

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2022 of 2024

Sanjeev Kumar Ishwar Son of Rambilash Ishwar Resident of Ward No.8
(Siwari), P.S.-Cheriya Briyarpur, District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secreary, Education Department, Govt. of Bihar, Patna.
2. The Additional Chief Secreary, 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

Appearance :

For the Petitioner/s : Mr. Satyam Shivam Sundaram, Adv.
For the Respondent/s : Mrs. Anuradha Singh (Sc 21)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 02-04-2025

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for seeking
following reliefs:

*i. For setting aside the order issued by
the Education Department, Govt. of Bihar, Patna
contained in Memo No.914 dated 21.04.2022 under
the signature of Director, Higher Education,
whereby and where-under the proposal sent by the
Kameshwar Singh Darbhanga Sanskrit University,
(hereinafter referred to as 'University') for
concurrence to the appointment of the petitioner
dated 29.10.2012 as a Graduate Teacher, made by
the Governing Body of Rudra Sanskrit UP-Sastri
College, Hullash, Supaul (hereinafter referred to as
'College'), has been rejected on the ground that the*



provision laid down under Section 35(2) of the Bihar State Universities Act, 1976, which mandates prior permission for any appointment, has not been followed in the said appointment.

ii. For setting aside all consequential letters, having been issued, in compliance of the aforesaid direction of the Education Department.

iii. For a declaration that the order issued by the Education Department, the State of Bihar; Patna is arbitrary, unreasonable and in violation of principles of natural justice.

iv. For appropriate direction to the Respondent Authorities to allow the petitioner to continue on his respective post/service.

v. For a declaration that the appointment of the petitioner on the post of Graduate Teacher in the aforesaid College has been made after following due process of law and thus is valid, legal and in accordance with law.

vi. For grant of any other relief/reliefs to which the petitioner is found entitled too.

3. The short facts of the present case is that by a resolution dated 18.10.1976 issued by the concerned authorities under the Education Department of the State Government, it was communicated that under the non-government Sanskrit Educational Institutions, 10 posts of Teachers were sanctioned which included 1 posts of Principal, 6 posts of Lecturers in different Sanskrit subjects including 2 posts of Lecturers in Sahitya, 2 posts of Lecturer in Vyakaran and 2 posts of Lecturer of any Sanskrit subject out of which 1 person was to be appointed against the post of Principal and the remaining 4 posts included 1 post of Teacher in English, 1 post of Teacher in Hindi, 1 post of Teacher in Sanskrit and 1 post of Teacher in any Modern Science.



4. In a similar manner, under the aforesaid resolution dated 18.10.1976, provisions has also been made with respect to the posts of Non-Teaching Employees were admissible in the Sanskrit Educational Institutions which included 1 post of Clerk, 1 post of Typists, I post of peon, 1 post of Night Guard and in the manner as aforesaid its is manifest that in terms of the decision contained in the aforesaid resolution 18.10.1976 issued by the concerned authorities under the Education Department of the State Government, there were altogether 10 posts of Teacher and 4 posts of Non-Teaching Employees sanctioned in favour of the Sanskrit College/Institutions situated within the State of Bihar. So far as the College is concerned, it is permanently affiliated College of the University and as such, it is an admitted position in terms of the aforesaid resolution dated 18.10.1976, 10 posts of teaching with include 1 post of principal, 4 other Non-Teaching Posts are admissible in favour of the College in relation to which no separate order or direction is required to be issued by any authority either under the state government or the University. The College also enjoys the status of being full deficit grant College i.e. to meant that the state government made available necessary fund in favour of the College for the purposes of making payment of salary to its Teacher and Non-Teaching Employees, the provisions



contained under the Bihar State Universities Act, 1976 and relevant statutes framed there under.

5. An advertisement has been published by the College on 26.09.2012 in Daily Newspaper 'Aaj' inviting application from eligible candidates for consideration of their cases for appointment against the different posts of Teachers in the concerned College (Annexure-P/1 of the writ application). In response to the aforesaid advertisement, the petitioner, being eligible for the post of Graduate Teacher, submitted his application in the prescribed manner for consideration of his case for appointment against respective post in the said College. After scrutiny of the applications submitted against the aforesaid posts, the process of Interview has been commenced by the Selection Committee on 26.10.2012. The petitioner participated in the Interview for the aforesaid posts, held on 26.10.2012 in which all the members of the Selection Committee so constituted, have participated. The petitioner thereafter, found suitable by the Selection Committee for appointment to the post of Graduate Teacher in the aforesaid College and accordingly a recommendation dated 26.10.2012 has been made for his appointment by the Selection Committee (Annexure-P/2 of the writ application).

6. There were two posts of Graduate Teachers has been advertised and, therefore, two names including the petitioner has



been recommended by the Selection Committee for appointment against the said post. Thereafter, the governing body of the said College vide its letter No.139/12 dated 29.10.2012 issued a letter to the petitioner, intimating that he has been appointed to the Post of Graduate Teacher in the aforesaid College in view of the recommendation of the Interview Board and the subsequent decision of the governing body dated 28.10.2012. The petitioner has been accordingly directed to submit his joining within a period of 15 days (Annexure-P/3 of the writ application). In response to the aforesaid appointment letter, the petitioner submitted his joining vide his application dated 05.11.2012 to the concerned authority of Governing Body and the college which was accepted by them (Annexure-P/4 of the writ application).

7. Learned counsel for the petitioner submits that in accordance with the provisions contained under Section 57 (A) and the statues framed in terms of Section 57 (B) of the Bihar State Universities Act, as amended from time to time, the present petitioner has been appointed against the said Posts at the College and as such, their appointments did not suffer from any infirmity whatsoever in the eyes of law. The appointment of the petitioner has been submitted to the University by the College for the purpose of granting approval to the appointment of the petitioner



vide letter dated 22.01.2017 (Annexure-P/5 of the writ application).

8. The University after due consideration on the proposal sent by the College for granting of approval to the appointment of the petitioner, issued a notification contained as Memo No.653 dated 19.04.2018 giving concurrence to the appointment of the petitioner along with other teachers (Annexure-P/6 of the writ petition). The petitioner in the meantime approached this Hon'ble Court for grant of approval of his appointment as well as the salary in C.W.J.C. No.18977 of 2019 2019 which was disposed of vide order dated 16.09.2019 with direction to the State to take appropriate decision with regard to the allotment of fund to the University for payment of salary to the petitioner within a maximum period of 60 days from the date of receipt/production of a copy of this order (Annexure-P/7 of the writ application).

9. Despite the aforesaid direction having been passed by this Court by its order dated 16.09.2019 directing the state government to take steps towards allotment of fund to the Universities for the purposes of payment of salary to the petitioner no.4 who was petitioner in the said case, no action was taken with respect to allocation of fund in favour of the College for the purposes of making payment of salary to the petitioner no.4 and



other petitioners but on the contrary, all of a sudden the impugned orders dated 21.04.2022 was passed by the Director, Higher Education, Education Department, Bihar, Patna, by which the recommendation of the University for appointment of the services of the petitioners against different posts at the College have been rejected on patently misconceived and untenable grounds and contrary to the provisions contained under the Bihar State Universities Act, 1976 and the statutes framed there under (Annexure-P/8 of the writ application).

10. Learned counsel for the petitioner further submits that while referring to the provisions contained under Section 35 (2) of the Bihar State Universities Act, 1976, the appointment of the petitioners against the respective posts of Lecturers in the services of the College have been rejected by the State Government on the ground that prior to making their appointments, permission had not been taken from the state government and as such, the said ground is completely misconceived and devoid of any sanction in the eyes of law as bare perusal of the provisions contained under the said Act, so Section 35(2) of the Bihar State Universities Act, 1976 which clearly demonstrate that such prior approval is required only in the case, where appointments are being made against posts which are not duly sanctioned whereas in the present case, in view of the fact



that the posts against which the present petitioners have been appointed are duly sanctioned in terms of the provisions contained under Section 35 (II) of the Bihar State Universities Act, 1976 did not have any applicability and as such, the orders dated 21.04.2022 passed by the Director, Higher Education, Education Department, Bihar, Patna are completely misconceived and untenable in the eyes of law. He further submits that there is violation of Articles 14, 16 & 21 of the Constitution of India.

11. Learned counsel for the petitioner submits that this Hon'ble Court to an order and judgment dated 01.11.2018 passed in one C.W.J.C. No.10397/2014 by this Hon'ble Court where under similar circumstances, while referring to the provisions contained under Section 35 of the Bihar State Universities Act, the appointment of the petitioners of the said case that had already been approved by the syndicate of the University had been cancelled on the ground that no prior approval with respect to the appointment of the petitioners of the said case has been taken in terms of the provisions contained under Section 35 of the Bihar State Universities Act and while taking note of the various aspects of the matter, this Hon'ble Court was pleased to hold that the State under Section 35 of the Act could interfere only in the matter of appointment if the posts were not sanctioned or created with the prior approval of the state government and it has no role to play in



the matter of appointment in the University, if the post in question was sanctioned one.

12. Learned counsel for the petitioner relied upon the judgment of Full Bench of this Court passed in *L.P.A. No.36 of 1994 Braj Kishore Singh And Ors. vs State Of Bihar And Ors.* He submits that it is mentioned in para-9 that “if the appointment of a person is found to be illegal for want of sanction of the posts by the State Government in view of the provisions of the Section 35 of the Universities Act, it would be appropriate at this stage to notice the relevant provisions as hereunder:-

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 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 with 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) Shall incur expenditure of any kind on any development scheme without the prior approval of the Government (2) 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 candidate possessing the prescribed qualification”.

13. Para-21 of the said judgment reads as follows “the point for consideration is whether appointments made by the College/University authorities against sanctioned posts, i.e., posts within the staffing pattern are to be accepted as final. As noticed above, Section 35 of the Universities Act provides for prior approval both in the matter of creation of posts as also in the matter of appointment. Creation of post is the earlier stage, actual appointment comes next. As noticed above, there cannot be a College without the teachers and without teachers the College cannot be granted affiliation, 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 that 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”.

14. Para-22 of the said judgment reads as follows “the above discussion may be summed up in these words. By reason of the approval of the staffing pattern proposed by the Bihar Inter University Board non-teaching class III and IV posts will be deemed to have been created with the prior approval of the State Government i.e. sanctioned. Appointment can be made against those 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. The College/University authorities are competent to make appointment of eligible and suitable persons against such posts. Ordinarily, this should be done



with the prior approval of the State Government. In exceptional cases, in exigency of service of situation, provisional appointment can be made subject to approval of the State Government within the stipulated time-frame. It is open to the State Government to examine the eligibility and suitability of even those who have already been appointed against the sanctioned posts as per the staffing pattern”.

15. Para-25 of the said judgment reads as follows “in the present case also, in view of the inherent 'unworkability' of the impugned provisions regarding prior approval of the State Government, the provisions can be read down in the manner indicated above. The soul of the provisions is not violated and the purpose is also achieved. The purpose in making these provisions is to pre-empt illegal and uncalled for appointments. Large scale illegal appointments without availability of posts have been made in different establishment/organisations in this State in recent times and the legislature thought it appropriate to intervene and make the provisions which would deter the College/University authorities from making illegal appointments because, more often than not, it is the State which was to bear the financial burden of the appointments. The purpose underlying the provisions, therefore, has not only to be lauded but also achieved. If Section 35 of the said Act is interpreted in the provisions would be



substantially complied with but the purpose also would be fulfilled”.

16. A counter affidavit has been filed on behalf of the Respondent Nos. 4 and 5 in which it is admitted that an advertisement was published by the Secretary of the College on 26.09.2012 inviting application for appointment on the post of Graduate Teacher in the concerned College. Petitioner applied for appointment and he was called for interview to be conducted by the Selection Committee, after interview upon recommendation of Selection committee, Governing body considered the name of the petitioner in its meeting held on 28.10.2012 and, accordingly, petitioner was appointed on the post of Graduate Teacher. In the meeting of the Approval, Seniority and Pay Fixation Committee of the University which was held on 24.03.2018, appointment of the petitioner was considered and approval was granted subject to certain conditions.

17. Learned counsel for the Respondent Nos.4 and 5 submits that since the salary of the petitioner was not started, petitioner filed writ petition bearing C.W.J.C. No. 18977/2019 for payment of salary. The same was disposed off with a direction to State authorities to release necessary fund. When the matter was placed before Education Department for compliance of order in writ petition, Director, Higher Education, Education Department



has passed an order vide Memo No. 914 dated 21.04.2022 (Annexure-8 to the writ petition), recording disagreement with the request of the University, on the ground that Section 35(2) of the Bihar State Universities Act, 1976 has not been followed in the appointment of the petitioner, since no prior approval of the appointment has been taken from the State Govt. In the same order University was directed to take steps for termination of the service of the petitioner. In light of direction of the Education Department, University has cancelled its approval given in the appointment of the petitioner and directed the Governing Body of the College vide letter No. 529/22 dated 16.06.2022 to comply the order of the Education Department.

18. A counter affidavit has been filed on behalf of the Respondent Nos.1 to 3 in which it is stated that relevant clause of Section 35 of the Bihar State University Act 1976 deals with the creation of post in University and College and Section 35 (1)(i) provides that after commencement of this act no teaching or non-teaching involving financial liabilities shall be created without the approval of the State Government. Section 35(2) of the Act provides that notwithstanding anything contained in this Act, No college other than one mentioned in Clause (a) and (b) of Sub Section (1) shall after the commencement of this Act, appoint any person on any post without the prior approval the State



Government and Section 35(3) further provide that any appointment or promotion made contrary to the provision of this Act, or Statutes, Rule or regulation 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 provision of the Public Demand Recovery Act.

19. In the light of the order passed by this Hon'ble Court, after receiving the submission of the petitioner and the report of the university, a meeting was held on 28.06.2021 with University in respect of discussion in this matter and it is found that no prior approval was obtained from the State Government for new appointment by the College. Hence the proposal of the University has been rejected on 21.04.2022 by the Director, Higher Education, Patna contained in Annexure-P/8 of the writ petition.

20. Learned counsel for the State submits that after perusal of all the records in respect of appointment of the petitioner it is found that the appointment of the petitioner has been made contrary to section 35(2) of the Bihar State University Act 1976. There is no merit in this case and the writ petition is liable to be dismissed.



21. Considering the arguments advanced on behalf of the parties as well as considering the clear direction passed in the Full Bench of this Court, as there is no requirement to take prior approval of the State Government, when the post is already sanctioned and petitioner was legally appointed because the post was advertised and he was appointed after facing interview. In view of the Full Bench judgment, the post facto approval of the State Government is not required after scrutiny of qualification.

22. It is admitted fact that the service of petitioner was regular on sanctioned post, which is clear from Annexure-P/6 of the writ petition. Petitioner is entitled to participate in the domestic enquiry for the reason that the petitioner's appointment was made without prior approval of the State Government, in violation of Sections 35(2) of Bihar State Universities Act. The Apex Court time and again held that even temporary employees are entitled for domestic enquiry, if the allegation are made against such temporary employees before termination of his/her service. At present, the petitioner is a regular employee in sanctioned post.

23. In view of the foregoing discussions, I set aside the impugned order contained in Memo No.914 dated 21.04.2022 (Annexure-P/8) of the writ application.

24. The University as well as the State is directed to regularize the service of the petitioner and release the fund and pay



all the consequential benefit to the petitioner within three months from the date of receipt/production of a copy of this order.

25. With the aforesaid observations and directions, this writ application is disposed of.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2025
Transmission Date	NA

