

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1171 of 2023

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Mohd Gholam Umar Son of Mohd Matiur Rahman, Resident of Mohalla-Naya Tola Talayabpur Rajwanpur, Police Station-Ballabelowan, District-Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secreary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education, Bihar Patna.
4. The Patna University through its Registrar, Ashok Raj Path, Patna.
5. The Vice Chancellor, Patna Universi, Ashok Rajpath Patna.
6. The Bihar Public Service Commission through its Secretary, Bailey Road Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anand Ojha, Sr. Advocate Mr.Ashok Kumar Karna, Advocate Mr.Abhishek Raj, Advocate Ms.Somya, Advocate
For the BPSC	:	Mr.Sanjay Pandey, Advocate Mr.Nishan Kumar Jha, Advocate Mr.Prabhakar Pahapur, Advocate
For the Patna University :		Mr.Mrigank Mauli, Sr. Advocate
For the Respondent/s	:	Mr.Prabhakar Jha (GP- 27)

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 15-05-2026

Heard the learned counsel for the parties.

2. The petitioner has filed the writ petition for the following reliefs:-

“(i) Issuance of writ in nature of mandamus to appoint the Petitioner on the post of Assistant Professor in the Patna University in Persian subject in connection



with Advertisement No. 47/2014 issued by the Bihar Public Service Commission, Patna as the Bihar Public service Commission had recommended the name of the Petitioner for appointment on post of Assistant Professor in Persian subject in Patna University after declaring the result and the Patna University had also completed the Counseling of the Petitioner on 29.07.2022 against the 2 vacant post of Assistant Professor in General category in Persian subject for appointment.

(ii) Issuance of writ in the nature of certiorari to quash the Letter No. G/2581 dated 10.09.2022 issued by the Registrar, Patna University, Patna by which the Patna University had sought guidelines from the Director Higher Education, Bihar with remarks that due to rationalization of seats in Persian subject the post of Persian subject became less vacant i.e. only 3 vacant post, whereas earlier requisition for 4 post in Persian subject had been sent by the Patna University itself before Bihar Public service Commission, Patna and the Bihar Public Service Commission, Patna had allotted the post of Assistant Professor to the Petitioner in Persian subject in Patna University with recommendation.

(iii) Issuance of writ in nature of certiorari to quash the Letter No. 3691 dated 01.12.2022 issued by the Director, Higher Education, Bihar Patna by which the



Education Department Government of Bihar had directed the Patna University to appoint the candidates against only three post in Persian subject whereas the Director, Higher education Bihar had itself earlier forwarded the recommendation of BPSC and directed the Patna University to conduct the counseling of the concerned candidates including the Petitioner against the 4 vacant post (out of 4 vacant posts 2 vacant posts in General category) and to appoint them.”

3. During course of hearing, a counter affidavit was filed on behalf of the respondents no. 2 and 3 on 17.10.2023 whereby in paragraph no. 8, it was stated that the Commission recommended the name of four persons, including the name of the petitioner for the Patna University, Patna for appointment for the post of Assistant Professor in Persian subject after almost eight years from the date of advertisement. However, due to rationalization process in the University conducted during these eight years, the post in Persian subject in the University, has been reduced to total 8 seats and only 3 seats are vacant. It has further been mentioned that there is no post available in the Patna University, Patna for accommodating the petitioner against the recommended post of Assistant Professor in the Persian subject, hence he has not been appointed by the said



University.

4. A counter affidavit has also been filed on behalf of the Patna University on 09.05.2024, wherein the same stand has been taken that in view of rationalization, the petitioner could not be appointed. It further appears that a rejoinder to the counter affidavit was filed on behalf of the petitioner wherein it was stated that vide letter no. 788 dated 31.03.2022 issued under the signature of the Director, Higher Education, Government of Bihar, Patna, the recommendation of B.P.S.C was sent to the Patna University for appointment of the petitioner in Persian subject in General category. In view of the directions of the Director, Higher Education, the Registrar, University called the petitioner vide letter no. 2161 dated 21.07.2022 for appearing in counseling on 29.07.2022. The petitioner appeared for counseling on 29.07.2022, in the light of the directions of the Registrar, Patna University and despite that, the appointment letter was not issued to the petitioner. The University sought for guideline from the Director, Higher Education, vide letter no. 2581 dated 10.09.2022, about the appointment of the petitioner in the Persian subject, with a remark that due to rationalization of the Persian subject the sanctioned strength of post in Persian subject became only 06 and out of 06 posts, only 03 posts are



vacant, in which only 01 post is vacant in General category. Vide letter no. 3691 dated 01.12.2022, the Director, Higher Education, Government of Bihar, Patna directed the Registrar, Patna University to make appointment against only 03 vacant posts, as per the category. The Patna University made appointment against only 01 vacant post, in General category, to the candidate who secured first position in the merit list, as he has also made preference of the Patna University. The petitioner was on second position in the merit list, therefore, he was not appointed, since one vacant post (General category) in the Persian subject is vacant and therefore, he was not appointed. The petitioner came to know that one Shri Abu Taiyab Ashrafi sought for an information under the Right to Information Act and vide letter no. 554 dated 12.03.2024, the P.I.O.-cum-Registrar, Patna University informed that out of the total sanctioned strength of 06 in the subject Persian, 01 post of Assistant Professor is vacant. It also came to the knowledge of the petitioner that similarly situated person namely, Md. Ekram Uddin was appointed against the post of Assistant Professor in the Persian subject in the Nalanda Mahila College, under the Patliputra University vide Memo no. 150/2024 dated 11.01.2024.



5. Subsequently, a supplementary counter affidavit was filed on behalf of the University on 24.04.2025, wherein it was stated that the Department of Education, Government of Bihar, Patna vide its letter no. 15/A2/06/2022/947 dated 23.03.2023, issued under the signature of the Director, Higher Education, Government of Bihar, Patna, addressed to the Registrar, Patna University, Patna, directed the Registrar to send all the original records of the fourth candidate, who happens to be the petitioner, so that options can be asked from him and further process can be done. In compliance of the letter dated 23.03.2023, the Registrar, Patna University vide letter no. G/387/13.04.2023, addressed to the Director, Higher Education, Department of Education, Government of Bihar, Patna provided the original records, related to the petitioner for necessary action. When the matter was heard on 02.04.2026, the learned counsel appearing on behalf of the respondents-State, prayed for two weeks time to take final decision on the letter no. 947 dated 20.03.2023 issued by the Registrar, Patna University. In the order dated 02.04.2026, it was also recorded that if the decision will not be taken by the Director, Higher Education, within the period of two weeks, he will appear through virtual mode on 16.04.2026. The time so sought for was granted and the matter



was fixed for 16.04.2026. When the matter was taken up on 17.04.2026, the Director, Higher Education appeared in person and submitted that vide letter no. 652 dated 02.04.2026, the Registrar, Patna University, Patna had been directed to take decision with regard to the appointment of the petitioner at his own level and further it was directed that the dossier with regard to the petitioner is being returned to the University. He had undertaken before the Court on 17.04.2026 that the direction with regard to appointment of the petitioner will be sent to the University within a period of two weeks from the date of passing of the order dated 17.04.2026, with a clear stipulation to the University to act upon the same within the aforementioned period. The matter was directed to be listed on 13.05.2026. In the order dated 17.04.2026, it was also recorded that in the meantime, necessary corrective measures will be taken by the State and the University and to file affidavit bringing on record the necessary orders with regard to appointment of the petitioner in view of the decision communicated by the Director, Higher Education vide order dated 02.04.2026, and the undertaking given by the Director, Higher Education before this Court. When the matter was taken up on 13.05.2026, a supplementary counter affidavit was filed on behalf of the State-respondents



whereby, while referring to the orders passed by this Court, it was further stated that as per the statute issued by the Hon'ble Chancellor vide notification BSU/25/2014/1359/GS(1) dated 11.09.2014, the authority for appointment of the Assistant Professor vests in the University and it was further stated that the situation has arisen due to wrong requisition sent by the University in question, with respect to the vacancy in the said subject and the explanation for such mistake has been fastened upon the decision of rationalization. It was further mentioned in the affidavit that in the letter dated 12.05.2026, it has further been explained that the resolution related with the rationalization was taken by the department in the year 2011-12 and the requisition was sent by the University in the year, 2014 i.e. after two years from the decision of the rationalization. In the counter affidavit, the detail with regard to the posts which were advertised has also been given and further it was stated that as per contention of the University 01 post of Assistant Professor in the Persian subject has become vacant in the year 2024 due to retirement of Md. Abid Hussain, hence, there is one post vacant in the said subject. In the counter affidavit reference to clause -6 of the statute dated 11.09.2014, for appointment of Assistant teachers (Assistant Professor) for the University of



Bihar, 2014, has been quoted wherein it has been stated that the power for appointment of Assistant Professors vests in the Vice Chancellor and the provisions contained in clause-6 of the statute dated 11.09.2014 has been quoted in the paragraph no. 11 of the counter affidavit dated 15.04.2026.

6. Finally, in paragraph no. 7 and 8 it has been stated as under:-

“7. That it is humbly stated that the present situation has arisen due to wrong requisition sent by the university in question with respect to vacancy in the said subject and the explanation for such mistake has been fastened upon the decision of rationalization.

8. That it has been explained in the aforementioned letter that the resolution related with the rationalization was taken by the department in the year 2011-12 and the requisition for vacancy was sent by the university in the year 2014, i.e. after two years from the decision of rationalization.”

7. When the matter was taken up on 13.05.2026, after recording the statement made by the State in its affidavit dated 15.04.2026 and after going through the letter dated 12.05.2026, which was provided to this Court that during course of hearing, in paragraph no. 7 of the order dated 13.05.2026, it was



recorded as follows:-

“7. From the attitude of the respondent-University and the State authorities, it appears that they are shifting the buck on each other and the petitioner is being treated like a football who is being thrown from one post to another post. Despite orders of this Court, no clear-cut direction has been given by the State and the University, despite direction of the State Government, is not taking any corrective measures.”

8. Left with no other option, this Court directed the Vice Chancellor, Patna University and the Director, Higher Education to appear in person on 15.05.2026 at 10.30 A.M. The Director, Higher Education submits that the power to appoint the Assistant Professor vests in the University and submitted that the State Government has got no role in issuance of appointment letter, for appointment of Assistant Professor. On a query made by this Court with regard to compliance of Section 35 of the Universities Act, 1976, which is quoted hereinbelow:-

“35. No post for appointment shall be created without the prior 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:

¹[(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) shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no College other than one mentioned in clauses (a) and (b) of subsection (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 possessing the prescribed qualification.

¹[(3) Any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules or Regulations made thereunder or made in irregular or unauthorised manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall be realised from the officer making such appointment or promotion as a public demand under the provisions of the Public Demands Recovery Act, 1914.]”

9. The Director, Higher Education, Government of Bihar, Patna submits that the University is the competent authority to appoint an Assistant Professor and the appointment of the petitioner is being done in terms of the directions given by the Director, Higher Education, Government of Bihar, Patna vide letter dated 02.04.2026 and 12.05.2026, therefore, the same will be deemed to be approved by the Department and no further approval will be required. Accordingly, the matter was adjourned for 2.15 P.M. enabling the Vice Chancellor, Patna



University to bring on record the notification with regard to appointment of the petitioner.

10. On the submission made by the Director Higher Education, the Vice Chancellor, Patna University submitted that he is ready to issue appointment letter in favour of the petitioner in terms of the directions given by the Director, Higher Education, Department of Education, Government of Bihar, Patna vide letter no. 19/A2/03/2025/849 dated 12.05.2026 and the earlier directions issued vide letter no. 19/A2/03/2025/652 dated 02.04.2026, whereby the Director, Higher Education had directed the Registrar of the Patna University to take decision with regard to the case of the petitioner at the level of the University. It was further mentioned in the said letter that the dossier with regard to the petitioner is also being returned. Accordingly, it was submitted by the Vice Chancellor, Patna University that he be granted an opportunity to come out with the notification, appointing the petitioner on the post of Assistant Professor, in terms of the directions given by the Director, Higher Education vide his letter dated 12.05.2026. The matter was adjourned for 2.15 P.M.

11. The matter has been called out at 2.15 P.M. The Vice Chancellor, Patna University as well as the Director,



Higher Education, are present. The Vice Chancellor, Patna University has produced the Memo No. G/203 dated 15.05.2026, issued under the signature of the Registrar, Patna University, Patna on the orders of the Vice Chancellor, Patna University, Patna, whereby by giving reference to the present writ petition and the letters issued under the signature of the Director, Higher Education vide letter no. 652 dated 02.04.2026 and letter no. 849 dated 12.05.2026, the Registrar has proceeded to appoint the petitioner having roll no. 47010029 on the post of Assistant Professor, Persian in the pay scale of Rs. 57,700/- to 1,82,400/- in the Patna University, along with the applicable allowances, from the date of his joining the said post. It has further been mentioned that the appointment will be provisional for a period of two years. By the said letter, the petitioner has been posted in the Post-Graduate Department of Persian, Patna University and he has been directed to give his joining along with the relevant documents on or before 30.06.2026. The contents of the said letter have been read over by the Director, Higher Education, Government of Bihar, Patna who is present in Court and he has found no illegality in the issuance of the said letter.

12. From the second supplementary affidavit filed on



behalf of the Patna University, it appears that an information was provided to Shri Abu Taiyab Ashrafi under R.T.I. Act that the number of vacant post is 01 which became vacant by the retirement of Dr. Md. Abid Hussain on 31.01.2014 and as per the roster the said vacancy will go to the E.W.S. category.

13. Accordingly, the University is directed to accept the joining of the petitioner, if the same is given on or before 30.06.2026, without any unnecessary delay. The Director, Higher Education, Government of Bihar, Patna is directed to adhere to his undertaking given before this Court that there will be no impediment in releasing the salary and other benefits to the petitioner in terms of the notification issued vide Memo no. G/203 dated 15.05.2026, on the directions given by him vide his letter dated 02.04.2026 and 12.05.2026. No objection will be raised in future that the petitioner has been appointed, without following the process prescribed under Section 35 of the Patna University Act, since the order has been passed in presence of the Director, Higher Education, Government of Bihar, Patna and on his undertaking given before this Court. It is expected that the Director, Higher Education, Government of Bihar, Patna will adhere to his undertaking given before this Court and will issue necessary sanction in favour of the petitioner, after his joining,



for release of salary etc. as per the budgetary provision and as per entitlement of the petitioner. Since the petitioner was denied appointment, along with similarly situated persons, although he was recommended for the appointment and only due to fault on the part of the respondent authorities, he could not join. He will be entitled for his seniority and notional benefits from the date, persons recommended with him, gave their respective joining. However, he will be entitled for salary from the date of his joining.

14. The supplementary counter affidavit filed on behalf of respondent no. 3 and second supplementary counter affidavit filed by the respondents no. 4 and 5, which is uploaded on the website of this Court are taken on record along with Memo no. G/203 dated 15.05.2026 issued under the signature of the Registrar, Patna University, Patna.

15. In terms of the second supplementary counter affidavit filed on behalf of respondents no. 4 and 5, the Director, Higher Education, Government of Bihar, Patna submits that he will take necessary steps for getting the roster clearance with regard to the petitioner, as soon as the University will send the same for its clearance. It is clarified that the payment of salary etc. will not be stopped of the petitioner in name of getting the



roster clearance or any other impediment in their way, since the order has been passed on the undertaking given by the Director, Higher Education, Department of Education, Government of Bihar, Patna.

16. With the above-mentioned observation and direction, the writ petition is allowed.

17. Pending application(s) if any shall also stands disposed of.

(Ritesh Kumar, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2026
Transmission Date	

