

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.73 of 2025

In

Civil Writ Jurisdiction Case No.5197 of 2021

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The Bihar State University Service Commission Budha Marg, Patna through
its Secretary.

... Respondent No. 5/Appellant

Versus

1. Ramjee Prasad Verma (since dead)
2. Kavi Mohan Singh, Son of Late Shambhu Singh, resident of Ashok Nagar, Rampur, Police Station Rampur, District - Gaya.
3. Muni Kishore Singh, Son of Late Rama Prasad Singh, resident of House No.- 80, Patna Gaya Line, Railway Colony, Gaya, Police Station- Delha, District - Gaya.
4. Jitendra Kumar, Son of Late Balram Prasad Singh, resident of House No.- 101, Hanuman Nagar, Police Station Rampur, District - Gaya.
5. Hafiz Ruknuddin Ahmad, Son of Late Hafiz Syed Masood Ahmad, Resident of Quazi Mohalla, Police Station- Sherghati, District - Gaya.
6. Amrendra Kumar Mishra, Son of Late Ranvijay Kumar Mishra, resident of L.I.G. 231, Shahid Bhagat Singh Colony, Mustafabad, Police Station- Rampur, District - Gaya.
7. Raj Gopalachari Pandey, Son of Late Shankar Dayal Pandey, resident of Gobal Bigha, Painpar, Police Line Road, Gaya, Police Station- Rampur, District - Gaya.
8. Om Prakash Singh, Son of Sri Kalpnath Singh, resident of Shyam Nagar Ghora Hospital, Police Station Jehanabad, District - Jehanabad.
9. Arbind Kumar Singh, Son of Late Jharkhandi Prasad Singh, resident of Village Rerama, Sri Ram Path, Road No.- 13, Police Station- Daltenganj, District Palamu, Jharkhand.
10. Brajesh Kumar Singh, Son of Late Suryadeo Singh, resident of Village- Anewan, Police Station- Kako, District- Jehanabad.
11. Arvind Kumar Mishra, Son of Madhawanand Singh, resident of Village- Noawan, Police Station- Shakurabad, District - Jehanabad.
12. Shiv Shankar Singh, Son of Ram Jeet Singh, resident of Village- Ainwan, Police Station- Kako, District- Jehanabad.
13. Vishnu Shankar, Son of Sheo Mohan Singh, resident of Quarter No.- 156, Anugrahpuri Colony, Police Station- Rampur, District - Gaya.
14. Lata Verma, Wife of Prof. Ranjeet Kumar Verma, Resident of House No.- 69, Anugrahpuri Colony, Police Station- Rampur, District - Gaya.
15. Binay Kumar Verma, Son of Sarju Prasad, resident of Gauri Sadan, near Loyola Public School, Pant Nagar, Police Station- Vishnupad, District - Gaya.



16. Bishwanath Prasad, Son of Late Ram Kishore Prasad, resident of D-3/01 Barauni Refinery Township Begusarai, Police Station- Thana Nagar, Begusarai, District- Begusarai.

...Writ Petitioners/ Respondent 1st Set

17. The State of Bihar, through the Principal Secretary, Higher Education, Vikas Bhawan, Patna.
18. The Additional Secretary, Higher Education Department, Vikas Bhawan, Patna.

...Respondent Nos. 1 & 2/ Respondent 2nd Set

19. The Magadh University through its the Registrar, Magadh University, Bodh Gaya.
20. The Registrar, Magadh University, Bodh Gaya.

...Respondent Nos. 3 & 4/ Respondent 3rd Set

... .. Respondent/s

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Appearance :		
For the Appellant/s	:	Mr. Anjani Kumar, Sr. Adv. Mr. Alok Kumar Rahi, Adv.
For the Res. Nos. 19 & 20	:	Mr. Siddhartha Prasad, Adv.
For the Res. 1 st Set	:	Mr. Rupak Kumar, Adv.
For the State	:	Mr. Vikash Kumar, A.C. to A.G.
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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)
Date : 13-05-2026**

We have heard Mr. Anjani Kumar, learned Senior Advocate along with Mr. Alok Kumar Rahi, learned Advocate for the Bihar State University Service Commission (in short ‘Commission’) and Mr. Rupak Kumar, learned Advocate for the writ petitioners-respondent 1st Set. Mr. Siddhartha Prasad, learned Advocate for the Magadh University and Mr. Vikash Kumar, learned Advocate for the State.



2. The instant Letters Patent Appeal under Clause 10 of Appendix E of the Patna High Court Rules, 1916 has been preferred against the order and judgment dated 25.11.2024 passed in C.W.J.C. No. 5197 of 2021, whereby the learned Single Judge has been pleased to dispose off the writ petition with a direction to the appellant to allow the writ petitioners to take part in the ongoing selection process keeping in view that the petitioners, who were appointed as *Ad hoc* Assistant Professor against the sanctioned posts, were said to be eligible for age relaxation to participate in the selection process of Assistant Professor in the Colleges run by Magadh University.

3. The short facts which led to filing of the instant appeal are being set out hereunder:

(i) All the writ petitioners were said to be appointed against the sanctioned vacant posts of Assistant Professor/Lecturer in different subjects under different constituent Colleges of Magadh University on or before 10.12.1989. While they were working in the different Colleges against different posts of Assistant Professor/Lecturer, in the meanwhile, a Three Men *Ad hoc* Lecturer Enquiry Committee was constituted vide Notification No. 1342 dated 14.07.2017 in terms with the decision dated 18.05.2007 passed by the Hon'ble



Supreme Court in Civil Appeal Nos. 1601-1602 of 2004. The Registrar, Magadh University, on notice, sent a letter bearing No. 131 dated 24.05.2019 to the Vice Chancellor, Patna University-cum-*Ad hoc* Lecturer Enquiry Committee in respect of detailed information regarding 22 working *Ad hoc* Lecturer in different Colleges under Magadh University containing the names of the writ petitioners. A Three Men *Ad hoc* Lecturer Enquiry Committee submitted its report on 26.08.2020, after scrutinizing the requisite eligibility, educational qualification and availability of sanctioned posts against which the *Ad hoc* Lecturers were working on or before 10.02.1989. The Chairman, *Ad hoc* Lecturer Enquiry Committee thereafter requested the Principal Secretary, Education Department, Bihar, Patna vide its letter dated 14.09.2020 to take necessary action in pursuance of the enquiry report.

(ii) In the light of the afore-noted enquiry report as also the letter referred hereinabove, a chart has been prepared by the writ petitioners bringing specific particulars showing their names and the colleges in which they have been continuously discharging their duties, besides the date of appointment, date of birth and the subject in which they have been imparting teaching.



(iii) Notwithstanding the aforesaid fact, when the case of the petitioners were not considered for regularization to the post of Assistant Professor in different Colleges; keeping in view less number of year left for rendering services, the petitioners invoked the jurisdiction of this Court by filing C.W.J.C. No. 5197 of 2021, *inter alia*, seeking a direction upon the respondents-State and the University to regularize their services on the post of Assistant Professor/Lecturer in different constituent Colleges of Magadh University, Bodh Gaya in the light of the report submitted by the Three Men Committee along with the consequential benefits.

(iv) Admittedly, the appellant was not arrayed as party respondent and when the matter was taken up on 02.07.2024, the State as well as the University were directed to file counter affidavit and in compliance thereof, counter affidavit was filed on behalf of the State authorities, wherein it is submitted that in pursuant to the order of the Hon'ble Supreme Court, a Three Men Committee submitted its report and except one *Ad hoc* Teacher, namely, Sri Hafiz Ruknuddin Ahmad, the writ petition no. 5, none was found having qualification for appointment on the post of Assistant Professor or were appointed even on a sanctioned post.



(v) However, in view of the report submitted by the Three Men Committee, Department has taken a decision to relax the age of aforesaid Sri Hafiz Ruknuddin Ahmad (writ petitioner no. 5) in the forthcoming selection process of Assistant Professor. The claim of rest of the *ad hoc* teachers for age relaxation was rejected as they were not found eligible for it vide order contained in Memo No. 2074 dated 21.06.2023. In the said counter affidavit, it is also stated that in the year 2014, an advertisement was published by the Bihar Public Service Commission for appointment of Assistant Professors in different Universities and the recommendations were also made for appointment of eligible candidates. Similarly, another recruitment process has also been initiated in the year 2020 by the Bihar State University Service Commission for appointment on the post of Assistant Professors in different subjects in different Universities and the process is going on.

(vi) Considering the afore-noted stand of the State authorities, the learned Single Judge vide its order dated 26.09.2024 directed the learned Advocate for the writ petitioners to implead the Bihar State University Service Commission as respondent no. 5 in course of the day and the Commission was directed to ensure filing of the counter affidavit. Further, the



matter was taken up on 25.11.2024 and the impugned order came to be passed as under:

“7. Having heard the learned counsel appearing on behalf of the parties and on careful perusals of the entire materials on record and specially relying upon the aforesaid judgment of the Hon’ble Supreme Court, this Court is of the view that the petitioners who were appointed as Ad hoc Assistant Professors against the sanctioned posts are eligible for age relaxation to take part in the selection process of Assistant Professors in the colleges run by Magadh University.

8. The commission is directed to allow the petitioners to take part in the on-going selection process.”

4. Mr. Anjani Kumar, learned Senior Advocate for the Commission questioning the legality of the impugned judgment under appeal has straightaway taken this Court through the writ petition as well as the other materials available on record and submitted that the writ petition was filed only for a direction upon the respondents-State and the University to regularize their services on the post of Assistant Professor/Lecturer in different constituent Colleges of Magadh University and there was no whisper regarding the advertisement duly notified by the Commission on 21.09.2020 for appointment on the post of Assistant Professor. Neither any



issues nor any averments were made regarding the petitioners' right to participate in the selection process and in fact even the appellant was not arrayed as party respondent.

It is further contended that even in the counter affidavit filed on behalf of respondent 2nd set, it was only pointed out that except the writ petitioner no. 5, no other writ petitioners satisfied the educational qualification requirement and, as such, in view of the report of the Committee, the Education Department had taken a decision to relax the age of said Sri Hafiz Ruknuddin Ahmad (writ petitioner no. 5) and the claim of rest of the writ petitioners had been rejected as they were not found eligible. This Court is also apprised that as per the mandate of the advertisement dated 21.09.2020, the last date for receiving the application from the eligible candidates was 10.12.2020. For receiving the hard copies of the online application form, the last date was notified as 30.12.2020. Clause 6 of the Advertisement specifically lays down the age criteria; the age of the candidate should not be more than 55 years as on 01.01.2020, which was in consonance with Clause 3.4 of the Statutes.

Neither the writ petitioners had applied against the advertisement nor they agitated before any forum for their right



to participate in the selection process. Even though the writ petitioner no. 5 satisfied the age criteria in terms of the advertisement, but he did not apply against the advertisement within the stipulated time frame under the advertisement. Hence the petitioners are, in any view of the matter, not entitled to get any relief. Reliance has also been placed on a Co-ordinated Bench decision of this Court in L.P.A. No. 1003 of 2024 (***Dr. Shishu Pal Singh @ Shishu Pal Singh Vs. The State of Bihar & Ors.***), wherein the Court underscored that the rules and schedule of recruitment should be strictly followed.

5. Mr. Anjani Kumar strenuously argued that the learned Single Judge failed to appreciate that the writ petition and its pleadings were confined to the prayer of regularization and had not assailed the advertisement or Clause 6 thereof setting out the age limit criteria. Hence, no relief could be granted to those who have already acquiesced in and waived their right to challenge the selection process by participating in it. It is lastly contended that the learned Single Judge has failed to appreciate that in most of the subjects in which the writ petitioners were working as *Ad hoc* Lecturer, selection process had stood long concluded and the Commission had already sent recommendation to the concerned Department for making



appointment.

6. On the other hand, Mr. Rupak Kumar, learned Advocate for the writ petitioners respondents herein dispelling the aforesaid contention, at the outset, submits that the instant appeal is not maintainable on account of the fact that the Commission had at one hand, in M.J.C. No. 104 of 2025, categorically averred that they are taking steps to comply with the order and direction of the learned Single Judge passed in C.W.J.C. No. 5197 of 2021 in its true letter and spirit and, on the other hand, they are assailing the order before the learned Division Bench. Hence, the present appeal suffers from waiver and acquiescence. It is next contended that while exercising the jurisdiction under Article 226 of the Constitution of India, the learned Single Judge was empowered to mould the relief in order to avoid inconvenience to the litigants for the ends of justice. To support the aforesaid contention, reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in Civil Appeal No(s). 7400-7401 of 2018 (***Roma Sonkar Vs. Madhya Pradesh State Public Service Commission & Anr.***).

7. Besides the afore-noted submissions, Mr. Rupak Kumar further submitted that the Three Men *Ad hoc* Lecturer



Enquiry Committee submitted its report with a recommendation to take onward action and accordingly the Director, Higher Education took a decision to give age relaxation in the wake of the judgment of the Hon'ble Apex Court. Pursuant thereto, the writ petitioner no. 5 submitted application along with his educational certificates before the Commission but surprisingly he was not called for interview, whereupon the Commission has been impleaded as party respondent and finally the impugned order came to be passed directing the Commission to allow the petitioners to participate in the ongoing selection process.

8. This Court has carefully heard the learned Senior Advocate/Advocates for the respective parties and anxiously perused the materials available on record.

9. The moot question for consideration before this Court is as to whether the learned Single Judge was justified in directing the Commission to allow the petitioners to take part in the ongoing selection process despite there being no relief prayed for in the writ petition and the process of appointment having been completed much earlier; all the more when none of the writ petitioners have filed any application against the advertisement or agitated their claim before any forum for their right to participate in the selection process.



10. Before answering the afore-noted issues, we remind ourselves of the settled legal position that the Writ Court, beyond any question, while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India can mould the relief and pass necessary order to meet the ends of justice. It would be worth benefiting to refer a decision rendered by the Hon'ble Apex Court in the case of ***B.C. Chaturvedi Vs. Union of India & Ors.***, AIR 1996 SC 484 where the Court underscored that “*mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material.*”

11. Having reminded with the afore-noted legal position, this court is also not oblivious of the fact that there is a distinction between the pleadings under the Civil Procedure Code and the writ petition. In the case of ***Bharat Singh & Ors. Vs. State of Haryana & Ors.***, AIR 1988 SC 2181, the Hon'ble Supreme Court ruled that in a writ petition or counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. It is well settled that the



Court cannot travel beyond the pleadings, as no party can lead evidence on an issue or point not raised therein; and even if such evidence has been adduced or a finding of fact has been recorded thereon, the same is liable to be ignored.

12. The Hon'ble Supreme Court in *National Textile Corporation Ltd. Vs. Nareshkumar Badrikumar Jagad & Ors.*; [(2011) 12 SCC 695] reiterating the principles enunciated in *Trojan & Co. Ltd. Vs. Rm. N. N. Nagappa Chettiar* [AIR 1953 SC 235], *State of Maharashtra Vs. M/S Hindustan Construction Co. Ltd.* [(2010) 4 SCC 518] and *Kalyan Singh Chouhan Vs C. P. Joshi* [(2011) 11 SCC 786], observed that pleadings and particular facts are necessary to enable the court to decide the rights of the parties in the trial. The pleadings extend a grant help to the Court in crystallizing the controversy involved and to inform the parties concerned to question in issue, so that they may adduce appropriate evidence on the said issue. The Court underscored the settled legal proposition, relief not founded on the pleadings should not be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties.

13. It would be further pertinent to refer to a decision rendered in the case of *Dr. R. K. S. Chauhan & Anr.*



Vs. The State of U.P. & Ors., 1995 Supp (3) SCC 688 where the Hon'ble Supreme Court taking note of the fact that despite having not pleaded, the learned Single Judge had accepted the plea that the selection for promotion was vitiated by non application of the applicable criterion of merit cum seniority, held that the High Court fell into an error in making out a case which was not pleaded by the unsuccessful candidates in the application before the Tribunal and which it appears was made out for the first time by the High Court. The Hon'ble Apex Court further observed that even when the matter was pending before the High Court, the unsuccessful candidates never sought leave to amend their application and include this plea. The appellant as well as the State therefore had hardly any opportunity to place their point of view in that behalf, therefore, the said ground on which the High Court quashed the selection cannot be allowed to stand.

The Hon'ble Supreme Court further ruled that even if the High Court desired to examine this contention and if the unsuccessful candidates were inclined to raise it, the proper course was to seek amendment of the application and then give the appellant as well as the State an opportunity to contest that contention. By merely calling for the file, looking into it and



deciding without pleadings and without proper opportunity to rebut the impression formed by the High Court on perusal of the file, it was not correct to conclude that there was non application of mind by the Services Tribunal. The Hon'ble Apex Court in no uncertain terms held that the decision on plea not raised is unsustainable.

14. Now coming to the facts of this Court it is not in dispute that the writ petitioners have approached this Court seeking issuance of writ in the nature of mandamus directing the respondents State as well as the University to regularize their services on the post of Assistant Professor/Lecturer in different constituent Colleges of Magadh University. Counter affidavit filed on behalf of the State-respondent in the writ petition, it is stated that after examination of the eligibility of the petitioners, only one of the writ petitioner is found to have qualification for appointment on the post of Assistant Professor. The claim of the rest of the writ petitioners, who were/are holding the post of *Ad-hoc* Teachers, for age relaxation was rejected on the ground of ineligibility because they did not meet the criteria vide order contained in Memo No. 2074 dated 21.06.2023. Admittedly, this order dated 21.06.2023 has neither been challenged nor set aside or even modified by any authority or the Court. The State



authorities by filing the counter affidavit has though apprised that the State Government has come out with the advertisement in the year 2014 published by the Bihar Public Service Commission for appointment of the Assistant Professors in different subjects and appointments were also made on the recommendation made by the Bihar Public Service Commission. Similarly, another recruitment process has also been initiated in the year 2020 by the Bihar State University Service Commission for appointment on the post of Assistant Professor in different subjects under different Universities; but there has neither been any prayer on the part of the writ petitioners to allow them to participate in the said recruitment process nor there is any finding of the learned single judge with regard to the eligibility of the writ petitioners in terms with the advertisement, issued by the Bihar State University Service Commission on 21.09.2020.

15. At this stage, we also feel it apposite to refer the decision rendered by the Hon'ble Apex Court in the case of the ***State of Tamil Nadu & Ors. Vs. G. Hemalathaa & Anr., (2020) 19 SCC 430***, where the Hon'ble Court emphasized that "*the instructions issued by the Commission (Recruiting Agency) are mandatory, having the force of law and they have to be strictly*



complied with. Strict adherence to the terms and conditions of the instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the instructions issued by the Commission.” The Hon’ble Supreme Court having noted the fact has further observed that in spite of the finding that there was no adherence to the instructions, the High Court granted relief, ignoring the mandatory nature of instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the instructions, which are binding on the candidates taking examination.

16. The advertisement issued by the Bihar State University Commission dated 21.09.2020 clearly prescribed the last date for receiving the application from the eligible candidates as 10.12.2020 and further for receiving the hard copies of online application form the last date was notified as 30.12.2020. The age of the candidates, in terms with Clause 6 of the advertisement clearly stipulates that it should not be more than 55 years as on 01.01.2020. Irrespective of the stipulation which has neither been challenged nor modified by any authority, any direction to the State University Service Commission to accept the application and allow them to take



part in the ongoing selection process, which has already been concluded barring in relation to few of the subjects, that too, when none of them have filed any application within the time prescribed under the advertisement, in the opinion of this Court, *prima facie*, appears to be wholly without jurisdiction and, thus, unsustainable.

17. We also deem it apt to refer to the decision of the coordinate Bench of this Court in the case of ***Dr. Shishu Pal Singh*** (Supra), where the learned Court taking note of the judgment of the Hon'ble Supreme Court in ***Bedanga Talukdar vs Saifudaullah Khan & Ors.***, (2011) 12 SCC 85 and the Full Bench judgment of this Court in the case of ***Braj Kishore Prasad Vs. The State of Bihar & Ors.***, 1998(3) PLJR 34 has observed that the selection process has to be conducted strictly in accordance with the stipulated selection procedure and the same has to be maintained, unless otherwise specified by the Rules. In above referred case, the order of the learned Single Judge was affirmed and the claim of the writ petitioner was rejected by the Commission due to his failure to submit the required experience certificate in the format prescribed before the cut off date prescribed in the advertisement.

18. The plea of the learned Advocate for the



respondents that once the Commission had filed a show cause stating therein that they are taking sincere steps to ensure compliance of the order of the learned Single Judge and further prosecuting the appeal against such order, after accepting such order, amounts to abuse of the process of the Court, is wholly misconceived and not at all acceptable. Rather, the act of the writ petitioners in neither making any prayer in the writ to allow them to participate in the selection process nor challenging the stipulations of the advertisement, which had clearly barred from participating in the recruitment process for having no eligibility or for not applying in terms of the advertisement within stipulated time, can be treated as their voluntary decision to not participate in the selection process as well as acquiescing to the advertisement.

19. The act of the writ petitioners in the aforesaid facts and circumstances once treated to be voluntary and intentional relinquishment of right to participate in the selection process, the principle of estoppel, waiver or abandonment would be attracted

20. It is suffice to observe that in order to constitute waiver, there must be voluntary and intentional relinquishment of right; Irrespective of the position assuming that there was no



voluntary relinquishment of their right but since no relief has been sought for by the writ petitioners, in such circumstances, to allow them to participate in the selection process in terms with the advertisement issued on 21.09.2020 and without giving any finding regarding the eligibility of the writ petitioners to participate in such selection process contrary to the instructions and specific stipulation of the advertisement, in the opinion of this Court, with due regard to the learned Single Judge, the impugned order/judgment is wholly unsustainable in law as well as on facts and, thus, warrants interference.

21. Accordingly, the impugned order/judgment dated 25.11.2024 passed in C.W.J.C. No. 5197 of 2021 is hereby set aside. C.W.J.C. No. 5197 of 2021 is dismissed and L.P.A. No. 73 of 2025 stands allowed.

(Harish Kumar, J)

(Sangam Kumar Sahoo, CJ): *I agree.*

(Sangam Kumar Sahoo, CJ)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	05.05.2026
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