binding on the State and the State cannot overreach the same.

12. The clarification having been made by the



AICTE about its own regulation and also communicated to all the parties including the State, the State is required to abide by the said clarification.

13. It is further clarified that the respondent no.3 has totally misconceived the regular promotion with financial upgradation. In this regard, the Apex Court in the case of ***Amresh Kumar Sinha & Ors. Vs. The State of Bihar & Ors.*** reported in ***2023 SCC OnLine SC 496***, while observing the claim of the appellant of the said case who became entitled for the Assured Career Progression (ACP) on completion of 12 years of service to avoid stagnation in Para-17 to 20 has observed as under:

“17. It was further observed that fulfilment of educational qualifications prescribed under the recruitment rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated.

18. In the aforesaid case, the employees were working as malis (Gardeners) and had claimed promotion in the higher pay scale. The Central Administrative Tribunal seized of the original applications observed that the employees cannot claim the scale of the next higher post by way of in situ promotion. On the matter being taken to the High Court by way of a writ petition, the contention of the employees was accepted and it was observed that the object of in situ promotion on non-functional posts, is to ensure that the group C and D employees are not stagnated in the same cadre/pay scale and that they should be provided with certain monetary benefits. Therefore, the rejection of the claim for such nonfunctional in situ promotion on the



ground that the employees do not possess the necessary minimum qualification of matriculation as per the rules is not justified and renders the order erroneous in law. The view so taken by the Division Bench of the High Court was affirmed by this Court in the above referred Civil Appeals holding that the High Court has correctly analysed the object of the in situ promotion and fixation of pay scales to Group C and D employees to avoid stagnation.

19. In view of the aforesaid legal position coupled with the fact that the qualification of graduation prescribed is for the promotion to the post of Accounts Officer rather than for the grant of in situ promotion on the non-functional post or for extending the benefit of ACP which is purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post, we are of the opinion that the judgment and order of the Division Bench of the High Court impugned in the appeals cannot be sustained. It is accordingly hereby set aside and that the judgment of the writ court dated 28.11.2017 is restored. The appellants are extended the benefit of ACP, as directed by the writ court.

20. We have not considered it necessary to deal with the two cases on the basis of which the Single Judge has allowed the writ petitions and granted the benefit of the ACP to the appellants, as we have independently of those two decisions have considered and held that the appellants are entitled to financial upgradation under the ACP Scheme on completion of requisite regular service ignoring the higher qualification prescribed for the next higher post as grant of such benefit is not actually a promotion but only financial upgradation and if the higher qualification is insisted it would frustrate the purpose of the entire scheme.

14. The Apex Court has clarified in Para-17 that educational qualification required for the purposes of promotion is not necessary for the grant of non-functional in situ promotion i.e. only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be



stagnated.

15. In view of the clarification made by the AICTE, the petitioner becomes entitled for Lecturer (Selection Grade). The notification which came into effect from 04.01.2016 has no application in the case of the petitioner. The rejection of the claim of the petitioner for his entitlement of pay scale of Lecturer (Selection Grade) by the Joint Director, Science and Technology, Government of Bihar (respondent no.3) is contrary to the Notification dated 02.01.2003 and its clarification made by the AICTE dated 10.09.2003. Accordingly, the impugned order dated 10.02.2021 being wholly misconceived is set aside and quashed.

16. In the present case, I have already clarified that the petitioner is entitled for Lecturer (Selection Grade) w.e.f. 08.03.2002. The petitioner is entitled for the Lecturer (Selection Grade) pay scale till the date of his retirement i.e. 31.03.2021. I, accordingly, direct the respondent no.2 – The Director, Department of Science and Technology, Government of Bihar to take corrective measures to grant Lecturer (Selection Grade) to the petitioner w.e.f. 08.03.2002 in view of the fact that he has completed 5 years of Kalavadhi for the post of Lecturer (Selection Grade) from the date he was granted Lecturer (Senior



Scale) w.e.f. 08.03.1997. The petitioner also becomes entitled for other consequential benefits arising out of said pay scale.

17. The writ petition stands allowed.

18. There shall be no order as to costs.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.08.2025
Transmission Date	N.A.

