

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14317 of 2025

Dr. Mamta Kumari W/o Kripa Shankar Jha, House No. 249/843, Road No. 1,
Rajbanshi Nagar, Phulwari, Patna, Bihar- 800023.

... .. Petitioner/s

Versus

1. Bihar State University Service Commission (BSUSC) Through its Chairman, 8th Floor, Bihar School Examination Board, Academic Building Buddh Marg, Patna- 800001.
2. L.N. Mishra Institute of Economic Development and Social Change, Through its Director, Jawahar Lal Nehru Marg, Patna- 800001.
3. The Registrar, Lalit Narayan Mishra Institute of Economic Development and Social Change, Jawahar Lal Nehru Marg, Patna- 800001.
4. All India Council for Technical Education (AICTE), Through its Chairman, Nelson Mandela Marg, Vasant Kunj, New Delhi- 110070

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr. Arya Achint, Advocate Mr. Amar Shakti, Advocate
For the BSUSC	:	Mr. Pawan Kumar, Advocate
For the LNMI	:	Mr. Vipin Kumar, Advocate
For the AICTE	:	Mrs. Archana, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 11-11-2025

Heard the parties.

2. Invoking the jurisdiction of this Court, the petitioner seeks issuance of a writ in the nature of certiorari to quash the merit list published on 14.05.2025, for the post of Assistant Professor (Management) under Notification No. BSUSC/LNMI-01/2024 issued by respondent nos. 1 and 2. Prayer has also been made to direct the concerned respondents to consider the petitioner as an Incumbent Faculty Member and



extend the benefit of AICTE Rules 7.4 and 7.5 and Clause 5.2(B)(iii) of the captioned Advertisement.

3. The facts of the case, briefly stated, are that the petitioner was appointed as a Faculty Member on contractual basis in Marketing Management by L.N. Mishra Institute of Economic Development and Social Change (in short, the 'Institute') on 08.02.2008 following the advertisement published in the year 2007 (Annexure-1) with a stipulation that in special circumstances, the period of six months shall be extended. The services of the petitioner was duly extended and in the meantime Office Order, bearing No. 1031/10 dated 09.10.2010 came to be issued. The appointment of the petitioner was extended until regular appointment of faculty members along with increased remuneration. On 01.09.2011, the Institute came out with a new Advertisement for contractual appointments. The petitioner applied for the same and she was called for an interview. However, before the results of the new selection process were declared, the services of the petitioner and five other adjunct faculty were terminated under Memo No. 540/12 dated 03.10.2012.

4. Aggrieved with the order of termination, the petitioner approached before this Court by filing a writ petition,



bearing C.W.J.C. No. 2872 of 2013. Subsequently, the petitioner withdrew the writ petition and filed a comprehensive writ petition, bearing C.W.J.C. No. 23378 of 2018. A Bench of this Court noticing the fact that the petitioner has been allowed to continue as Adjunct Faculty Member, the writ petition came to be disposed of with an observation that the petitioner should not be replaced by any other ad-hoc engagement, unless there is any other plausible reason to replace her. The orders of this Court have been marked as Annexures- 5 and 6 to the writ petition.

5. While the petitioner has been discharging her duty, the Bihar State University Service Commission issued Advertisement, bearing No. BSUSC/LNMI-01/2024 for appointment to the post of Professor/ Assistant Professor (Management/Computer) in the Institute. The petitioner on being found eligible, submitted her application along with all the self-attested documents. Since, under the Advertisement, a preference of 5 marks was prescribed under Clause -3(C)(iii) for a candidate, who is possessing teaching experience, after acquiring Master's degree, on regular/contractual basis as an Assistant Professor; and this benefit shall also be accorded to the candidates, who were working as Assistant Professor in the Institute. The petitioner submitted an application to the Director



of the Institute seeking issuance of an appropriate work experience certificate, which was a mandatory document for the said recruitment process. The petitioner participated in the interview, however, her name has not been included in the merit list, the petitioner filed an application under Right to Information Act and she has been informed that as she did not possess the experience required under Clause 3(C)(iii), hence she has not been found eligible for selection.

6. Learned Senior Advocate Ms. Nivedita Nirvikar advertng to the aforesaid facts submitted that the petitioner has long service experience record of 16 years with a good attendance record. Nonetheless, the respondents failed to extend the benefit of experience as stipulated under the Advertisement, specifically Clause- 5.2(B)(iii), which states that a maximum of 25 marks will be awarded for satisfactory service rendered by the Assistant Professor already working on a contractual basis with a maximum of 5 marks per year. Had the marks been awarded to the petitioner, her score would have been much more than the cut off marks. The Advertisement explicitly promise that the applicants will receive the benefit of AICTE Rules 7.4 and 7.5, which specifically provides of incumbent of faculty members. The cut off merit list published on 14.05.2025 is said



to be illegal and unsustainable, as it was prepared without applying the benefit of the promised AICTE Regulation and specific Clause of BSUSC Advertisement No. 1 of 2024. The action of the respondents are said to be wholly arbitrary, discriminatory and in violation of Articles 14 and 16 of the Constitution of India. The denial of the benefit of experience to the petitioner despite her long and continuous service also suffers from malafide.

7. Taking this Court to the appointment letter, as contained in Annexure- 2 and further the order of this Court passed in C.W.J.C. No. 23378 of 2018, it is submitted that the authority of the Institute admitted that the petitioner has been discharging her duty as Adjunct Faculty Member on contractual basis, hence in any view of the matter, the petitioner cannot be deprived from extending the benefit of experience of five years.

8. Learned Senior Advocate further contended that the stand of the respondents is wholly unjustified and contrary to the record that the petitioner has worked only as a Guest Teacher and hence no benefit of experience can be accorded to her. However, for the sake of argument, even if it is accepted, this High Court placing reliance of the Apex Court decision has held that the guest teachers and the contract teachers are



discharging same duties as they are teaching the students in the school and there is no difference between them. Denial to award the benefit of 5 marks per year for teaching experience is held to be violative of Article 14 of the Constitution of India. A Certificate, duly issued by the Registrar of the Institute, dated 28.12.2024 has also been brought on record by filing supplementary affidavit to emphasize her submission that the petitioner had been engaged as Guest Faculty (as per requirement) on per class basis right from 2012 to 2024.

9. To buttress the aforesaid submission, reliance has been placed on a decision rendered by the Apex Court in the case of *Asim Kumar Bose Vs. Union of India & Ors.*, reported in *AIR 1989 SC 509* and further the decision passed by the learned coordinate bench of this Court in the case of *Krishna Mohan Singh & Ors. Vs. The State of Bihar & Ors.*, reported in *2022 (3) PLJR 87* and *Sandeep Kumar Jha & Ors. Vs. The State of Bihar & Ors.*, reported in *2024 (3) PLJR 5*.

10. Dispelling the aforementioned contention, Mr. Pawan Kumar, learned Advocate for the BSUSC has submitted that for appointment against 24 posts of Assistant Professor (Management) application was invited from the eligible candidates. Altogether 79 applicants participated in the



interview, which was provisional in nature. After completing all the process of interview in terms of the advertisement, a final select list of the candidates, under different category, was prepared and accordingly recommendation for appointment of selected candidates was forwarded to the concerned department. Since the petitioner had enclosed two teaching experience certificates with her application form; firstly working as a Guest Faculty, for the period 01.11.2006 to 07.02.2008 (1 years 3 months 7 days) in the department of Advertisement, Sales Promotion and Sales Management, which was not in consonance with the Clause 3(C)(iii) of the advertisement. Further she worked on the post of Assistant Professor (Management) as Guest Faculty and Adjunct Faculty from 08.02.2008 to 10.11.2012 (4 years 9 months 2 days), which is less than five years, also not in consonance with Clause 3 (C) of the Advertisement. Moreover, the certificate issued by the Institute also mentioned that she has been engaged as Guest Faculty. In this way, petitioner lacks the minimum qualification required for appointment to the post of Assistant Professor (Management), hence she was declared ineligible.

11. Mr. Vipin Kumar, learned Advocate for the Institute taking this Court through the Advertisement No.



1/2024 submitted that the same has been published as per requirement of Institute and in consonance with AICTE Regulation. Clause 2.25 of Regulation, 2019 clearly manifest that previous appointment shall be counted for direct recruitment provided that previous appointment was not as Guest Faculty for any duration. Further incumbent was drawing total gross emolument not less than monthly gross salary at the initial stage of regularly appointed Assistant Professor/Associate Professor and Professor as the case may be. Since the petitioner had been working as Guest Faculty, as such experience certificate can not be issued in terms of Regulation, 2019. It is further contended that identical issue has come up for consideration before a Bench of this Court in C.W.J.C. No. 19391 of 2024, preferred by some of the Guest Faculty of the Institute and the learned Court taking notice of Clause 2.25 of Regulation, 2019 clearly observed that no weightage is to be given to a Guest Faculty and dismissed the writ petition.

12. Learned Advocate for the AICTE adopted the similar line of arguments of other respondents.

13. This Court has bestowed careful consideration to the submissions advanced by the learned Advocate for the respective parties and the materials available on record.



14. Before parting with the case, it would be pertinent to reproduce the relevant Clause of the captioned Advertisement, based upon which the petitioner has made a claim for awarding marks of teaching experience.

“Clause 3(C)(iii): Minimum 5 (Five years) teaching experience after acquiring Master’s degree on regular/contractual basis as an Assistant Professor in any university/Govt. Institute/Autonomous Institute approved by the AICTE.

Note: Candidates, who are working as Assistant Professor on contract basis in L.N. Mishra Institute of Economic Development and Social Change, Patna, shall have the benefit of AICTE Regulation 2019, Rule No. 7.4 and 7.5.”

15. Bare reading of the aforesaid prescription, it is explicit that the benefit of experience under AICTE Regulation, 2019 in its prescribed terms shall be accorded to the candidates, who were working as Assistant Professor on contract basis in L. N. Mishra Institute of Economic Development and Social Change, Patna. It is pertinent to note that in exercise of power under Private Teaching Institute (Taking Over) Act, 1987 [**Bihar Private Educational Institution (Taking Over) Act, 1987**], the Government has framed Rule as Lalit Narayan Mishra Institute



of Economic Development and Social Change Institute Rule, 2017, which was further amended by Rules, 2024. Under Rule 10(1) it is prescribed that for the teaching post of the Institute, the standard prescribed by the AICTE/UGC shall be followed by the direction of the State Government.

16. Now coming to the AICTE Regulation, 2019, which regulates counting of Past Services for Direct Recruitment and Promotion. Regulation 2.25(f) would be relevant for adjudicating the issue raised before this Court.

“2.25(f): The previous appointment was not as guest faculty for any duration or ad-hoc or in a leave vacancy of less than one year duration. Ad-hoc or temporary service of more than one year duration can be counted provided that:

(i) The period of service was of more than one year.

(ii) The incumbent was appointed on the recommendation of the duly constituted Selection Committee.

(iii) The incumbent was selected for the permanent post in continuation to the ad-hoc or temporary service;

(iv) An artificial break in service shall not be used to the prejudice of employee, appointed on permanent basis. The person appointed on a permanent basis shall be given the



benefit of the entire service rendered by him with effect from the date of initial appointment (temporary /contract / ad-hoc) notwithstanding the artificial break / breaks in service.

(v) The incumbent was drawing total gross emoluments not less than the monthly gross salary at the initial stage of a regularly appointed Assistant professor, Associate Professor and Professor, as the case may be; and

(vi) At the time of selection, the negotiated terms and conditions clearly mention the period of experience, nature of experience and same has been consented by the employer.”

17. Going through the aforementioned prescriptions of the Regulation, it is evident that the counting of Past Services for Direct Recruitment shall only be counted if he/she had been working on ad-hoc or temporary services for more than one year and explicitly ruled out the Guest Faculty for any duration. Even for counting previous appointment of an ad-hoc or temporary service, it has been provided that the period of service should be of more than one year and the incumbent was duly appointed on the recommendation of the duly constituted committee, besides the incumbent was drawing total gross emolument not less than monthly gross salary at the initial stage of regularly appointed Assistant Professor/Associate Professor and Professor as the case may be. All the conditions prescribed under proviso to Rule



2.25(f) are to be read together and in case of non-fulfillment of the aforementioned requirement, the past services of ad-hoc or temporary service shall not be counted.

18. So far Clause 7.4 and 7.5 of AICTE Regulation, 2019 are concerned, explicitly Clause 7.4 deals with nomenclature of relevant degree and so far 7.5 is concerned it talks about incumbent faculty member with previous qualification and do not have much relevance for determination of the present issue.

19. Now coming to the decisions upon which reliance has been placed by the learned Senior Advocate for the petitioner. In the case of *Asim Kumar Bose* (supra), the question had arisen as to whether for the purpose of appointment as Assistant Professor, the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (ex officio) would be counted towards the requisite teaching experience. The Court noticed that the recruitment rules nowhere provide that the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (Ex officio) shall not count towards the requisite teaching experience. Conversely there was no provision made in the Rules that the teaching experience must be gained on a



regular appointment. Therefore, the Court held that there is hardly any difference so far as teaching experience is concerned whether it is acquired on regular appointment or as Specialist in a teaching hospital with the ex officio designation.

20. In the case of **Krishna Mohan Singh** (supra) an aspirant of Assistant Professor in connection with Advertisement issued by the Bihar State University Service Commission, has approached the Court seeking a direction upon the respondents to adhere to Clause 5.5 of the Advertisement while filling up the vacancies and restrain the respondents from implementing subsequent changes in the educational qualification by way of subsequent resolution and also prayed for quashing of such resolution. The learned coordinate Bench of this Court taking note of the fact that the subsequent resolution has been issued only by way of clarification that the experience certificate issued by the Head of the Department/Principal/ Institute countersigned by the Registrar of the respective University shall be valid for awarding the marks for teaching experience in accordance with the provisions of the Statutes and the same was also duly accepted by the State University Commission, hence did not interfere in the writ petition and dismissed the same.



21. The contention raised in the, aforementioned, case by the petitioner that the Guest Faculty experience should not be counted in relation to one candidate, who applied at the Central University, namely, Baba Saheb Bhim Rao Ambedkar University at Lucknow on the basis of draft regulations of University Grant Commission, 2018 has been turned down, as the Court observed that the University Grant Commission Regulation, 2018 was a Draft regulation and have not come into force as yet. Hence, on the basis of draft regulations, the petitioners can not claim that the said teaching experience is said to be not counted.

22. Further coming to the case of **Sandeep Kumar Jha** (supra), which relates to the appointment of Teachers in connection with Advertisement No.27/2023 published by the Bihar Public Service Commission stipulating a preference/weightage preference of 5 marks per year of teaching experience, which has been denied to the Guest teachers and the learned Court categorically observed that since the appointment in the said advertisement has already been concluded, therefore, the prayer of the petitioner is not accepted. Further awarding the grace marks found to be a relaxation and, as such, a policy decision within the domain of the State and no such



provision/decision has been taken by the State Government to give the benefit of five marks per year, maximum upto 25 marks, to the Guest Teacher; In such premise, the Court directed the State Government to take final decision to grant 5 marks for each year of employment and maximum 25 marks to the guest teacher, as given to the contract teachers, keeping in mind that both the contract teachers and the guest teachers are discharging same duties as the teachers are teaching in the school and there is no difference between them.

23. Coming to the case at hand, there is no dispute that the petitioner was appointed on contractual basis in pursuant to Advertisement (Annexure-1) published by the Institute inviting application for Senior Guest Faculty/Guest Faculty, though the employment letter of the petitioner has missed the word “Guest Faculty” and mentioned that duly appointed under contract basis and later on also used the word “Adjunct Faculty Member”. Since the very appointment of the petitioner was based on the terms of the Advertisement of 2007, hence they cannot be treated as Adjunct Faculty Member, hence in the opinion of this Court the petitioner had never been worked as a contractual employee on temporary or ad-hoc basis. Even if, this Court accepts the argument of the learned Senior



Advocate for the petitioner that the petitioner had discharged her duty as a contractual employee on ad-hoc or temporary basis for more than a year, the petitioner does not qualify for counting of past services, as she does not fulfill the stipulation as prescribed under Proviso to Clause 2.25(f). The decisions over which reliance have been placed also do not cover the case of the petitioner. Regulation, 2019 in unequivocal term says that the previous appointment as Guest Faculty, any duration shall not be counted, as past services for direct recruitment.

24. In view of the aforesaid facts, the present writ petition sans any merit. Accordingly, the same stands dismissed.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.11.2025
Transmission Date	NA

