

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12163 of 2019

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1. Akhileshwar Sharma S/o Late Bindeshwar Sharma R/o K P 29, Kailash Puri, Hanuman Nagar, Kankarbagh, Sampatchak, Patna-800020
 2. Manmohan Singh S/o Ganeshwar Singh Thana-Koilwar, Post Office-Rajapur, English village Rajapur, P.S. Koilwar, District-Bhojpur, Bihar
 3. Madhuri Devi Wife of Late Manoj Kumar R/o Mohalla-Chiktoli, Mangal Talab, Patna City, P.S.-Chowk, Patna-800008
 4. Tarun Kumar S/o Late Manoj Kumar Rajak Mangal Talab, Chik Toli, Sampatchak, Patna-800008

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department Secretariat, Bihar, Patna
2. The Director Higher Education, Human Resources Development Department, Bihar, Patna
3. The Vice Chancellor Magadh University, Bodh Gaya, Gaya
4. Magadh University through its Registrar, Magadh University, Bodh Gaya, Gaya
5. Vice Chancellor Patliputra University, Kankarbagh, Patna
6. Patliputra University through the Registrar, Kankarbagh, Patna
7. Principal S G G S College, Patna City a Minority cum Constituent College of Patliputra University

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sujeet Kumar Sinha
For the State	:	Smt. Binita Singh (Sc28)
For the M.U.	:	Mr.Sunit Kumar
For the P.P.U	:	Mr.Rana Vikram Singh

CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL JUDGMENT

Date : 13-01-2026

In the instant petition, petitioners have prayed for the
following relief(s):-

*“ That this is an application for
issuance of a writ in the nature of
Mandamus commanding the respondent*



University to pay the with held salary of petitioner no one and two from March 2009 as well as pay the arrear of salary and pension to petitioner no. 3 and consider the name of petitioner no. 4 for compassionate appointment in Sri Guru Govind Singh College, Patna City.”

2. Counsel for the petitioner by referring to the order dated 11.05.2016 passed by Justice S.B.Sinha (Retd.) Commission, New Delhi (herein after referred as 'Sinha Commission') on their respective Claim Petition Nos. 573 of 2013 (*Akhileshwar Sharma*), 576 of 2013 (*Manoj Kumar Rajak*) & 563 of 2019 (*Manmohan Singh*), submitted that the learned Justice Sinha Commission after adjudication of all the claims, which were conjointly heard and composite order is said to have been passed, in which Justice Sinha (Retd.) has categorically recorded its findings that there are 06 persons, who were appointed on 26.06.1985, and they are namely, *Sri Rajeshwar Prasad*, *Sri Manoj Kumar Rajak* (petitioner), *Shri Akhileshwar Sharma*, *Sri Raj Kumar Prasad*, *Md. Abid Ansari* & *Sri Birendra Kumar*, and similarly, two other persons have been appointed on 06.07.1985 namely, Petitioner No. 1 - *Sri Akhileshwar Sharma* & Petitioner No. 2 – *Sri Manmohan Singh*. These 08 persons being senior, their cases may be considered first, whereafter only the cases of other eligible candidates to be considered in terms of their respective seniority,



and it has further been directed that for the determination of *inter se* seniority, the University shall take into consideration, the guidelines issued by this Commission in the case of Assistants, and accordingly all the claim petitions were disposed of. It has further been submitted by the counsel that these petitioners have admittedly been receiving their salary since 1989, and even on query being made by the University from the College in question in 2014 itself, with regard to the status of vacancies, which was categorically responded by the Principal of Sri Guru Govind Singh College, Patna City *vide* letter dated 06.02.2019, that there are altogether 19 vacancies as against DRT Category.

3. Counsel for the petitioners by taking this Court to the order dated 11.05.2016 passed by the Sinha Commission that the name of the Petitioner No. 3, who is represented by legal heirs of the petitioner found place at Serial No. 2, is said to have been appointed on 26.06.1985 but for no obvious reason, the name of all these petitioners were singled out by the State Government while directing absorption, wherein others who were appointed similarly and despite there being findings of absorption by Justice Sinha Commission, absorption was not directed by the State Government. This matter was heard at length on 08.09.2025, and



this Court had passed the following orders, which is reproduced as under:-

“Heard the parties concerned.

2. Learned counsel for the petitioners submits that pursuant to Annexure-7, which is said to have been passed by Justice S.B. Sinha (Retd.) Commission, New Delhi vide order dated 11.05.2016, the claim petitions, filed by the petitioners, have been considered and the Hon'ble Commission issued directions in presence of State of Bihar as well as the University wherein the Hon'ble Commission was of the view that six persons were appointed on 26.06.1985 who are, Shri Rajeshwar Prasad, Shri Manoj Kumar Rajak, Shri Akhileshwar Kumar Singh, Shri Raj Kumar Prasad, Shri Md. Abid Ansari and Shri Birendra Kumar. Similarly, two persons have been appointed on 06.07.1985, namely, Shri Manmohan Singh and Shri Akhileshwar Sharma and the Hon'ble Commission after recording the name of altogether eight persons directed that these eight persons being senior, their cases may be considered first, whereafter only the cases of other eligible candidates should be considered in terms of their respective seniority.

3. For determination of inter se seniority, the University shall take into consideration the guidelines issued by this Commission in the case of Assistant and accordingly, the said claim petitions were disposed of.

4. Learned counsel for the petitioner, at this stage, takes this Court to vacancy position which is at Annexure-10 and the relevant portion is at page 57 of this petition, which is prepared by the In-charge Principal of the College which goes to show the vacancy position in the non teaching cadre on account of certain staff being promoted/retired/death or resigned.

5. On perusal of the said letter, it is quite clear that more than eight vacancies are there and all these recommendees could have been adjusted



against the said posts but for the reason unexplained, their cases were not considered.

6. Learned counsel for the petitioners has further taken this Court to the judgment rendered by the Hon'ble Apex Court in the case of **State of Bihar v. Bihar Rajya MSESCK Mahasangh** reported in (2005) 9 SCC 129 and based on which, the Hon'ble Co-ordinate Bench of this Court in **CWJC No. 17670 of 2017(Akhilanand Singh & Ors. vs. The State of Bihar & Ors)** has passed an order, wherein, it has categorically been observed that if the name of the petitioners either in the list prepared by Justice Agarwal Commission or in the list of Justice S.B. Sinha Commission finds favour, then their cases can be considered. The case of the petitioners is on better footing where there is already a recommendation by Justice S.B. Sinha Commission, still the State has come out with a reason stating that the names of these petitioners were not in the list prepared by the Justice Agarwal Commission, therefore, their cases cannot be considered.

7. Even in the cases of such persons whose names did not find place in both the list prepared by the Justice Agarwal Commission and Justice S.B. Sinha Commission, but their salaries were paid on basis of the certain orders of the State Government, their cases were considered and this Court directed for their absorption. 8. Learned counsel for the petitioners further submits that by way of the rejoinder the specific stand taken by the State as well as Patliputra University has been elaborately answered in para-6, 7, 8, 9, 10, 11 and 12. To this, learned counsel for the State submits that the copy of the said rejoinder has not been served upon him. Accordingly, the learned counsel for the petitioner under takes to serve a copy of the rejoinder upon learned counsel for the State as well as that of Patliputra University.

9. Be that as it may, let both the Universities being Patliputra University and Magadh University as well as the State to come up with specific stand and appropriate steps taken



with regard to compliance of observation made by the Hon'ble Apex Court in the cases referred above, for apprising the Court with proposed action taken so that on the next date of hearing, this Court can adjudicate the issue in question on the basis fresh instruction taken in the light of observations made hereinabove.

10. Post it after four weeks on 13.10.2025."

4. Pursuant to the directions issued on 08.09.2025, supplementary counter affidavit is stated to have filed on behalf of Respondent Nos. 3 & 4, and the counsel representing Magadh University, Bodh Gaya by taking this Court to Annexure-R/2 submits that the University in terms of the vacancy under DRT/Promotion Category, on the basis of *inter se* (date of joining/date of birth) had recommended the name of altogether nine persons to be absorbed against the vacant post, their names were namely, *Uma Devi, Birendra Kumar, Raj Kumar Prasad, Md. Abid Ansari, Akhileshwar Kumar Singh , Rajeshwar Prasad, Manoj Kumar Rajak, Akhileshwar Sharma & Manmohan Singh*, in whose favour the recommendation for absorption were directed by the Sinha Commission *vide* order dated 11.05.2016. But, the Department of Education *vide* its letter no. 2177 dated 29.11.2018 asked the University Officials to re-look to the recommendation, which was made by them and to make appropriate recommendation for its compliance. It is the case of the University



that after having re-looked the issues, the matters of other similarly situated persons including these petitioners were again sent for absorption/regularisation *vide* Letter No. 223 of 2018 dated 05.12.2018, wherein, it was specifically stated in respect of these petitioners including other's that the earlier speaking order was passed taking into consideration, the provisions for DRT in Hon'ble S.C. Agarwal Commission report, which was followed by Hon'ble Justice S.B. Sinha Commission and in its order dated 11.05.2016 mentioned 06 posts fallen vacant under DRT category, in fact 09 posts were fallen vacant, which has been mentioned in the earlier speaking order. Following the above provisions for DRT, the speaking order was passed for 09 persons taking *inter se* seniority for adjustment in DRT category. With the stipulation that If the Government wishes to consider only six posts in DRT Category, may consider the claims of six persons as per their seniority decided in earlier speaking order, and pursuant to such stipulations made by the University, it is said that the Department of Education came out with Office Order as contained in Memo No. 98 dated 12.01.2019, appending list of referred cases and only six persons from the recommended list were only considered eligible for absorption, while the said list contained the number of 13 members, but for no prudent reason the name of these



petitioners, namely, *Sri Akhileshwar Sharma, Manoj Kumar Rajak* (since died and duly represented by the legal heirs) & *Manmohan Singh*, were not considered, while Justice Sinha (Retd.) Commission, had directed for their absorption along with others.

5. The counsel representing Magadh University further submits that *vide* notification dated 22.01.2019 appended as Annexure-R/6, the persons so recommended for absorption by the State Government excluding these petitioners, the appropriate notification of absorption were issued by the University. On the other hand, counsel for the State by referring to the stand taken in the counter affidavit, does not dispute the factual position which is said to have been stated by the Principal of Sri Guru Govind Singh College, Patna City wherein it has been stated that there were 19 vacancies as against DRT Category. On the issues that the recommendation which is said to have been made by the University, wherein there had been specific stand that there was 09 vacancies and as per *inter se* seniority in terms of the observation of Justice Sinha Commission, the name of these petitioners with the names of other eligible candidates, for which the directions for absorption were made, still absorption with respect to only six persons were directed by the State under DRT Category, whereas there were 09 vacancies, and considering such vacancies, the



recommendation of these petitioners were also made, there is no plausible answer before the State counsel for violating the direction of the Commission, and directing absorption ignoring these petitioners.

6. Considering the fact that Sinha Commission which was constituted under the orders of Hon'ble Apex Court judgment rendered in the case of *State of Bihar vs. Bihar Rajya MSES KK Mahasangh* reported in (2005) 9 SCC 129, and the commission having been constituted for addressing the issues of absorption of such teachers, who were working in the respective colleges, despite their being specific recommendation in favour of these petitioners as against the existing vacancies, which were duly identified by the University Officials, but for no prudent reason, the State Government is said to have not considered the case of these petitioners, whereas, they were also eligible for consideration as against the vacant post for their absorption, in similar terms as that has been done in the case of other six persons, whose names also find place in the recommendation made by the University vide letter dated 17.11.2018 as per the directions issued by the Justice Sinha Commission in its order dated 11.05.2016, and as such they have certainly made out a case of consideration for similar treatment.



7. Taking into account the fact that the State Government in its response, has miserably failed to justify their arbitrary action in making pick and choose, from the list of recommendation made by the University dated 17.11.2018, which was in consonance with the direction of Justice Sinha Commission, wherein recommendation with regard to the absorption of these petitioners as against the vacant post was also made in their favour, but for no prudent reason, the name of these petitioners have not been considered, accordingly, this Court directs the State Government to consider the case of these petitioners for absorption strictly in consonance with the recommendation so made in favour of these petitioners by the Commission, namely, Hon'ble Justice S.B. Sinha (Retd.) Commission *vide* its order dated 11.05.2016, and pass necessary orders by extending benefits, for which these petitioner are also entitled in similar terms, as that of other similar situated persons in whose favour, the recommendation for absorption made by the University were approved by the State Government *vide* letter dated 12.01.2019, which forms part of supplementary counter affidavit as Annexure-R/5 filed on behalf of the Respondent Nos. 3 & 4 within a period of two months from the date of such representation.



8. The State Government is directed to take care of all financial implications, which might accrue in settling the claims of these petitioners, for which necessary funds shall be allocated to the concerned University for carrying out necessary obligations as per the requisition made in this regard.

9. It is needless to say that original employee, namely, *Manoj Kumar Rajak* has since died and is being represented through legal heirs, namely, *Madhuri Devi* (wife) & *Taruk Kumar Rajak* (son) who are Petitioner Nos. 3 & 4, so the University will take steps in settling the claim in favour of legal heirs mutually after completing all legal formalities, without causing any unwarranted harassments to avoid further litigation.

10. With the above observation, the instant writ petition stands disposed of.

(Ajit Kumar, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	17.01.2026
Uploading Date	NA
Transmission Date	NA

