

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9515 of 2025

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Raghvendra Kumar Sharma Son of Krishna Mohan Sharma Resident of
Village- Hathikhap, P.S.- Jamjor, Hathikhap, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Higher Education, Govt. of Bihar, Patna.
4. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
5. The Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyam Shivam Sundram, Adv. Mr. Ankit, Adv. Mr. Aman Kumar, Adv.
For the State	:	Mr. Rajeshwar Singh, GA 10 Mr. Jitendra Kumar, AC to GA 10
For the University	:	Mr. Binay Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 03-02-2026

Heard the parties.

2. A counter affidavit has been filed on behalf of the University, the same is taken on record.

3. The petitioner was appointed against the post of M.A. Teacher in terms with an advertisement duly published in the newspaper by the College in question on 13.02.2013 inviting application from the eligible candidates for consideration of their cases for appointment against the teaching and non teaching posts in the concerned college.



4. Mr. Satyam Shivam Sundram, learned Advocate for the petitioner submitted that the materials available on record clearly reflects that in terms with the advertisement, the petitioner submitted his application for appointment against the post of M.A. Teacher and after proper verification of his qualification and eligibility, he was called upon for interview held on 24.03.2013. The petitioner participated in the interview for the aforesaid post which was conducted by the duly constituted Selection Committee and on being found suitable by the Selection Committee, the name of the petitioner has been recommended for his appointment on the post of MA Teacher. There was only one post of MA Teacher as has been advertised against which the petitioner was appointed. It is submitted that the said post was duly sanctioned as is also evident from the advertisement, copy of which is marked as Annexure-P/1. After having appointed on the post of MA Teacher, necessary particulars have been placed before the University for the purposes of granting approval of the appointment of the petitioner. Accordingly, the University after due consideration on the proposal sent by the College issued a notification contained in Memo No. 653 dated 19.04.2018 giving concurrence to the appointment of the petitioner along with



other teachers.

5. Subsequently, the University vide its letter No. A1/14046/18 dated 19.09.2018 requested the State Government for making budgetary provision for payment of salary with grant-in-aid for the same, but no action has been taken by the State Government. In the aforesaid premise, the petitioner had earlier approached this Court by filing CWJC No. 23533 of 2018 seeking a direction for payment of his salary. In the meanwhile, all of a sudden the impugned order contained in Memo No. 920 dated 21.04.2022 came to be passed by the Director, Higher Education, Education Department, Bihar, Patna by which recommendation of the University for approval of the appointment of the petitioner along with others against different posts in the College have been rejected. It is this order which is put to challenge before this Court. This Court is also apprised that since earlier writ petition bearing CJWC No. 23533 of 2018 had become infructuous and, as such, the petitioner withdrew the afore noted writ petition.

6. Assailing the impugned order, learned Advocate for the petitioner submitted that besides the order is wholly illegal, arbitrary and unsustainable in law as well as on facts, the reason for rejecting the approval of the petitioner's appointment is only



based upon the provision of Section 35(2) of the Bihar State Universities Act, 1976 (in short 'Act, 1976'), that in terms with the afore noted provision, the College in question has not taken prior permission of the State Government; which provision is not at all applicable in the present case. The impugned order is also said to be in teeth of the order passed by the Full Bench of this Court in ***Braj Kishore Singh & Ors. vs. State of Bihar & Ors. [LPA No. 36 of 1994]***. The identical issue has also come up for consideration before this Court in CWJC No. 2022 of 2024 which came to be disposed of on 02.04.2025. Taking this Court through the afore noted decision, it is lastly contended that the provision of Section 35(2) of the Act, 1976 was not required to be followed as the appointment of the petitioner has been made against the sanctioned and vacant post.

7. On the other hand, learned Advocate for the State referring to the averments made in the counter affidavit has submitted that there is a specific mandate under Section 35(2) of the Act, 1976 that no college after commencement of the Act appoints any person on any post without prior approval of the State Government. In the case at hand, admittedly, the College has not taken prior approval before making appointment and, as such, after proper examination of the matter, the Department



refused to grant approval of services of the petitioner vide impugned order. So far the decision of the Full Bench of this Court rendered in ***Braj kishore Singh*** (supra) is concerned, the same is said to be not applicable in the facts of the present case. It is also contended that the afore noted judgment did not replace the word '*post facto*' in place of 'prior approval' rather read down the provision contained in Section 35(2) of the Act, 1976 to make it work in special circumstances.

8. Heavy reliance has been placed on para-26 of the decision rendered by the Full Bench where the learned Court has observed that if the power of the State Government to scrutinize the eligibility or suitability of the candidates appointed or proposed to be appointed or the validity of the selection process is reserved to it, the State Government can, even after the appointments have been made, decide not to approve them. The term "prior approval" in Section 35 in the matter of appointment should be read as "post facto" approval, inasmuch as, as a general rule, after completing the selection process the University/College authorities should seek approval of the State Government before its decisions are given effect to and actual appointments are made.

9. Learned Advocate for the University further



advanced his submission that the appointment of the petitioner has been made after proper publication of the advertisement at the level of the Governing Body and the University forwarded the matter to the authorities of the State with condition. However, the Education Department having found certain illegality referred hereinabove has rejected the approval of the appointment of the petitioner by treating it as invalid.

10. This Court has considered the submissions advanced by the learned Advocates for the respective parties and also anxiously perused the materials available on record.

11. Before proceeding further, it would be relevant to take note of the decision passed by the learned Full Bench of this Court in ***Braj Kishore Singh*** (supra), where the issue pertaining to approval of the services of the appellants on Class III/Class IV post in the College was under consideration. The appointment of the appellants was found to be illegal for want of sanction of post by the State Government in view of the provisions of Section 35 of the Universities Act. The learned Full Bench while formulating the point for consideration as to whether the appointments made by the College/University authorities against the sanctioned post, i.e., the posts within the staffing pattern are to be accepted as a final; noticing the



prescription provided under Section 35 of the Universities Act in para-21 held that the relevant part of Section 35 requiring prior approval in the matter of appointment has to be read down to include '*post facto*' approval otherwise the provision may become unworkable and lead to anomalous or absurd situations. One of the objects underlying Section 35 is that appointments are made of persons possessing necessary eligibility and qualifications and in accordance with law. This object can be achieved even without insistence on 'prior approval' in each and every case. In appropriate cases, appointment can be made subject to '*post facto*' approval of the State Government after such scrutiny of the qualifications and the recruitment process as may be necessary and appropriate. Such appointments, made by the college/university authorities, should not be treated as final, they shall have legal effect and sanctity only after approval of the State Government.

12. While summing up the discussions, the learned Full Court of this Court further held that by reason of the approval of the staffing pattern proposed by the Bihar Inter University Board, non-teaching classes III and IV posts will be deemed to have been created with the prior approval of the State Government i.e. sanctioned. Appointments can be made against



these posts in accordance with the staffing pattern without seeking further approval regarding post(s). Merely on the ground that prior approval of the State Government was not obtained, the appointment cannot be said to be illegal. Further the Court while interpreting Section 35 of the Act, 1976 concluded in para-30 as follows:

“30. In view of my interpretation of Section 35 of the Act and conclusion that the staffing pattern has already been laid down which amounts to creation of posts, the above said decisions cannot be said to be correct in law. The Supreme Court rejected the S.L.Ps. summarily and these orders cannot be understood as upholding the judgments/orders on merit. If the appointments are made against posts as per the staffing pattern i.e. within the sanctioned strength, they cannot be said to be violative of Section 35 of the Act and illegal on the ground that the posts have not been sanctioned by the State Government provided, of course, the candidates possess the eligibility and suitability and the selection/appointment process was in conformity with Articles 14 and 16 of the Constitution.”

13. After having carefully gone through the Full Bench decision of this Court in **Braj Kishore Singh** (supra), indubitably if appointments are made against the posts within the sanctioned strength by following all the due procedures they cannot be said to be violative of Section 35 of the Act and illegal on the ground that prior approval has not been taken. However, of course, the candidate must possess the eligibility



and suitability and the selection /appointment process was in conformity with Articles 14 and 16 of the Constitution.

14. Now coming to the case at hand, this Court is apprised that the College in question is a duly affiliated college of the University and the post against which appointment of the petitioner is made was the sanctioned post. Since the College enjoys the status of full deficit grant college and it is the State Government who made available necessary fund for payment of salary to its teaching and non teaching employees, the provisions contained under the Bihar State Universities Act, 1976 and the relevant statutes framed thereunder are applicable even in matters of appointment and other service conditions. The appointment of the teachers of the College are governed by the provisions of Section 57A of the Bihar State Universities Act, 1976 as amended time to time and the statutes framed in terms of Section 57B which clearly postulates the appointment of the teachers are to be made on the basis of recommendation of the selection Committee.

15. It is the admitted position that the process for appointment of the petitioner has been carried out following all the due procedure and the petitioner was having requisite qualification for the post on which he was duly appointed by the



Governing Body. This is not the case of the University that the petitioner was not appointed against the sanctioned post. Once post is sanctioned what is required to be looked into by the Government is only the eligibility and suitability of the candidate who is duly appointed against such post. The approval should not be refused only on the premise that prior approval has not been taken by the State Government.

16. The identical issue has come up for consideration before this Court in CWJC No. 10397 of 2014, where under similar circumstances the respondent by referring to the provisions contained under Section 35 of the Act, 1976 has cancelled the appointment of the petitioner of the said case on the ground that no prior approval with respect to the appointment has been taken. The Co-ordinate Bench of this Court while taking note of various aspects of the matter has been pleased to hold that the State under Section 35 of the Act, 1976 could interfere only in the matter of appointment in exercise of power under Section 35 of the Act, if the posts are not sanctioned or created with the prior approval of the State Government. It has no role to play in the matter of appointment in the University, if the post is sanctioned one.

17. Identical issue has also been raised in CWJC



No. 2022 of 2024 wherein the Court after having referred the relevant observation of the Full Bench of this Court in ***Braj Kishore Singh*** (supra) has summed up his decision by holding that there is no requirement to take prior approval of the State when the post is already sanctioned and the petitioner was legally appointed once the post was advertised and he was appointed after facing due interview. The Court further observed that there is no requirement of *post facto* approval of the State Government after scrutiny of qualification and accordingly set aside the impugned order and directed the University to regularise the services of the petitioner and release the fund to ensure payment of all the consequential benefits.

18. Having found the clear position of law as also the fact that the petitioner having requisite qualification was duly appointed against the vacant and sanctioned post after following due selection procedure by the Governing Body of the College and the petitioner has been discharging his duties to the entire satisfaction of the College concerned since the date of his appointment i.e., 14.03.2013, the State Government is only empowered to scrutinize the eligibility or suitability of the petitioner against the post and can not compel the College to get prior approval even for appointment against a sanctioned post.



Hence, rejection of the claim of the petitioner appears to be wholly bad, illegal and unsustainable in law. Accordingly, the impugned order as contained in Memo No. 920 of 21.04.2022 issued under the signature of the Director, Higher Education is hereby set aside. The matter is remitted to the Director, Higher Education, Government of Bihar to take appropriate decision in the matter pertaining to concurrence of the appointment of the petitioner, in accordance with law, keeping in mind the discussions and the observations made hereinabove.

19. With the aforesaid observation, the writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.02.2026
Transmission Date	

