

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9974 of 2022

Manidhar Mishra son of Late Jatadhar Mishra, resident of Village and Post-Saramohanpur, P.S.-Sadar, District-Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Bihar, Patna.
2. The Director, Higher Education, Education Department, Vikash Bhawan, New Secretariat, Bihar, Patna.
3. The Kameshwar Singh Darbhanga Sanskrit University Kameshwarnagar, Darbhanga, through its Registrar.
4. The Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University Kameshwarnagar, Darbhanga.
5. The Registrar, Kameshwar Singh Darbhanga Sanskrit University Kameshwarnagar, Darbhanga.
6. The Principal, Baba Saheb Ram Sanskrit Mahavidyalaya, Pachadhi, Darbhanga.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Kaushalesh Choudhary
For the Respondent/s : Mrs. Shilpa Singh (Ga12)
For the University : Mr. Awadhesh Pd. Singh
Mr. Binay Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 25-02-2025

Re:- I.A. No.1 of 2022

2. The present I.A. No.01/2022 has been filed on behalf of the petitioner to add the additional reliefs as mentioned in paragraph-1 of this application.
3. Having heard learned counsel for the parties, as the present Interlocutory Application being formal in nature, is not opposed, and hence is allowed.
4. Accordingly, I.A. No.1/2022 is hereby stands disposed of.



Re:- C.W.J.C. No.9974 of 2022

Heard learned counsels for the parties.

5. The present writ application has been filed for the following reliefs:-

(i) *For quashing the order contained in Memo No.1304 dated 30.05.2022, passed by the Director, Higher Education, Education Department, Patna, Bihar, by which the appointment/regularization of service of the petitioner has been disapproved and further a direction has been issued to the concerned University to ensure further action on the basis of the said order. Further the aforesaid order has been issued in contravention of the Judgment and Order dated 09.01.2020 passed in C.W.J.C. No.10892 of 2019 as well as letter no.15/सी 2509//2019-2617 dated 13.11.2019, issued by the Director, Higher Education/Respondent No.2*

(ii) *For commanding the respondents to not withheld/stop the monthly pension, which is being paid to the petitioner since 01.08.2016 till date.*

(iii) *For quashing the letter No.646, dated 09.07.2022, issued by the Registrar of the Kameshwar Singh Darbhanga Sanskrit University, Kameshwarnagar, Darbhanga, by which the petitioner's service has been declared invalid, following which he has been deprived of all the pensionary benefits including the monthly pension.*

(iv) *For any other relief(s) to which the petitioner may be found entitled to in the facts and circumstances of the case.*

6. Learned counsel for the petitioner submits that the case of the petitioner in nutshell is that on the basis of due selection process, petitioner was appointed as Lecturer in History by the Secretary of the Managing Committee of Maharani Adhirani



Rameshwar Lata Sanskrit Mahavidyalaya, Darbhanga (hereinafter referred to as the MARLS College) on the sanctioned and vacant post of lecturer in the Department of History in the aforesaid college vide memo no.12/80 dated 14.07.1980. Subsequent to his appointment, petitioner submitted his joining in the aforesaid college on 15.07.1980 and the Registrar of the Kameshwar Singh Darbhanga Sanskrit University (hereinafter referred to as 'the University') vide Memo No.3009 dated 16.09.1982 has provisionally approved the service of the petitioner from 15.07.1980 to 31.12.1981.

7. He further submits that the Registrar of the University vide his Memo No.59 dated 05.03.1983, has approved the petitioner's joining from 01.04.1981 upto 31.12.1982, and vide Memo No.612 dated 15.04.1983, he approved the extension of service of the petitioner from 01.07.1983 till further order. Thereafter, the Registrar of the University issued an order contained in Memo No.10299 dated 07.12.1999, by which the petitioner was transferred from MARLS College to Lalit Narayan Sanskrit Mahavidyalaya, Jaijaiapatti, Darbhanga. He was again transferred to Ramautar Gautam Sanskrit Mahavidyalaya, Ahilya Sthan, Darbhanga, vide memo no.288/03, dated 17.01.2003, issued by the Registrar of the



University following which the petitioner had submitted his joining on 01.02.2003 in the aforesaid College. The petitioner was once again transferred from the Ramautar Gautam Sanskrit Mahavidyalaya, Ahilya Sthan, Darbhanga to the Baba Saheb Ram Sanskrit Mahavidyalaya, Pachadhi, Darbhanga by the Office Order contained in Letter No.7868 dated 18.09.2009, issued by the Registrar of the University.

8. He further submits that the service of the petitioner was confirmed by the Office order contained in Letter No.8363 dated 25.08.2010, issued by the Registrar of the University. The aforesaid order was issued on the basis of the order passed by the Syndicate of the University vide its Resolution No.05 dated 05.12.2009. It is relevant to mention that in the aforesaid letter, it is clearly stated that the service of the petitioner was confirmed w.e.f. 01.04.1983.

9. That the petitioner's pay has been revised by granting yearly increment from 01.04.1990 to 01.04.1995 and from 01.01.1996 till 01.04.2005 and 01.01.2006 till 01.07.2011 by the Registrar of the University which is evident from perusal of Pay Fixation Form duly approved by the Registrar on 24.05.2012 and the said Pay Fixation Form has also been signed by the Pay Fixation Committee, the Government Auditor, the Finance



Officer, the Section Officer (Establishment) and the Section Officer, Account.

10. The Registrar of the University had issued an office order contained in Memo No.8132 dated 01.06.2012 by which the Sixth Pay Revision was approved for the petitioner and two other lecturers. He also issued an Office Order vide Letter No.3366 dated 15.06.2013 by which 20 lecturers' service was regularized from different dates, in which the petitioners' name was figured at serial no.07 and his service was regularized from 01.04.1983. The aforesaid office order was issued on the basis of recommendation of Selection Committee of the University dated 27/28.10.2012 and on the basis of the said recommendation, the Syndicate of the University took a decision for regularization of the service of the petitioner and other 19 persons vide its Resolution No.19 dated 15.12.2012.

11. He further submits that the Registrar of the University vide his Memo No.882 dated 18.05.2016 had issued an Office Order stating therein that the petitioner is going to retire w.e.f. 31.07.2016 from the post of Assistant Principal of Baba Saheb Ram Sanskrit Mahavidyalaya, Pachadhi, Darbhanga, after attaining the age of 65 years. After his retirement, the petitioners' PPO (Pension Payment Order) No.539 dated



09.12.2016 had been issued by the Registrar of the University vide Letter No.KSDS/A/c/12113/16 dated 16.12.2016, by which the petitioners' pension was fixed on the scale of Rs.21,895/- and after adding Dearness Allowances, the petitioners' monthly pension was fixed as Rs.46,636/- and the same has also been authenticated by the Finance Officer of the University.

12. That after issuance of the aforesaid PPO dated 09.12.2016, all the post retirement benefits have been given to the petitioner and monthly pension from August, 2016 till September, 2018 have also been paid to him regularly. But from the month of October, 2018, the monthly pension of the petitioner has been withheld without any reason and without issuing any show cause notice to him. Therefore, he moved to this Court vide C.W.J.C. No.10892 of 2019, for payment of monthly pension dues from October, 2018. In the said writ petition, this Court on 14.11.2019, was pleased to issue direction to the respondent University to restart the monthly pension and also pay the arrear of pension to the petitioner. During the pendency of the aforesaid writ, a counter affidavit on behalf of the respondent nos. 1 and 2 was filed on 14.11.2019 in which the Letter No.15/सं 2509//2019-2617 dated 13.11.2019, issued by the Director, Higher Education/Respondent No.2 has been



annexed as Annexure-B to the said counter affidavit by which the Registrar of the University has been directed to restart the monthly pension of the petitioner.

13. He further submits that the aforesaid case was disposed of vide Judgment and Order dated 09.01.2020 by which on behalf of the respondents, it is stated that the grievance of the petitioner has been redressed and the pension is being paid to him which shall also be continued.

14. He further submits that the Director, Higher Education, vide Letter No.61 dated 10.01.2020, directing the petitioner to ensure his presence before him on 23.01.2020 along with all the documents related to his appointment. The aforesaid letter was received by the petitioner on 16.01.2020, thereafter, he sent his representation through his registered post on 18.01.2020 seeking one month time for his appearance along with all the documents before the said authority. But as the petitioner was indisposed, therefore, he had sent his representation along with 18 relevant documents related with appointment, regularization and retirement of the petitioner to the Director (Higher Education) through registered post dated 18.02.2020.

15. Though the petitioner had already sent all the documents related to his appointment, regularization and retirement to the



respondent no.2 i.e. the Director, Higher Education, Patna, Bihar through the registered post dated 18.02.2020 but even after that the Director again issued letter no.486 dated 28.02.2020, directing the petitioner to ensure his presence before the Director on 06.03.2020 along with all the necessary documents. Further the petitioner received the aforesaid letter on 05.03.2020 but he could not appear before the Director on 06.03.2020 as he was indisposed by that time. Therefore, the petitioner filed his representation dated 17.03.2020 along with the photo copy of the representation dated 18.02.2020 along with all the 18 annexures as well as the postal receipt dated 18.02.2020, through his messenger Sri Ram Naresh Jha, the Advocate Clerk which was received in the Officer of the Director, Higher Education, Patna, Bihar on 20.03.2020.

16. The Director again issued direction to the petitioner and 43 similarly situated persons to ensure his presence before the official chamber of the Director on 09.10.2020, following which the petitioner has appeared before the Director along with all the documents on 09.10.2020 through his Advocate.

17. He further submits that ignoring all the relevant facts, the Director issued his order contained in Memo No.1304 dated 30.05.2022, by which the appointment and regularization of the



petitioners' service has been disapproved and the concerned University has been directed to ensure the further action in the light of this order. On the basis of the aforesaid direction, the University issued letter no.646 dated 09.07.2022, issued by the Registrar of the University by which the service of the petitioner has been declared invalid following which has been disapproved of the pensionary benefits including the monthly pension. Thereafter, the petitioner filed M.J.C. No.1494/202 in C.W.J.C. No.10892 of 2019. The said M.J.C. was disposed of by a coordinate Bench of this Court with a direction to the concerned authority to restart the pension of the petitioner.

18. He lastly submits that the Director (Higher Education) has exceeded his jurisdiction and passed the impugned order without even initiating any proceeding against the petitioner and even ignoring the orders of this Court, therefore, the petitioner has no other option left but to move before this Court for the consideration of his reliefs.

19. A counter affidavit has been filed on behalf of the respondent nos. 1 and 2. It has been stated that the C.W.J.C. No.10892 of 2019 was earlier filed by the petitioner for payment of monthly pension to the petitioner due from October 2018, till date and for continuation of the same as the petitioners' monthly



pension has been withheld by the concerned respondents since October 2018 without any rhyme and reason. The said writ petition was heard by the Single Judge of this Court and vide order dated 25.10.2019, he was pleased to pass the following order:-

“This Court finds that the appointment of the petitioner has been declared to be illegal, without either initiation of any proceedings or passing of any order terminating the services of the petitioner, hence the State has illegally held his guilty of obtaining appointment by fraud”.

“In such view of the matter, this Court finds that the respondent State is required to file a better affidavit, showing commencement of payment of the monthly pension which has been stopped since the month of September, 2018”.

20. Thereafter, in compliance of the aforesaid order supplementary counter affidavit was filed on behalf of the State respondents stating therein as follows:-

(A) That Section 35 of the Bihar State Universities Act, 1976 provides that:

“35. No post for appointment shall be created without the proper sanction of the State Government. Notwithstanding anything contained in this Act, no University or any College affiliated to such a University, except such college

(a) as is established, maintained or governed by the State Government:

or

(b) as is established by a religious or linguistic minority;

(i) After the commencement of this Act no teaching or non-teaching post involving financial liabilities shall be created without the prior approval of the State



Government.

(ii) Shall either increase the pay or allowance attached to any post or sanction any new allowance;

Provided that the State Government may by an order, revise the pay scale attached to such post or sanction any new allowance'

(iii) Shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefit having financial implication to any person holding a teaching or non-teaching post;

(iv) Notwithstanding anything contained in this Act, no College other than one mentioned in clauses (a) and (b) of sub-Section (1) shall after the commencement of this Act, appoint any person on any post without the prior approval of the State Government.

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher for a period not exceeding six months, by a candidate possession the prescribed qualification.

(3) Any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules of Regulations made there under or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall be realized from the officer making such appointment or promotion as a public demand under, the provisions of the Public Demands Recovery Act, 1914.

21. Learned counsel for the State submits that the Division Bench of this Court in a Judgment reported in 2001 (2) PLJR 817 (Dr. Shiv Narain Yadav & Ors. Vs. State of Bihar & Ors.) held that only mode of appointment of teachers of affiliated college is on the basis of recommendation by the commission.



Statutory provision with regard to the mode of appointment cannot be given go bye on the basis of a provision which is neither permissible under Act nor has the Statutory sanction in the sense of competency in the authority concerned to issued such instruction.

22. He further submits that it is not in dispute that the petitioner was appointed when the college in question was an affiliated unit. On 14.07.1980 by the Governing Body of the College as a temporary lecturer in the subject History in view of Section 35 of the Bihar State Universities Act. He was never appointed in terms of Section 57(A) of the Bihar Universities Act. He was appointed on the basis of recommendation of the then Bihar College Service Commission. The college in question was converted into constituent unity in the year 1982.

23. He further submits that prior to the judgment passed by this Court in Dr. Shiv Narain Yadav (*supra*) case, no regularization of a teacher can be made thereafter but the University vide its Office Order dated 15.06.2013 regularized the services of altogether 20 teachers including the petitioner which is void ab initio.

24. He further submits that from perusal of the letter of the University it is evident that the University is also of the view



that continuation of service as well as regularization made by the University itself to the petitioner and others was not valid and legal, therefore, the payment of pension was stopped.

25. A counter affidavit has also been filed on behalf of the University. It is stated that on the direction of the Director the pension of the petitioner was stopped but he did not deny this fact that the petitioners' service was regularized by the University itself on the sanctioned post.

26. In view of the foregoing discussions and in view of the order passed in the *Braj Kishor Singh & Ors. Vs. The State of Bihar & Ors 1997(1) BLJR 625*, admittedly, there is no requirement to take prior approval of the State Government, when the post is already sanctioned and the petitioner can be said to be legally appointed as the post was advertised and he was appointed after facing the interview for daily wages. In view of the Full Bench judgment, Braj Kishore Singh (supra) 'post facto' approval of the State Government is not required.

27. In the result, I set aside the Memo No.1304 dated 03.05.2022, passed by the Director, Higher Education, Education Department, Patna, Bihar, and the letter No.646, dated 09.07.2022, issued by the Registrar of the University.

28. The Authorities concerned are directed to pay the pension



of the petitioner and also arrear of pension, if any, within two months from the date of receipt/production of a copy of this order.

29. It is made clear that if the respondent nos. 2 & 4 shall be held liable for the non-compliance of the present order within the stipulated period.

30. With the aforesaid directions, this writ application stands allowed.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2025
Transmission Date	NA

