

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.283 of 2023

Badri Nath Jha Son Of Late Tejnath Jha Resident of Village and P.O.-Deep,
Via-Jhanjharpur P.S - Lakhnaur, Distt.- Madhubani (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Higher Education, Govt. of Bihar, New Secretariat, Patna
2. The Director, Department of Higher Education, Govt. of Bihar, New Secretariat, Patna
3. The Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Dharbhanga
4. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Dharbhanga
5. The Principal, Baba Saheb Ram Sanskrit College, Panchadi, Dharbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha Mr. Shashi Nath Jha Mr. Ram Naresh Jha
For the Respondent/s	:	Mr. Subhash Chandra Mishra (Sc 16)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 25-02-2025

Heard learned counsels for the parties.

2. The petitioner has approached this Court for the following reliefs:-

- (i) For setting aside the order, issued by the respondent no.2 vide memo no.3554 dated 23.11.2022 (Annexure-11), whereby and whereunder the petitioner's regularization and approval of his appointment made way back in the year 1980 has been cancelled and the claim of the petitioner for payment of arrears of his salary since June 2012 has also been rejected.
- (ii) For directing the respondent authorities to make payment of arrears of the salary of the



petitioner till he got superannuation on 30.06.2022 with all admissible allowances.

(iii) Directing the respondents authorities to make payment of all the retiral dues/benefits to the petitioners with interest.

(iv) Directing the respondent authorities to make payment of pension & gratuity to the petitioner at the earliest.

(v) Holding and declaring that the respondent no.2 was not authorized to hold that the appointment of the petitioner was illegal & irregular especially after the superannuation of the petitioner from service.

(vi) For any other relief(s) for which the petitioner may be found entitled to.

2. Learned counsel for the petitioner submits that the short fact of the case is that petitioner is a superannuated Assistant Professor from the Department of Ved. He got superannuated on 30.06.2022 from Baba Saheb Ram Sanskrit College, Panchadi, Darbhanga (hereinafter referred to as 'the College') under the Kameshwar Singh Darbhanga Sanskrit University, Darbhanga (hereinafter referred to as "the University").

4. The petitioner, after due process of selection was appointed as Lecturer in the Department of Ved in the Kalyani Mithila Sanskrit College, Deep, Madhubani on 26.02.1980, and he joined the said post on 01.03.1980. Subsequently, vide letter dated 15.03.1982 the petitioner got concurrence from the Bihar College Service Commission, Patna. He continued to receive his salary even after Kalyani Mithila Sanskrit College



was taken over by the University. Thereafter, he was transferred to the College from where he got superannuation.

5. He further submits that vide Office Order dated 01.09.2010, the service of the petitioner stood confirmed by the University w.e.f 01.04.1980 and vide Office Order dated 01.06.2012, he was also granted the benefits of sixth pay revision. Subsequently, vide Office Order dated 06.03.2013 the service of the petitioner was regularized w.e.f. 01.04.1980 by the decision of the University Selection Committee.

6. He further submits that when the salary of the petitioner was not paid since June 2012, then the petitioner along with other similarly situated persons approached this Court vide C.W.J.C. No.12290 of 2018 for payment of their arrears of salary. The said writ was disposed of by this Court vide order dated 09.09.2019 with a direction to the respondents to make payment of salary to the petitioners within a time frame after examining their service records but when within the stipulated period no salary was paid to the petitioners by the University then a contempt application bearing M.J.C. No.5075 of 2019 due to non-compliance of the aforesaid dated 09.09.2019 was filed. The said M.J.C. is still pending before this Court.

7. The respondent-University instead of paying the



amount of arrears of salary to the petitioner directed the Principal of the College to stop taking work from the petitioner. Consequently, the concerned Principal issued a letter to the petitioner on 30.08.2019 restraining him from performing his duty in the College.

8. Being aggrieved, petitioner assailed the order of the Principal dated 30.08.2019 before this Court vide CWJC No.20976 of 2019.

9. Vide letter dated 24.02.2020, the University was directed by the Respondent no.2 to communicate all the concerned persons including the petitioner to be present on New Secretariat, Patna on 09.10.2020 with all testimonials and service records so that their service might be verified at the level of the State Government. Pursuant to the direction of the University, the petitioner appeared before the Secretariat with all his service records and submitted the same to the authorities which is apparent from the letter dated 07.10.2020 submitted by the petitioner.

10. He further submits that after superannuation, the petitioner on 29.11.2022, received a letter dated 23.11.2022 vide Memo No.3554, issued by the respondent no.2 whereby it was held that the regularization and approval of the service of



the petitioner was illegal and was not in accordance with law, and thus the claim of the petitioner for arrears of amount of salary was also rejected. Petitioner represented himself several times before the University-authorities for the same but till date no amount has been paid to him.

11. He further submits that in this case vide order dated 20.01.2023, this Court had directed for provisional pension to be granted to the petitioner but the same has not been granted till date. Hence, contempt application bearing MJC No.1398 of 2023 was filed by the petitioner which is pending before this Court.

12. A counter affidavit has been filed on behalf of the State respondents stating therein as follows:-

(A) That Section 35 of the Bihar State Universities Act, 1976 provides 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.

13. 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 by 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.

14. He further submits that the petitioner was appointed as temporary teacher on 16.08.1980 under Section 35(2) of the Bihar State Universities Act for a maximum period of six months by the Governing Body of the College before the conversion of the College in the year 1982. After the conversion, the service of the petitioner was not regularized under the Statute of 'Regularization of temporary teacher'.

15. In view of the judgment passed by this Court in the case of Dr. Shiv Narain Yadav (supra), the service of the petitioner and others cannot be regularized. The request of the University for allotment of fund for payment of salary to the 43 teachers including the petitioner has been considered by the State and the same has been rejected as order contained in Memo No.2157 dated 21.09.2019.

16. A counter affidavit has also been filed on behalf of the University. The University has submitted 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.

17. It is further submitted that to comply the interim order of this Court dated 20.01.2023, University vide Letter No.141/23 dated 30.01.2023 has sought approval from the Director, Higher Education for payment of provisional pension to the petitioner but till date no response has been received from the Education Department.

18. 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.

19. In the result, I set aside the memo no.3554 dated 23.11.2022 (Annexure-11), passed by the respondent no.2.

25. The Authorities concerned are directed to pay the monthly pension to the petitioner and also pay the arrears of



salary and consequential benefits, 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.2 will be held responsible for non-compliance of the order within the stipulated period.

27. With the aforesaid directions, this writ application stands allowed. Any application pending i.e. the M.J.C. No.1398 of 2023 is also disposed off accordingly.

(Anjani Kumar Sharan, J)

shikha/-

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

