

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14227 of 2013

1. Jai Prakash Singh and Anr Son Of Late Sarbanand Singh Resident Of Vill. and P.O. Jat Dumri, P.S. Punpun, Dist. Patna
2. Siddheshwar Singh Son of Late Basudeo Singh Resident Of Vill. and P.O. Bhadoura, P.S. Masaurhi, Dist. Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Human Resource Development, Government of Bihar, Patna
3. The Principal Secretary, Department of Education, Government of Bihar, Patna
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna
5. Magadh University, Bodhgaya, Through The Vice-Chancellor
6. The Patliputra University through its Registrar.
7. The Vice-Chancellor, Patliputra University, Patna.
8. The Registrar, Patliputra University, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Advocate Mr. Dipak Kumar, Advocate
For the State	:	Mr. Sunil Kr. Mandal, SC- 3 Mr. Bipin Kumar, AC to SC- 3
For the P.P.U.	:	Mr. Rana Vikram Singh, Advocate Ms. Rasika Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 09-02-2026

Heard Mr. Chakrapani, learned Advocate with Mr. Dipak Kumar, learned Advocate for the petitioner, Mr. Sunil Kumar Mandal, learned Advocate for the State and Mr. Rana Vikram Singh, learned Advocate for the Patliputra University.



2. The petitioners are teaching and non-teaching employees of Dwarka Nath College, Jatti Chak, Masaurhi, Patna, duly affiliated to Magadh University, Bodhgaya and recognized by the University Grants Commission. Subsequently, the College stood transferred to Patliputra University in terms with the notification issued by the Education Department, Government of Bihar, Patna.

3. Invoking the jurisdiction of this Court, the petitioners are seeking a direction upon the respondent authorities to declare the College, in question, a constituent College of Magadh University, Bodh Gaya (now Patliputra University) in pursuance of the decision having been taken by the State Government way back in the year 1987-88.

4. It is submitted that 36 Colleges were made constituent Colleges of different Universities in the year 1987, coupled with five more Colleges were taken up for consideration, including the College, in question, under the scheme named as IVth Phase Constituent Colleges (36+5 scheme). Out of the above mentioned five Colleges, whose cases were taken up along with 36 Colleges under the IVth Phase Constituent Colleges, four were made Constituent, under different University, but final decision in respect of the present



College, in question, could not be taken as the file relating to the said College became traceless from the department.

5. Mr. Chakrapani, learned Advocate for the petitioners taking this Court through the relevant extracts of the proceeding relating to the College, in question, submitted that in the year 1987 itself, while the matter relating to grant of Constituent status to the College was under consideration, the then Chief Minister acknowledged the fact that the College, in question along with other four Colleges, besides 36 Colleges has fulfilled all the criteria and had ordered accordingly. However, to the utter shock and surprise, the notification could be issued in respect of only four Colleges, because the original file relating to the College, in question, appears to have become traceless. The question regarding declaration of college as constituent was brought before the Assembly in the year 2006 and the Aswathan Committee (Education Department) of Bihar Legislative Council informed that the matter remained pending before the respondent State Government, although recommendation has been made for declaration of the College, in question, as a constituent college.

6. The matter again travelled to the Chief Minister, who got an opinion from the learned Advocate General, Bihar,



who opined in favour of granting constituent college status to the college, in question. The Department of Human Resources Development as well as the Department of Education positively considered the case of the College, in question and gave their approval to proceed and the matter was placed before the Finance Department. The details of the financial aid as required to be given to the College, in question, has also been provided. Despite the aforesaid exercise carried out at the level of the highest rung of the State, the matter has not been placed before the Cabinet. Again the question regarding declaring the College, in question, as a constituent college was raised in the Assembly in the 2013. Subsequently, the then Education Minister, accepting the fact that recommendation has already been made and the matter is pending before the Cabinet, requested the College, in question, to take its case before the Justice S.C. Agrawal Commission in pursuance of the direction of the Hon'ble Apex Court in S.L.P. No. 12591 of 2010.

7. Adverting to the aforesaid facts, learned Advocate for the petitioner further submitted that the materials available on record clearly indicate that the State Government all along intended to make the College, in question, a constituent college. In the meanwhile, other similarly situated



Colleges have been made constituent, way back in the year 1987; except the college in question on the ground of non-availability of its file and pending litigation before the Hon'ble Supreme Court, which in no manner relates to the College, in question.

8. This Court is also apprised that the Principal of the College, in question, had also approached this Court in C.W.J.C. No. 12106 of 2018 commanding the respondent State to either declare the College, in question, a constituent unit of Patliputra University or to declare the College as a deficit grant college entitled to all the benefits granted by the State to such similarly situated institution, which were granted affiliation by the State Government prior to 09.12.1982 i.e. the date on which Vit Rahit Shiksha Niti was notified by the State Government. The prayer was also made for payment of all the arrears of admissible dues to the teaching/non teaching employees, besides some more prayer.

9. The learned Single Judge having considered the submissions of the learned Advocate for the petitioner and the materials available on record and without going into the merit of the case disposed of the same with a direction to the petitioner to file a detailed representation before the Principal Secretary,



Department of Education, Government of Bihar.

10. A counter affidavit has been filed on behalf of the State authorities (respondent nos. 2 and 3). Primary objection has been raised that the writ petition is fit to be dismissed on the ground of delay and laches. However, it is admitted that the State Government vide its letter no. 202 dated 19.08.1986 notified 36 affiliated colleges as constituent college under different Universities and further the then Chief Minister of Bihar announced on different dates to declare other four Colleges as a constituent college, to that effect notifications were issued in the year 1987. Since the matter of validity of teaching and non-teaching employees of 4th phase constituent colleges travelled up to the Hon'ble Supreme Court in Civil Appeal No. 6098 of 1997 [(2005) 9 SCC 129] and the Hon'ble Supreme Court constituted Justice SC Agrawal Commission to examine the validity of appointments of the employees of the 4th phase constituent colleges. Accordingly, the Commission submitted a detailed report. Some of the aggrieved persons again raised the question regarding the validity of absorption, which gave rise to S.L.P. No. 12591 of 2010; in pursuance of which Hon'ble Justice S.B. Sinha Commission was constituted. Further report has been submitted by the Justice S. B. Sinha



Commission and thereafter several contempt applications came to be filed. It is further submitted, yet another set of incumbents, whose claims were dismissed by the Hon'ble S.B. Sinha Commission has again travelled upto the Hon'ble Supreme Court.

11. Besides the aforesaid contention, it is specifically submitted that the department is not in a position to explain the exact reason as to why final decision was not taken in respect of the College, in question, as all the original file of Colleges were seized by the Vigilance Department. However, unless a formal order be issued, the announcement of the Chief Minister cannot be implemented. Now presently, the State Government vide its resolution, as contained in Memo No. 1846 dated 21.11.2008 has decided to abolish the non-aided education policy and to provide grant to affiliated colleges, according to the performance of the students in the examination in the particular college. The college, in question, is getting performance based grant in view of the aforesaid decision.

12. Reliance has also been placed on a Bench decision of this Court in the case of *Bijoy Bahadur Sharma Vs. The State of Bihar & Bihar & Ors.*, reported in, *2008 (4) PLJR 547* that a person must approach the Court within a reasonable



time.

13. Mr. Sunil Kumar Mandal, learned Advocate for the State finally contended that it is not viable for the State Government to take decision after lapse of about 37 years to declare the College into a Constituent unit when the matter of absorption of valid appointed employees of 40 colleges is still under consideration before the Hon'ble Supreme Court.

14. Mr. Rana Vikram Singh, learned Advocate for the Patliputra University, informed this Court that the answering University was established on 18.03.2018 and thereafter the College, in question, came under the aegis of the answering University as an affiliated College. The instant writ petition was filed before the establishment of the answering University and thus request has been made to the Magadh University to supply the relevant records of the College, in question, however, the same is still awaited. It is further contended that the process of declaring a College, as a constituent college, is a policy decision and based upon the discretion of the State Government and the concerned Department.

15. This Court has considered the submissions advanced by the learned Advocate for the respective parties and taken note of the materials available on record.



16. Coming to the issue with regard to the stale claim of the petitioners, the materials available on record clearly suggests that the decision regarding grant of constituent status was all along pending with the Government and lastly the question regarding declaring the College, in question, as a constituent college was raised in the Assembly in the year 2013, upon which the Education Minister accepted the fact that recommendation has already been made for grant of constituent status to the College, in question, and the matter is pending before the Cabinet. Hence this Court does not find any delay in view of the fact that the writ petition was filed long back in the year 2013 itself. Furthermore, the Principal of the College has also approached this Court in C.W.J.C. No. 12106 of 2018, which came to be disposed of on 12.12.2024 with a direction to the Principal Secretary, Department of Education, Government of Bihar to look into the matter.

17. The question for consideration before this Court is as to whether a person can be deprived of his right solely due to the fact that the original file is lost in the Department?

18. It is the admitted position that the College, in question, based on the recommendation of the University, was granted affiliation by the State Government on 06.12.1982, prior



to coming into force Vit Rahit Siksha Niti w.e.f. 09.12.1988. Despite, the College, in question, qualifying in all respect along with other four Colleges in whose favour the notification was issued in the year 1987 itself, leaving the fate of the collage, in question, in lurch only because the record relating to the College, in question, was lost.

19. This Court is not oblivious of the settled legal position that the notings in a note file do not have behind them, the sanction of law as an effective order, as has been held in the case of *State of Bihar & Ors. Vs. Kripalu Shanker*, reported in, *AIR 1987 SC 1554*. Nonetheless, from the notings appended to the writ petition, it appears that the State Government all along intended to declare the college, in question, to be a constituent college, but the notification could not be issued on the ground of non-availability of file. Hence, in any circumstances, the Department was obliged to reconstruct the file and proceed further in the matter. It is trite that lose of a file does not automatically mean a loss of undelaying legal right. Because of the fault on the part of the State, the teaching and non-teaching employees of the State cannot be made to suffer. The State is not allowed to treat differently even in the matter of distribution of largess and bounty, as held out by the Hon'ble Supreme Court in



the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Ors.*, reported in *1979 AIR 1628*. The question posed hereinabove, answered accordingly.

20. In view of the aforesaid facts, in the opinion of this Court, the State Government is bound to take a final decision in the matter of extending status to the College, in question, as a constituent college. Discrimination in any form is not permissible and the State being a welfare State governed by the rule of law, which mandates uniformity in its action. Hence, this Court directs the Additional Chief Secretary, Education Department, Government of Bihar to call for the relevant records of the College, in question, and in case reconstruction of record is required, the same be done; and on being satisfied with the contention of the petitioners noted hereinabove, place the matter before the State Government for final decision in accordance with law, keeping in mind the case of the petitioners' is based on parity with other four Colleges, which has been given status of a Constituent College.

21. It is expected that the afore noted exercise must be carried out within a period of three months from the date of receipt/production of a copy of this order.



22. Accordingly, the writ petition stands disposed

of.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.02.2026
Transmission Date	NA

