

(2018) 07 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.17670 of 2017

Akhilanand Singh & Ors

APPELLANT

Vs

State Of Bihar & Ors

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Bihar State Universities Act, 1976 — Section 2(c), 2(i), 14, 4(14), , 4(1)(14), 35, 57A
Constitution of India — Article 166

Citation : (2018) 3 PLJR 1029

Hon'ble Judges : ANIL KUMAR UPADHYAY, J

Bench : Single Bench

Advocate : Y.V. Giri, Sanjay Kumar Giri, Lalit Kishore, Binita Singh, Nishant Kumar Jha, Shivendra Kishore, P.N.Shahi

Final Decision : Disposed off

Judgement

1. Heard learned counsel for the petitioners and learned counsel appearing on behalf of the State.

2. A batch of 116 writ petitions have been heard together but on the request of learned Advocate General in the written notes of argument and the

submission of Mr. Shivendra Kishore, learned senior counsel appearing on behalf of the Magadh University, the Court has decided to dispose of the

writ petitions separately after deciding the core issues raised in the present batch of writ applications.

3. The relevant facts for the purpose of deciding the present case is, in fact, discussed by the Apex Court in the case of State of Bihar Vs. Bihar

Rajya MSESKE Mahasangh: (2005) 9 SCC 129, which is reproduced hereinbelow:-

4. The necessary factual background for the purpose of understanding the legal issues raised before this court in these cases is as under:- The

State of Bihar took a decision to convert affiliated colleges of different universities into constituent colleges of concerned universities in a phased manner.

5. The words 'Affiliated college' and 'constituent college' are defined in section 2(c) and 2(i) of the Bihar State Universities Act, 1976 [for short 'the Act']. Every institution recognized and receiving privileges of the universities in accordance with provisions of the Act and universities' statutes is called 'affiliated college'. 'Constituent college' means a teaching institution maintained and controlled by the university itself.

6. By letter dated 19.8.1986, the State of Bihar conveyed its decision to all the Vice-Chancellor of various universities in the State of converting 36

affiliated colleges mentioned in the appended list as constituent colleges. Three other colleges were similarly decided to be converted as constituent

colleges under decision conveyed by letter dated 03.7.1987. One minority educational institution was also decided to be converted as constituent

college. In all thus 40 affiliated colleges were decided to be converted into constituent colleges. In the decision conveyed by the State, the universities

were instructed in accordance with the provisions of Section 14 of the Act to pass a formal resolution for taking over the assets and liabilities of the

various affiliated colleges falling within the respective universities and enter into formal agreements with their governing bodies for the purpose of

converting them into constituent colleges.

7. In the same decision of the State Government, the universities were directed to obtain from each of the affiliated colleges information regarding

sanctioned teaching and non-teaching posts existing on the date of taking over of the colleges as constituent colleges and also ascertain information

with regard to proposals for creation of additional posts in the affiliated colleges which were received from the universities by 30.4.1986 and were

pending with the government. The list of teachers appointed against such additional posts pending for approval of the State Government were also

directed to be separately prepared for the purpose of consequential action on the part of the State Government.

8. Consequent upon the above decision of the government with instructions to the universities to take various steps for identifying the number of

sanctioned posts, the proposals for additional posts received by the universities

and pending with the government for approval, a further decision was conveyed by the State Government by letter dated 12.6.1987. The aforesaid subsequent decision has created the present controversy on the claims of various categories of teachers and non-teaching employees for absorption in the services of their respective converted constituent colleges. By the subsequent decision contained in letter dated 12.6.1987, it was directed that in addition to the proposal for creation of additional posts pending with State Government, the proposals for approval of posts for additional subjects in the colleges which had been received from the universities up to 30.4.1986 and pending with the government, be also ascertained and necessary information in the prescribed proforma be sent to the government to consider creation of posts, granting of affiliation to additional subjects and absorption of teachers who were appointed against such posts. In the resolution of the government, each university was directed to constitute a three-member committee to ascertain existing sanctioned teaching and non-teaching posts, proposals pending for additional posts, proposals pending for posts for additional subjects and list of various teachers who were working against sanctioned and non-sanctioned posts before the cut-off date.

9. In implementation of the resolution of the government to convert the 40 affiliated colleges into constituent colleges formal resolutions were passed by the governing bodies of the affiliated colleges. The three-member committees constituted by the universities completed their investigation for submitting necessary information in the prescribed proforma showing separately names of teachers and non-teaching employees working against sanctioned posts and those working against posts the creation of which was recommended by the University for sanction of the State Government.

10. On 17.1.1987, the Government of Bihar constituted a separate committee headed by Chairman of Inter-Universities Board to examine the proposals received before the cut off date i.e. 30.4.1986 for creation of posts of teachers and non-teaching staff in affiliated colleges which were converted into constituent colleges. On the report of the said Committee which were subsequently reconstituted on 01.2.1988, the State Government passed an order to absorb employees working against teaching and non-teaching posts but only on provisional basis because there were disputes with regard to the claims for absorption of certain members of the staff in various

colleges.

11. The State Government later constituted eight-member committee and thereafter a five-member committee to go into the question of absorption of members of the staff in the converted constituent colleges and ascertain number of posts duly created before the cut-off date and which were pending with the Government for approval or sanction.

12. On the recommendations of the above mentioned two committees, on 18.12.1989, the Government of Bihar took a formal decision to provisionally absorb teachers against sanctioned posts and posts which were recommended for sanction by some of the universities.

13. It seems that with the change of elected government there was rethinking on the decision of the earlier government to absorb members of the staff working against additional posts for the creation of which sanction was awaited. Large number of employees, it was reported, got surreptitious entry into the services of the erstwhile affiliated colleges in connivance with the members of governing bodies of the said colleges and tried to take advantage of conversion of those colleges into constituent colleges. A large number of complaints of manipulations and fabrication of records in affiliated colleges were received by the Government which became a subject of hot debate in Legislative Assembly and public.

14. The State Government took a decision to set up a vigilance enquiry into the alleged malpractices adopted by the various affiliated colleges in inducting employees, who had not been legally appointed in various affiliated colleges prior to cut-off date fixed in the resolution of the Government to take over the colleges. On the setting up of the vigilance enquiry, apprehensions arose of large scale termination and dispensation with the services of employees of various categories of employees working on teaching and non-teaching posts in erstwhile affiliated colleges. The association of the employees representing both holders of teaching and non-teaching posts approached the High Court in writ petition leading to the passing of the impugned judgment and the present appeal. In the writ petitions, the association of the employees of the affiliated colleges claimed a writ of prohibition restraining State and the universities from dispensing with or terminating the appointments of nearly four thousand employees working in different colleges under universities. They also sought a further relief that their services

be protected and not interfered with.

15. The Division Bench of the High Court after examining the record of the case, the contents of proceedings of the various committees and

construing the provisions of the Act, allowed the writ petitions of the employees' association. The High Court made the following observations and

issued following directions in the concluding part of its judgment:- ""In that view of the matter, the controversies have not reached a finality as

contemplated under section 4(14) of the Act. This Court, therefore, directs the concerned universities to take steps under sub-section (14) of section 4

of the said Act in respect of regularization of the services of the teachers of the colleges which have become constituent colleges of the different

universities in the fourth phase.

Even though, the universities have been made parties including the chancellors of the said universities, and they have been served with notice, but

nobody appeared on behalf of the universities or on behalf of the chancellors nor any affidavit has been filed.

In that view of the matter, this Court directs the universities who are parties of this proceeding to take steps in accordance with the communication of

the State Government which is at annexure-5 of the writ application in the light of the observation made in this judgment and in accordance with the

provisions of section 4(14) of the said Act within a period of four months from the date of receipt/production of a copy of this order.

It is, however, made clear that till such steps are taken by the respective universities, the status quo as existing on today will continue. With the

aforesaid direction this writ petition is allowed to the extent indicated above. No order as to costs.â??

4. In view of the decision taken by the Supreme Court in Mahasangh case and considering the factual aspects, the Apex Court had constituted a one-

man committee of Justice S.C. Agarawal, a retired judge of the Apex Court, to inquire into the various controversies and disputes with regard to the

absorption of the employees. The Apex Court formulated the following terms of reference:-

â??1. How many sanctioned posts of teachers and non-teaching employees were there in the 40 colleges which were converted into constituent

colleges pursuant to the sanction letter dated 19.8.1986 of the State of Bihar?

2. How many proposals with regard to creation of posts for teachers and non-teaching employees had been submitted to the Education Department of

the State of Bihar or universities before 30.4.1986, the cut-off date mentioned in Appendix 'Kha' (p.208 of SLP) with respect to 36 colleges converted

into constituent colleges as per government letter dated 19.8.1986? [List of colleges is at pp206-207 of SLP and other dates mentioned in government

communications in respect of four other colleges]?

3. How many teachers and non-teaching employees seeking absorption in the constituent colleges were not appointed through selections made by the

College Service Commission/University Service Commission and whether they possess the basic qualifications prescribed by the Act and Statutes?

This exercise will be without prejudice to the contention of the respondents that section 57A is not applicable to such selection, as has been held by the

High Court in the judgment?

4. How many teachers and non-teaching employees would be entitled to absorption on the basis of the government letter dated 19.8.1986 and

Appendix 'Kha' and the agreement entered into between the University concerned and the constituent college under section 4(14) of the Bihar State

University Act, 1976 and other orders of government?

5. Justice Agarwal Commission after marathon exercise submitted report and answered the reference in its voluminous report touching all issues of

facts and law in relation to 4th phase constituent colleges except the issue of letter No. 181C issued by the State Government as the said issue was

pending consideration by the Apex Court.

6. The Apex Court threadbare considered the report of Justice Agarwal Commission and also the objections submitted by the parties. Considering the

report of the Justice Agarwal Commission on each and every terms of reference, the Apex Court has held out as follows:-

18. In answer to 'terms of reference' no. 1, enquiry commission has taken different cut-off dates for different affiliated colleges with reference to

the dates on which decision was taken to convert them into constituent colleges. Thus taking 30.4.1986 or 31.3.1987 or 01.1.1987 as dates applicable

to the particular colleges, the Commission has identified the number of sanctioned posts and the members of the staff working against each of them. It

has given separate report for one minority institution in which there was no

indication of cut-off date. To answer term No. 2, the commission has divided it into two parts and answered each separately. Identification has been done in respect of each college which had sent proposals with regard to creation of additional posts and which have been submitted by concerned universities to the education department of the State before the cut-off date.

19. Separate identification has been done by the Commission regarding proposals for creation of additional posts submitted by each college before the cut-off date and which were pending with the concerned universities.

20. On the basis of the decision of the government conveyed from time to time by various letters to the universities, the Commission has come to a

conclusion that the decision taken was to absorb services of members of teaching and non-teaching staff of converted constituent colleges only

against additional posts for which proposals had been received from the universities by the State Government by the cut-off date and were pending for

consideration with the State Government. In the opinion of the Commission, there is no decision of the Government to consider for absorption the staff

working against such posts, the proposal for creation of which had been submitted by the governing bodies to the universities before the cut-off date.

21. We have perused carefully the contents of decisions of the government taken by it from time to time which are contained in its letters dated

19.8.1986, 25.8.1986, 30.6.1986 and 18.12.1989. At this very stage, it would be proper for us to opine that we find no merit in the objections submitted

to this part of the report of the commission which is based on the contents of the various resolutions of the government on the subject of converting

affiliated colleges into constituent colleges. We agree with the opinion of the Commission that only such members of the staff are liable to be

considered for absorption who were working against additional posts for which proposals had been received from the universities by the State

Government before the cut-off date. The other proposals for creation of posts which were pending at the university level are outside the purview of

the various decisions taken by the government to take over the 40 affiliated colleges. The claims for absorption of services of employees working

against posts for which proposals had not reached to the State Government before cut off date, are liable to be rejected.

22. With regard to term of reference no. 3, requiring identification of teaching and non-teaching members of the staff, who have not been appointed

through selection made by College Service Commission/ Universities Service Commission and enquiry about their possessing or not possessing basic

qualifications prescribed for the posts in accordance with the Act and the Statutes, the conclusions of the commission are that the revised list

submitted by the screening committee dated 30-1-1987 containing names of employees recommended for absorption is not worthy of acceptance.

23. In the course of its enquiry, the commission found that there were interpolation and tampering with records including the proceedings of governing

bodies of certain colleges. The screening committees constituted by the universities under the resolution of the government have gone into that aspect

and have prepared a list of members of the staff who deserved to be absorbed. According to the opinion of the Commission after the screening

committee had completed its task, the screening committee, without assigning any reasons, could not have submitted revised list to include some more

names or exclude others. This inclusion and exclusion can be an omission or error in original report or it was done on other extraneous consideration.

In the opinion of the commission, the last mentioned eventuality is not ruled out. It is in these circumstances that the commission has recommended

that revised list of the screening committee dated 30.1.1987, deserves no consideration.

24. After reading the report of the commission and considering the objections raised to it by the various parties before us, in our opinion the report of

the Commission proposing rejection of the revised list submitted by the screening committee on 30.1.1987, which show inclusion or exclusion of certain

names from its original list, deserves to be accepted.

25. So far as the qualifications of the various categories of holders of teaching and non-teaching posts are concerned, the commission has gone into

contents of the various statutes prescribing the qualifications for different teaching posts pursuant to the recommendations of University Grants

Commission which were adopted by the universities with implementation of revised scales of pay.

26. In our opinion, decision on absorption of the existing teaching and non-teaching staff of the affiliated colleges, which are taken over as constituent

colleges, is within exclusive jurisdiction of the universities concerned. Decision in individual cases, with due regard to the qualification of each

employee and corresponding statute applicable at the relevant time prescribing qualification, if any, for the teaching and non-teaching post, is required

to be taken by the university based on the findings in the report of Justice Agrawal Commission and in the light of the legal position explained in this judgment.

27. In answer to the terms of reference no. 4 requiring identification of teachers and non-teaching employees who are entitled to absorption on the

basis of government resolution dated 19.8.1986 and the agreements entered between universities and the concerned colleges, the commission after a

thorough enquiry and probe into records of the various colleges have given three separate lists (i) teachers appointed against the sanctioned posts have

been placed in the order of the date they became eligible for consideration; (ii) list of teachers appointed against posts for which the recommendations

were sent by the universities to the State Government upto the cut-off date are arranged in the order of the date they became eligible for consideration

and (iii) list of teachers appointed against posts for which recommendations were sent by the universities to the State of Bihar after the cut-off date

and those for which no recommendations were sent by the universities.â??

7. After hearing on recommendation and report of justice Agarwal Commission, the Apex Court answered the question raised by the learned counsel

for the State whether Section 35, which begins with non obstante clause will override the other provision of Section 4 (1) (14) which again contains

non obstante clause. The Apex Court answered that in the matter of taking over of the colleges and absorption under Section 4(1) (14), the provisions

of Section 35 will not govern the case rather the University is competent to decide the issue of absorption under Section 4 (1) (14) of the Bihar

Universities Act. The Apex Court after accepting the report of Justice Agarwal Commission directed the Universities to take decision in terms of

Section 4 (1) (14). The Apex Court categorically held out in paragraph 72 of the Mahasangh case, as follows:

â??72. In some of the written objections, certain mistakes of names and descriptions of employees in the Report of the Commission have been

pointed out. Such mistakes in the Report of the Commission may be brought by

the affected employees to the notice of the universities concerned. It would be open to the universities, for the above limited purpose to undertake enquiry and verification of the records to rectify and rely upon the report of the Commission with the necessary corrections only with regard to the names and descriptions of the employees.â??

8. Finally the Supreme Court in Mahasanga case issued the following directions in para 73 of the judgment;

â??1. The judgment of the High Court to the extent of the interpretation placed by it on the provisions of section 4(I)

(14) and section 35 with the directions issued in paragraphs 24 to 26 therein, is hereby confirmed for the reasons recorded by us above.

2. The report of the commission of enquiry of Hon. Justice S. C. Agrawal [retired], is accepted and all objections filed against the said report are rejected.

3. The members of the staff in various affiliated colleges identified and named in list no. (i) being appointees against the sanctioned posts shall be absorbed and formal order to that effect shall be issued by the universities concerned.

4. The universities shall take a decision under section 4(1) (14) of the Act in the matter of absorption of appointees named in list no. (ii) of the Report

of the Commission, being appointees against posts for which recommendations were sent by the universities to the State up to the cut-off date in

accordance with the decision of the State Government conveyed in its letter dated 19.8.1986 followed by letters dated 25.08.1986 and 12.06.1987.

In considering the question of absorption of appointees named in list no. (ii) of the report of the Enquiry Commission, the universities concerned shall

rely on the contents of the report of the enquiry commission and the present judgment of this Court.

5. The appointees mentioned in list no. (iii), being the appointees against posts for which recommendations were sent by the universities to the State

Government after the cut-off date or those working against posts for which no recommendations were sent for approval of the State Government,

have no right of being considered for absorption - whatever maybe the fortuitous circumstances or otherwise in the matter of not sending

recommendations for sanction in their cases. The negative report of the enquiry

commission with regard to list no. (iii) is accepted and the universities are directed to exclude all such appointees named in list no. (iii) from consideration for absorption.

6. A large number of objections to the Report of the Enquiry Commission filed before us by associations of employees and individuals pertain to the alleged lack of prescribed qualifications for the posts on which they are working. All those objectors have not been recommended for absorption in the report of the Enquiry Commission. Decision in individual cases, with due regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualifications, if any, for the teaching and non-teaching posts, shall be taken by the universities based on the findings in the report of Justice Agrawal Commission and in the light of the legal position explained above.â??

Paragraph 73 (4) is relevant for the purpose of this case, whereby the Supreme Court has underlined the scope of exercise of power by the

Universities in terms of discussion of the Agrawal Commission report and the judgment in Mahasangh Case.

9. After the judgment of the Apex Court in Mahasangh Case a new chapter started, the University took decision with regard to absorption of the

teaching and non-teaching employees in terms of the direction of the Apex Court. Following the direction of the Apex Court, the University after due

deliberation in the meeting of the Syndicate, decided to finalize the list of teaching and non-teaching employees for absorption. In the process of

finalization in addition to the report of Justice Agarwal Commission, the University has also considered the letter of the State Government i.e. letter

No. 181C, 38C, 36C and 35C. The list issued by the State Government at the relevant time for the purpose of provisional absorption of teaching and

non-teaching employee and in those letters a direction was issued by the State Government for the payment of teaching and non-teaching employees

on the basis of these letters.

10. So far as the letter No. 181 C is concerned, Justice Agarwal Commission declined to authoritatively decide with regard to letter No. 181C on the

ground that the matter is pending before the Apex Court. The Apex Court has decided the effect of letter No. 181C in the Mahasangh case. The

objection raised with regard to letter No. 181C on behalf of the States of Bihar

and Jharkhand was considered by the Apex Court in paras 41 and 57

to

62 which indicates that the objections of the States of Bihar and Jharkhand with reference to the government decision dated 18.12.1989, was

answered by the Apex Court. The Apex Court negated the objection of the State of Bihar and the State of Jharkhand that letter No.181 C is not the

governmental decision as it was not authenticated in terms of Article 166 of the Constitution of India. The Apex Court categorically held out that the

letter dated 18.12.1989 is the reflection of the governmental decision and it cannot be impeached on the ground that the said letter was not

authenticated in terms of Article 166 of the Constitution and there is no cabinet decision. Thus the Apex Court in so many words accepted the letter

No. 181C as a governmental decision.

11. So far as absorption of non-teaching employee one similar letter no. 25(C) was received recognizing the services of non-teaching employee for the

purpose of provisional absorption and payment. The State Government issued other letters and supplementary letters for provisional absorption that

was letter no. 36(C). It is to be noted that here that letter No. 38 (C) was issued on 01.02.1988 whereby additional post as well as decision was taken

to provisional absorption of employee of colleges made constituent unit in 4th phase.

12. After the decision of the University to absorb the services of teaching and non-teaching employee, again an issue was raised whether the

University has acted in accordance with Judgment of Mahasangh case and in terms of Justice Agarwal Commission report or not and thereafter at

the dictate of the State government and in certain cases on the opinion of the Advocate General, the University either reviewed the decision granting

absorption to teaching and non-teaching employee and in certain cases at the dictate of State Government notification for absorption was not issued by

the Universities. The matter was taken to the High Court and considering the controversies involved, the matter was referred to the larger Bench. A

Full Bench of Patna High Court considering the controversies raised, constituted two-men Committee comprising of Justice S.N. Jha and another non-

judicial member. Against the decision of the Full Bench, one Krishnandan Yadav preferred SLP (Civil Appeal No.2703 of 2017) and in his case once

again on 22nd January 2013 the Apex Court appointed Justice S.C. Agarwal to inquire into the matter and passed the following order;

â??a) The Commission shall adjudge the claim of each of the employee (both teaching and non-teaching) for absorption in constituent colleges on the

anvil of Justice Agarwal Commission report dated 10.12.2001 and the decision of the Supreme Court in State of Bihar Vs. Bihar Rajya MSESCK

Maha Sangha, 2005 (9) SCC 129,

b) Each of the Writ petitioners shall file their requisite brief with all the details and the basis of claiming absorption before the Commission within four

weeks with advance copies to (I) concerned university, (ii) Principal Secretary, Higher Education, State of Bihar, and (iii) standing counsel for State of

Bihar in Supreme Court. No claim made thereafter shall be entertained.

c) The concerned university and the State of Bihar shall file their response within 4 weeks, thereafter;

d) The present order shall relate only to cases which have been disposed of by the Patna High Court vide Judgment and order dated 11.3.2010 in LPA

No. 1304 of 2009 and connected matters.

In addition to the same, the persons who were not party were also permitted to make their representation before the Commission. For the above-said

purpose, the Commission has to issue a notification in the local daily prescribing four weeks time for filing their representation.

e) The registrar of the Universities shall produce all the records as directed by the Commission.â??

13. Due to inability expressed by Justice S.C. Agarwal, on 19.8.2013 Justice S.B. Sinha was appointed as one-member commission to inquire and

submit the report. Justice S.B. Sinha has submitted report with regard to absorption of certain teaching and non-teaching employee. Against the report

of Justice Sinha Commission objection was filed before the Apex Court in Krishnandan Yadav Case (Civil Appeal

No.2703 of 2017) on behalf of the State of Bihar and others. In paragraph 8 the Apex Court noted the objection raised on behalf of the States of Bihar

and Jharkhand.

8. We have heard learned counsel appearing for the State of Bihar and Mr. Vijay Hansaria on behalf of the State of Jharkhand. They have urged

four-fold objections as follows :

1. After the Orders passed by this Court, the Committees constituted by the States of Jharkhand and Bihar have taken into consideration the cases to absorb teachers and non-teaching staff of the constituent colleges with respect to whom the recommendations have been made by the Commission in the State of Jharkhand. Out of 154 recommendations, 98 have been accepted; but with respect to 56 incumbents recommendations have not been accepted. In the State of Bihar, 96 teaching staff recommendations have been accepted, and with respect to non-teaching staff 159 recommendations have been accepted. It was submitted by learned counsel that as a matter of fact, the posts had not been recommended for creation before cut of date. Correspondence has been relied upon by the Commission to hold creation of posts which could not have been relied upon for holding that these posts which were recommended before the cut of date.

2. It was also submitted that the agreement of taking over of the institutions between college and University, contains the list of those employees also who were working in the institutions as on the date of taking over of the same. Thus, Commission has relied upon on certain lists which were not correct.

3. In relation to the incumbents whose recommendations had not been accepted by the State Governments, it was submitted that it was so for the reason that there was no material on record to show that they had been paid salary by the institutions on the date of taking over of the colleges.

4. It was further submitted that even as regards certain posts which had fallen vacant on account of death or attaining the age of superannuation or due to transfer, the Commission had recommended to State Governments to accommodate the incumbents, which could not have been done.â??

14. The Apex Court overruled the objections and accepted the report of Justice S.B. Sinha. The relevant part of the consideration of the objection of the States of Bihar and Jharkhand on the report of Justice S.B. Sinha finds reference in the judgment of Krishnandan Yadav case is reproduced here for ready reference ;

â??9. Coming to the first submission raised by learned counsel appearing on behalf of the State of Bihar and the State of Jharkhand with respect to the recommendation of the posts before the cut of date. Facts in I.A. No.460 of 2017 have been mainly relied upon. Learned senior counsel appearing

on behalf of the State of Jharkhand with respect to the other similar cases also, has pointed out that in Abdul Bari Memorial (ABM) College, 18 posts

of Class III were sanctioned by the State Government. Out of these 18 Class III posts, 9 posts (upto serial No.5) were of clerical staff including head

clerk, accountant etc. There was no recommendation of posts to the Government up to the cut of date. Justice Agrawal had recommended in his

Report 13 number of Class III posts eligible for absorption. The names of the present claimants were neither mentioned by Justice Agrawal in his

Report nor in order of the Government issued on 01.02.1988 and 12.02.1990. The claimants filed their claim petitions before the Commission seeking

absorption of their services. The claimants, in the claim petition, relied upon two letters of the University dated 25.04.1981 and 02.07.1982 written to

the State Government, whereby the University had allegedly recommended 41 posts of non-teaching staff be created.

10. However, there were no averments on the claims filed by incumbents that these recommendations were received by the State Government. Lists

have been placed on record along with the interlocutory applications. The two letters dated 25.04.1981 and 02.07.1982 have been placed on record

along with the interlocutory applications. It is mentioned in the applications that University, in their reply dated 19.03.2014 before the Commission, has

categorically stated that "no recommendation was sent by the college or by the University to the Government and no proposal was pending before

the University sent by the college". The affidavit filed by the respondent has been placed on record. It is also mentioned in the application that the

aforesaid two letters of University were not filed before Justice Agrawal Commission and they have not filed before this Court also. The Commission,

now, has allowed claims of 10 Class III routine clerk employees and has directed their absorption in the services of University. Thus, an error had

been committed while relying upon aforesaid letters of the University for holding the creation of posts. Thus, it was submitted that the Action of the

State Government was appropriate in not accepting the recommendations made by the Commission. No case for further indulgence by this Court is

made out.

11. On the other hand, when we consider the orders passed by Commission, Justice Sinha in his Order dated 23.01.2013 has observed that although

claims for 41 posts of Class III were sanctioned, the same could not be furnished by the University before Justice Agrawal Commission. Further, it

was stated that University had itself filed an affidavit before this Court stating therein that the cases of 13 employees were left out in the Report of the

Justice Agrawal Commission. The University in its affidavit filed in March 2003 submitted before Justice Agrawal Commission stated as under :

10. That so far as non-teaching staffs are concerned there are total 14 persons in grade III and 20 persons in grade IV who have been appointed

on sanctioned posts the details of the individual concerned.

12. The University has taken a stand before Justice Sinha's Commission that cases of the claimants are covered by the same affidavit. But the State

of Jharkhand urged that prayer made earlier had not been accepted by this Court and, therefore, the contentions of the Claimants, as well as that of

the University, should not have been accepted by the Commission. However, claimants had produced requisite breakup of all the posts before the

Commission, and in further averments made in the affidavit filed before Justice Agrawal himself, as also filed in this Court, it was stated that 13

persons had been left out of non-teaching staff of Grade III and that the same was for the consideration of this Court as per law. The relevant

averments made in the affidavit filed by the University is as under :

The university is herewith annexing the list of the said 13 left out non-teaching staffs of Grade III of A.B. M. College, Jamshedpur for consideration

of this Hon'ble Court as per law and the same is annexed herewith and marked as Annexure RA.

A list of non-teaching staff working before 30.04.1986 contained 13 names of incumbents, who were left out at the time of the order passed by Mr.

Justice S.C. Agrawal. University had not disputed the authenticity of the relevant documents filed by claimants.

13. This court has directed to consider the individual cases of the concerned employees to the Commission. This Court has referred to Section 4 (1)

(14) of the Bihar University Act 1976 and observed in the case of Mahasangh (Supra) as under :

72. In some of the written objections, certain mistakes of names and descriptions of employees in the report of the Commission have been pointed

out. Such mistakes in the report of the Commission may be brought by the

affected employees to the notice of the universities concerned. It would be open to the universities, for the above-limited purpose to undertake enquiry and verification of the records to rectify and rely upon the report of the Commission with the necessary corrections only with regard to the names and descriptions of the employees.

73. In view of this judgment and the directions made herein to the university to take a final decision based on the report of the Enquiry Commission, all the applications for impleadment as parties and objections filed to the enquiry report are rejected. It is for the university to take a final decision concerning the individual employees. For the same reason, no further orders are required on the interlocutory applications seeking certain directions pending the appeal and for modification of earlier orders made. Other interlocutory applications also need no further directions or orders. They all stand disposed of.â??

Thus, Justice Sinha has observed that University was empowered to issue the necessary orders. The only grievance of the claimants was that they were not getting their salary on the basis of 5th and 6th Pay Revision Committee of the University Grants Commission (UGC). Only certain claimants' cases were accepted by Justice Sinha Commission and it has been ordered that respondents to ensure that the claimants be paid their salary as per the law from the date on which their services had been regularized.

14. In view of the factual matrix, the orders of accepting cases passed by Justice Sinha Commission are fully in accordance with law and the exercise undertaken by Justice Sinha cannot be said to be in violation of either the Reports of Justice Agrawal or the decision of this Court in Mahasangha case (supra). It was the decision in the case of Mahasangha (supra) that cases of individuals were required to be examined and thereafter, under the aforesaid terms of reference, Commission was required to decide individual cases. Thus, we find that the objections raised by the State of Bihar and the State of Jharkhand, refusing to accept the orders, cannot be accepted.

15. Apart from that, in one such case, vide order dated 04.01.2015, Justice Sinha in the matter of ASJSN College, with respect to non-teaching staff, has made an elaborate consideration into all these aspects, and the similar view has been taken by Justice Sinha in the other cases. The objection raised with respect to other cases also does not survive. Thus, the first

submission does not survive and is hereby rejected. Even in grey areas which were left for consideration by the Commission, the view adopted is wholly justified and is in accordance with the law, we are in agreement with the same.

16. Coming to the second objection. It is submitted that in the agreement of taking over of the colleges, certain manipulations were done so as to benefit incumbents in the list. We find that Justice Sinha Commission has taken into consideration all these aspects in individual cases as apparent from its various orders and, therefore, only those cases have been recommended in which it was found, on due consideration of the matter, that the appointments were not made on the basis of any manipulation or procured on the basis of illegal documents. The view taken by the Commission is based on meticulous consideration of cases cannot be said to be vitiated or illegal in any manner whatsoever.

17. Coming to the third objection raised with respect to certain candidates that they were not, in fact, working on the date of taking over. The Commission has taken into consideration these aspects and has clearly recorded findings only after going into the factual aspects of individual matters on the basis of documents only then cases have been decided. Thus, we find no infirmity or illegality in the same.

18. Coming to the fourth objection raised by learned counsel for the States with respect to the recommendations against the vacancies created by death or superannuation. We find that Justice Sinha has taken meticulous care in this regard while making recommendations as to whether the incumbents were working before the cut of date or not at the relevant time, and only thereafter recommendations have been made. With the passage of time, the factual scenario was bound to change including who held the post at the particular point of time. Therefore, the recommendations made are appropriate and in accordance with law.

19. Coming to objection that some posts which had fallen vacant due to the transfers have been ordered to be given to the incumbents who were found eligible. We find that this Court has made reference to Commission to examine the individual claims and they have been examined and considered in the orders passed by the Commission and that transfers were bound to happen after lapse of reasonable time would not defeat the rights

of person to hold the posts. As such, for aforesaid reasons, thus, we find the objection to be untenable.â??

15. The Apex Court held out that the recommendation with respect to the incumbents in whose favour direction has been issued by the Justice S.B.

Sinha, has to be acted upon by the State government and as such be implemented within an outer limit of three months.

16. The Apex Court while accepting the favourable recommendation directed for implementation of the same forthwith granted liberty to those who

were aggrieved by the report in para 21 of the judgment, which reads as follows:-

With respect to the cases of incumbents not found fit for acceptance by the Commission. They are free to approach the concerned High Court, as

prayed, for redressal of their grievance, if they so desire. In case petitions re filed before the High Court, it is expected that petitions would be dealt

with as expeditiously as possible preferably within a period of one year.

17. In view of the aforesaid factual background, it would be appropriate to first underline the scope of present writ application. From the judgment in

Mahasangh case and the term of reference in Krishnandan Yadav Case, it is evidently clear that the scope of scrutiny is confined to parameters fixed

by the Apex Court in Mahasangh Case i.e.

(A) At the touch stone of report of Justice S.C. Agarwal Commission,

(B) Decision of government contained in letter No. 181C and similar other letters with regard to provisional absorption of teaching and non teaching

employee of the colleges made constituent in 4th phase, as all such letters are governmental on the line of letter No. 181 (C)

(C) Scrutiny in terms of para 72 and para 73 (4) of Mahasangh judgment,

(D) The scope of improvement by Justice S.B. Sinha Commission on reference in Krishnandan Yadav, i.e with reference to the letter of State

government dated 30.01.1979 by which Justice Sinha has widened the scope of recommended post. His Lordship interpreted the letter dated.

30.01.1979, to mean that if the affiliation was pending on the cut of date or the affiliation was granted on the cut of date then in terms of letter of the

state government dated 30.1.1979 the post has to be treated to be recommended post pending before the State government. Justice Sinha has also

added that those who were working regularly and if their exist vacancies on account of death, retirement or transfer, may be a relevant factor for

absorption of those teaching and non-teaching employees. This issue is now relevant in view of the facts that the counsel appearing on behalf of the

States of Bihar and Jharkhand has raised specific objection on this issue in Krishnandan Yadav and the Apex Court has rejected that objection

meaning thereby that the principle discussion by Justice Sinha in allowing absorption of those teaching and non-teaching employees against clear cut

vacancies available due to death, retirement or transfer for the purpose of absorption.

18. In the aforesaid backdrop of the facts and circumstances while hearing this writ petition, this Court has indicated in the order dated 10.4.2018 the

scope of scrutiny in the present writ application and requested the Advocate General to assist the Court. The order-sheet of this case would indicate

that on different dates the case was adjourned to facilitate the Advocate General to assist the Court. Finally, the learned Advocate General has made

submission before this Court that he proposes to file written notes of arguments instead of making oral submission. Thereafter parties were heard

once again at length.

19. Learned counsel for the Magadh University has made submission and filed written notes of arguments.

20. On behalf of the petitioners basically the following submission have been made.

(i) The employees whose names figure in the report of Justice Agarwal Commission are entitled to be absorb and the University cannot make a

departure and ignore the case of teaching and non-teaching employee contrary to the recommendation of the Justice Agarwal Commission.

(ii) The University is required to take decision taking into consideration the Judgment of the Apex Court in Mahasangh Case not only by referring to

the report of Justice Agarwal Commission but also to consider the name of persons who figures in letter No. 181(C) or similar such letter including

Letter No.38 (C), 36 (C) and 25 (C).

(iii) The argument was advanced that the University once absorbed the teaching and non-teaching employees in terms of the decision of the Apex

Court, after the conscious decision of the University, the university becomes functus officio and it has no jurisdiction to review its order.

(iv) The argument advanced with reference to report of Justice S.B. Sinha

Commission that the posts sanctioned or recommended have to be construed liberally to include the teaching and non-teaching employee appointed in the college before takeover, considering the facts that the affiliation of the subject in which the teachers and support staff have been appointed, as affiliation matter was pending before the State government at the time of takeover or affiliation was granted on the date of takeover. In addition thereto referring to the judgment of the Apex Court which has approved the report of Justice S.B. Sinha in Krishnandan Yadav case the Court should consider the case on the same line and issue direction to the University to consider the case of those teaching and non-teaching employees who were regularly working in the college if appointed before the takeover of the college with requisite qualification if there are posts available on account of death retirement or transfer, on the line of reasoning which was the basis of recommendation of the Justice S.B. Sinha commission and all objections of the States of Bihar and Jharkhand were rejected by the Apex Court in Krishnandan Yadav Case.

(V) Some of the counsel for the petitioners have also argued that University while reviewing the earlier notification of absorption has not provided opportunity of hearing before reviewing the notification and as such the decisions of review is also violation of principles of natural justice.

21. On behalf of the State as indicated above no oral submission was made and written notes of arguments have been filed, which is re-produced

hereinbelow for ready reference:-

â??Written submission on behalf Respondent No. 1 and 2 in connection with C.W.J.C. No. 17670 of 2017 (Akhilanand Singh & Ors. Vs The State of Bihar & others and other analogous cases)

1. That at the outset it is important to state that in the present batch cases, the facts of each of the cases are different in view of the different order passed by the Honâ??ble Justice S.B.Sinha Commission on the facts of the claim of the claimants alleged therein.

2. That in this connection it is further stated that Honâ??ble Justice S. B. Sinha Commission has examined each of the cases on the anvil of

Honâ??ble Justice Agrawal Commission report dated 10.12.2001 and the decision of the Supreme Court in State of Bihar Vs Bihar Rajya MSES&K

Maha Sangha and passed order accordingly. Therefore, it would be proper to

hear each of the cases separately in the light of the framework fixed by both the commissions, so as to find out any discrepancy and set it right.

3. That the first question is whether the university has any jurisdiction to review its decision, which was taken by the respective university in

exercise of power under Section 4(1)(14) in terms of the direction in Mahasangh case and if the university lacks power of review then the entire

action of the university to review the earlier decision of absorption is nullity and cannot in any manner frustrate the right accrued to the teaching and

non-teaching staff, whose case was considered and who were absorbed in terms of Section 4(1)(14) of the Act.

(i) That the whole controversy has arisen because of the manner in which the universities have absorbed teaching and non-teaching staff, in exercise

of power conferred under Section 4(1)(14) of the Act. Clause 14 of section 4(I) of the Act with its proviso needs full reproduction:-

4. Purpose and powers of the University.

(I) There shall be the following purposes and powers of the University.

.....

.....

(14) to enter into agreement with other bodies and persons for promoting the purposes of this Act and to assume the management of any institution

under them and to take over its assets and liabilities :

Provided that before entering into such an agreement the University shall obtain the sanction of the State Government, or shall do so upon receiving

such a proposal from the State Government:

Provided further that if at any time any irregularity is found in determination and payment of any pay, special pay or allowances, or in any appointment

in an institution taken over by the university in its management under such an agreement, then, notwithstanding anything to the contrary contained in

this Act, the University shall have the powers to take decisions after reviewing it and such a decision shall be final and binding.

(ii) That a bare reading of the aforesaid provision would reveal that the said provision is applied at the time when a university assume the management

of any institution under them and to take over its assets and liabilities, of course with a rider that such exercise shall be taken only after sanction of the

State Government or upon receiving such proposal from the State Government.

(iii) That when the university taken an exercise under the aforesaid provision, in connection with fourth phase constituent colleges, several

controversies arose and ultimately caused the constitution of two Commissions by Honâ??ble Supreme Court of India.

(iv) That it is stated that the decision taken by the university in exercise of power conferred under Section 4(1)(14) of the Act cannot be said to be

conclusive or final otherwise there was no need to constitute the aforesaid Two Commissions by Honâ??ble Supreme Court. Therefore, no question

arises of reviewing the earlier order passed under Section 4(1)(14) of the Act by the university.

(v) That in other words what has to be done by the university in exercise of power conferred to it under Section 4(1)(14) of the Act, has been done by

the aforesaid Two commissions.

(vi) That it is humbly stated that not only the decision taken by the university at the time of taking over of fourth phase constituent colleges under

Section 4(1)(14) of the Act caused controversy/dispute but the subsequent exercise under the said provision, in terms of the direction given in

Mahasangh Case has also cause similar controversy/dispute, which necessitated the constitution of the Honâ??ble Justice S. B. Sinha Commission

by Honâ??ble Supreme Court of India.

(vii) That therefore it is not a question of whether the university has the power to review its earlier order passed in exercise of power under Section

4(1)(14) of the Act rather the issue is to take decision in the light of the direction given by the Honâ??ble Commissions, whose report has been

accepted by the Honâ??ble Supreme Court.

(viii) That in this connection it is further stated that the university is not on its own passing a fresh order in exercise of power conferred under Section

4(1)

(14) of the Act of the Act, but the university has been directed by the Honâ??ble Supreme Court to do so, hence in this view of the matter also, the

question of having power to review its earlier order by the university is not relevant.

4. That the second question of law relates to conflict between the power conferred under Section 4(1)(14) of the Act and

(i) This issue has been dealt with in detail by the Honâ??ble Supreme Court Mahasangh Case. The relevant para is being reproduced herein below for the better appreciation of this fact:

â??If we examine the scheme of the Act and object of the two provisions, they seem to operate in two different fields and there is no conflict in them. Section 35 is expressly applicable to affiliated colleges and mandates that new posts giving rise to financial liabilities cannot be created and appointments against them cannot be made without prior approval of the State Government.

In contrast, clause 14 of section 4(I) operates in a totally different field that is where on grant of sanction by the government or on receiving a proposal from the State Government, the university enters into an agreement with any affiliated or non-affiliated institution to take over its management with assets and liabilities. It is with regard to such institutions which are taken over with the staff working in them that the university has been given exclusive power to review the appointments made in such institution and take a decision regarding absorption of the staff with due regard to the regularity or otherwise of their appointments. Clause 14 of section 4(I), by the language employed in it, contemplates taking over of even such institutions where there may be staff employed or working without valid sanction of the posts. University is empowered to make a review of such appointments and consider absorption of such employees. The non-obstante clause using the expression â??notwithstanding anything to the contrary contained in this Actâ?? has to be construed and given effect to with the above object and purpose evinced by express language employed in clause 14 which enables the university not only to take over the assets and liabilities of the institution but also the staff appointed regularly or otherwise.

Section 35 is applicable to all â??affiliated collegesâ?? but does not cover a situation at a stage when an â??affiliated collegeâ?? is proposed to be taken over as â??constituent collegeâ?? by the university on the sanction or proposal of the State Government. The subject of taking over institution affiliated or non-affiliated with assets, liabilities and staff is regulated by provisions of clause 14 of Section 4(I) alone. Section 35 of the Act requiring obtaining of prior approval to creation of posts or appointments against them, is not intended to restrict the powers of university in absorbing staff of

institutions taken over in accordance with the terms of agreement entered into with the governing bodies of those institutions. It is a different matter

that in taking a decision for absorbing the staff of non-affiliated or affiliated institution under an agreement to be entered into with the Governing

Bodies or Managements of such institution, the university may bestow due regard to the validity or otherwise of the appointments where the institution

is an affiliated college and the qualifications of persons appointed. University may also take into consideration the provisions of section 35 to decide

whether any appointment made against posts, without prior approval of the State Government, should be recognized for absorption or not.â??

(ii) That it is humbly stated that the aforesaid authoritative pronouncement has rest the controversy in between provision contained in Section 4(1)(14)

and Section 35 of the Act.

5. That the third question of law framed by this Honâ??ble Court is as follows:

Thirdly: The Court has to consider the case of teaching and non-teaching staff for absorption in terms of the principle discussed in the Mahasangh

Case, so far as binding effect as to the decision of the Government with regard to the provisional absorption as contained in letter no. 181(C) or similar

such letters.

(i) That it is humbly stated that in order to answer the aforesaid question of law, it would be proper and appropriate to bring on record the report dated

22.08.2016 (annexed to supplementary counter affidavit filed on behalf of present respondent) submitted by the Honâ??ble Justice S.B. Sinha

Commission to the Honâ??ble Supreme Court. Â

(ii) That it is stated that para 137 of the aforesaid report speaks about the determination of the number of sanctioned and recommended posts as relied

upon vide Annexure-I and II by the Honâ??ble Justice Agrawal Commission. The said para is being produced herein below:

â??137. Be it noted that this commission, however, with a view to determine the number of sanctioned and recommended posts has relied upon only

Annexures-I and II appended to the said report and not on the subsequent government letters, unless, a direct link was found with the document issued

by the universities prior to the cut-off date.â??

(iii) That in this connection it is further stated that para 140 and 141 of the aforesaid report is also relevant, which is produced herein below:

140 So far as the said government order dated 181(c) dated 18.12.1989 is concerned, it was opined that it comprised of three categories of teachers or non-teaching staff:

A. The posts which were recommended prior to the cut off date.

B. The cases where the affiliation of subjects was pending and affiliation and creation of additional posts whereof were granted coupled with the posts; and

C. The cases where recommendations or appointments had been made after the cut-off date. 141 The commission in its report has taken into consideration the first two categories and not the cases which fall in the third category.

6. That it is important to mention here that regarding the other issue i.e. filling up the vacancies that would have arisen on account of retirement or death or transfer of teaching and non teaching staff.

(i) That it is important to mention here that regarding the other issue i.e. filling up the vacancies that would have arisen on account of retirement or

death or transfer of teaching and non teaching staff whose services are absorbed with effect from the date of conversion, it has been observed by the

Hon'ble Justice Agrawal Commission, at page 65 of its Report, stated as under:

Moreover subsequent to the date of conversion of the college into a constituent college some, vacancies would have arisen on account of

retirement or death of teachers whose services are absorbed with effect from the date of conversion and teachers who had been working in the

college on the date of conversion and are eligible for consideration for appointment against such vacancies could be considered for absorption against

such vacancies.

(ii) That it is stated that the State of Bihar made an objection to the aforesaid direction for absorption in such a contingency, which had been rejected.

(iii) That it is stated that keeping the aforesaid direction given by the Hon'ble Justice Agrawal Commission, the Hon'ble Justice S. B. Sinha

Commission has observed in para 158 to 162 of the order given on the Scope and ambit of the said commission, which are being produced herein

below for the better appreciation of this fact:

158. This Commission admittedly cannot sit over the observations made by

the Agrawal Commission or the Supreme Court of India, although there are some other decisions of the Supreme Court of India to the contrary.

159. In short it may be opined, subject to the observations made hereinafter, that where subsequent sanctioning of the posts has a relationship directly or indirectly with the recommendations made upto the cut-off date, but had been taken into consideration by the State of Bihar and State of Jharkhand, their claim petitions should be considered on merit, but where the candidates come within the purview of the posts sanctioned at a later date without having any link with the recommendations made prior to the cut-off date, their cases cannot be considered.

160. This commission has been informed that there may be certain employees whose names find place in Government Letter No. 181(C), or the list attached with the agreement, or some other document created prior to or after the cut-off date, but has a direct co-relationship therewith. In such cases, the claim petitions would be entertainable.

161. Agrawal Commission, however, as indicated heretobefore, has referred only to four letters of recommendation, and there is no other document issued prior to the cut-off dates. If, however, there are other documents in this behalf, the same may be brought to the notice of the Commission.

162. However, keeping in view a large number of Supreme Court decisions including Uma Debi (supra), the State, if necessary, may obtain requisite clarifications from the Honâ??ble Supreme Court of India in this behalf.â??

(iv) That it is stated that as per the observation made in para 162 of the aforesaid order, the State of Bihar approached the Honâ??ble Supreme Court for clarification but the Honâ??ble Supreme Court declined to clarify at that stage.

(v) That it is relevant to mention here that the State of Bihar has filed a review application for reviewing the order dated 31.08.2017 passed in CIVIL APPEAL NO.2703 OF 2017, which is pending consideration before Honâ??ble Supreme Court.

(vi) That it is pertinent to mention here that the a bare reading of the direction contained in both the reports i.e. Honâ??ble Justice Agrawal

Commission report as well as Honâ??ble Justice S. B. Sinha Commission report, it is clear that absorption on the post arising out of retirement and

death, cannot be in perpetuity but will be subject to conditions mentioned in both

the reports.

(vii) That it is stated that it has clearly been observed by the Honâ??ble Justice Agrawal Commission in the aforesaid para that only those teachers

who had been working in the college on the date of conversion, eligible for consideration for appointment against such vacancies could be considered

for absorption against such vacancies

(viii) That it is important to mention here that the Honâ??ble Supreme Court has accepted the aforesaid report dated 22.08.2016 submitted by the

Honâ??ble Justice S. B. Sinha Commission.

7. That it is humbly stated that the other issues have already been dealt with in the report submitted by the Honâ??ble S. B. Sinha Commission,

however it is most humbly stated that the scope of this Honâ??ble Court is very limited and it relates to the cases which were rejected by the

Honâ??ble Justice S. B. Sinha Commission.

8. That in this connection it is further stated that any order of absorption cannot go beyond the direction and observation made by aforesaid both the

commissions.

9. That it is most humbly stated that Honâ??ble Justice S. B. Sinha Commission has examined each of the cases on the anvil of Honâ??ble Justice

Agrawal Commission report dated 10.12.2001 and the decision of the Supreme Court in State of Bihar Vs Bihar Rajya MSESKE Maha Sangha and

passed order accordingly. Therefore, it would be proper to hear each of the cases separately in the light of the framework fixed by both the

commissions, so as to find out any discrepancy and set it right.â??

22. Thus from the written notes of argument of the State it is manifest that para 3 to 9 of the written notes of argument is the reflection of the stand of

the State in the present Batch of writ applications.

23. This Court has advantage of hearing Mr. Shivendra Kishore, learned counsel appearing on behalf of the Magadh University and submission of

other Universitiesâ?? counsels. In addition thereto Magadh University also filed their written notes of arguments. The written notes of arguments of

the Magadh University reads as follows:-

â??1. That, petitioners have claimed to have been appointed on the post of lecturers in the Department of â??Public Administrationâ?? and

Prakrit in S.B.A.N. College, Darheta Lari, prior to conversion of the college into a constituent unit.

2. That the genesis of the 4th phase constituent colleges lies way back in mid-1986 when 44 colleges were made constituent unit under different

Universities in undivided Bihar wherein State government vide its notification contained in letter no. 1095 dated 19.08.1986 took a decision to convert

36 affiliated colleges into constituent unit under different Universities with certain terms and conditions, followed by letter dated 03.07.87 few more

colleges were decided to be converted into constituent colleges. Total 40 colleges were made constituent commonly known as 4th Phase

Constituent Colleges out of which 8 colleges under Magadh University Bodhgaya were converted into constituent colleges.

3. That the Magadh University was instructed to prepare the list of employees working on sanctioned post, working on recommended post, sent to the

State government for creating additional post and granting affiliation received up to 30.04.1986 (cut-off date with the government).

4. That the State government issued letter No.181/C dated 18.12.89, 36/C dated 24.02.90 notifying formal absorption of teachers and letter No.25/C

dated 12.09.90 notifying formal absorption of non-teaching employees.

5. That at this juncture, Mahasangh filed writ application being CWJC No.4021/95 which was finally decided on 31.01.97; reported in 1997 (1) PLJR

533 giving specific direction in paragraph no.24, 25 and 26 thereof directing the Universities to take decision in the light of observation in accordance

with the provisions of Section 4(1)(14) of the Universities Act.

6. That against the order/judgment dated 31.01.97 passed in CWJC No.4021/95 the State government preferred SLP(C) No.10452/1997, subsequently

converted as CA No.6098 of 97. The Hon'ble apex court vide its order dated 12.10.2001 appointed one-member commission(Hon'ble Mr.

Justice S.C. Agrawal) so as to identify the alleged bogus appointees in various affiliated colleges to sneaked into the services of the erstwhile affiliated

colleges in connivance with authorities of various colleges and Universities of the State of Bihar. The Hon'ble apex court while asking the

Commission to go into the various controversies with regard to absorption of employees of the erstwhile affiliated colleges in the service of the

converted constituent colleges by formulating terms of reference.

7. That one-member commission examined the controversies as per terms of reference after hearing the concerned parties submitted its report before the apex court on 19.12.2003.

8. That the Honâ??ble apex court vide its order dated

12.10.2004, while disposing of CA No. 6098 of 1997 in its paragraph no.73 reported in (2005) 9SCC directed the University to take a final decision

based on the report of Enquiry Commission with following conclusion:-

Â (1) â??The Judgment of the High Court to the extent of interpretation placed by it on the provisions of Section 4(1)(14) and Section 35 with the

directions issued in paras 24 to 26 herein is hereby confirmed for the reasons recorded by us above.

(2) The report of the commission of Enquiry of the Honâ??ble Justice S.C. Agrawal (Retd.) is accepted and all objections filed against the said

report are rejected.

(3) The members of the staff in various affiliated colleges identified and named in list-

(I) being appointees against the sanctioned posts shall be absorbed and final order to that effect shall be issued by the University concerned.

(4) The Universities shall take a decision u/s.

4(1)(14) of the Act in the matter of absorption of appointees named in List-(II) of the report of the Commission, being appointees against post for

which recommendations were sent by the Universities to the State up to the cut-off date in accordance with the decisions of the state Government

conveyed in its letter dated

19.08.1986 followed by letters dated

25.08.1986 and 12.06.1987

On considering the question of absorption of appointees named in List (II) of the report of the enquiry commission, the Universities concerned shall

rely on the contents of the report of the enquiry commission and the present judgment of this court.

(5) That appointees mentioned in List (III) being appointees against posts for which recommendations were sent by the Universities to the State

government after the cut-off date or those working against the posts for which no recommendations were sent for approval of the State government,

have no right of being considered for absorption whatever may be the fortuitous circumstances or otherwise in the matter of not sending

recommendations for sanction of their cases. The negative report of the enquiry commission with regard to List (III) is accepted and the Universities

are directed to exclude all such appointees named in List (III) from consideration for absorption.

(6) A large number of objections to the report of enquiry commission filed before us by associations of the employees and individuals pertained to the

alleged lack of prescribed qualification for the post on which they are working. All those objections have not been recommended for absorption in the

report of the enquiry commission. Decision in individual cases with due regard to the qualification of each employee and corresponding statute

applicable at the relevant time prescribing qualifications, if any, for the teaching and non-teaching posts, shall be taken by the universities bases on the

findings in the report of Justice Agrawal Commission and in the light of legal position explained above.â??

9. That the decision of the Honâ??ble apex court was acted upon by constituting 9-man committee for verification and screening the list for

absorption of teaching and non-teaching employees. The list was approved by the Syndicate followed by issue of consequential notification dated

08.05.2005 u/s 4(1) (14) of the Act. Petitioners were absorbed. They were paid their salary until March 2008 which was stopped in compliance of

strict direction of the State government.

10. That in the light of instruction of the State government, Magadh University issued a notification dated 21.07.2008 withholding the payment of the

petitioners.

11. That the University constituted a 3-man committee to scrutinize the persons who are in the categories of â??Sâ?? and â??Râ?? â??NRâ?? and

R-II. Recommendation of the 3-man committee was placed before the Syndicate which approved the same whereafter Magadh University issued

letter No.228/G-ID and 229/G-ID both dated 09.07.09 by which partial modification was made in the notification dated 08.05.2005 which was never

challenged by the petitioner before the competent court of law.

12. That some person aggrieved of letter No.228 and 229 both dated 09.07.09 filed writ application for payment of their salary from May 2008 which

travelled up to the Honâ??ble apex court which constituted one-man Commission namely Honâ??ble Mr. Justice S.B. Sinha Commission to decide

on the basis of relevant parameters prescribed by the Honâ??ble Supreme Court in the light of report of Justice Agrawal Commission.

13. That the State Government vide various letters directed the University to stop taking work from employees named in R-II and NR category

followed by letter dated 15.09.09 directing the University to remove them from service.

14. That many writ applications were filed against withholding of salary and for not assigning any work which ultimately travelled to Honâ??ble

Supreme Court which appointed Honâ??ble Justice S.B. Sinha as one-man commission with certain terms of reference.

15. That the petitioners submitted their claim before Honâ??ble Justice S.B. Sinha Commission which were dismissed on the ground that no

recommendation to grant affiliation could have been made by the University during the period from 01.05.86 to

31.07.86. The University has not made any recommendation or grant of affiliation for the Public Administration and Prakrit prior to the cut-off date.

The Honâ??ble Agrawal Commissions report does not show any post of Public Administration and Prakrit.

16. That neither Honâ??ble Mr. justice S.C. Agrawal Commission nor Honâ??ble Mr. Justice S.B. Sinha Commission recommended the case of

petitioners.

17. The present writ application is devoid of merit and fit to be dismissed.

18. That each writ applications have their own different and distinct facts and have been considered by the two Commissions namely Honâ??ble Mr.

Justice S.C. Agrawal and Honâ??ble Mr. justice S.B. Sinha who passed separate orders with observations and directions; as such each writ

application is required to be heard separately.

19. That it is submitted that the written submission filed on behalf of respondent State is adopted by Magadh University since the entire funding is

made by the State Government.â??

24. Thus from the written notes of argument of Magadh University is apparent that the University took decision of review at the dictate of the State

Government and also mentioned in Para

19 that the University adopts the written submission of State as entire funding is made by the State Government.

25. In view of the judgment of the Apex Court in the case of Partappur Suger Mill Vs. Cane Commissioner: AIR 1970 SC 1896, the action / decision

of the University at the dictate of the State Government is nullity.

26. It is noted here that on behalf of the petitioners in most of the cases argument was advanced on the same line as indicated in the preceding

paragraphs of this judgment and as such in order to avoid repetition, the Court has noted the basic argument of the parties and deem it fit and proper to

first discuss rival contention of the parties and while deciding the individual cases reference will be made to the factual aspects of each writ petition if

necessary.

27. Since the Advocate General and Mr. Pushkar Naryan Sahi appearing on behalf of the B.N. Mandal University are same on the point of their

submissions on the prayer made in the writ petition, the Court deem fit and proper to first consider the submission made on behalf of the learned

Advocate General in the written notes of arguments. From the statements made in para 3 of the written notes of argument, which is quoted in the

preceding paragraph, it would manifest that focus is made that the power under Section 4 (1) (14) is of the University but in the present scenario that

power was exercised by two commissions, namely, Justice S.C. Agrawal Commission and Justice S.B. Sinha Commission and as such the submission

is that it is not a case where the University has power to review its earlier decision taken in terms of Section 4(1)(14) but the issue is to take decision

in the light of the report of the Commission which was accepted by the Honâ??ble Supreme Court. Learned Advocate General, in the aforesaid

circumstances, submits that question of power of review is immaterial. So far as the conflict between Section 4 (1) (14) and Section 35, the Advocate

General conceded that in view of the judgment of the Apex Court, the issue is now no more res integra. In the matter of letter No. 181C reference

was made to the report of Justice S.B. Sinha, particularly para 140 and 141 and submissions was advanced that the cases where recommendation and

appointment have been made after cut off date i.e. in relation to the conversion, the commission has excluded the category of teaching and non-

teaching employees appointment where recommendation and appointment have

been made after cut off date. However, he submitted that the applications which were recommended and was pending additional post were admissible. In other words, the learned Advocate General appearing on behalf of the State admits that where affiliation matter was pending on cut off date the additional post is admissible for the purpose of counting available post for absorption. So far as the vacancies occurring on account of death, retirement and transfer is concerned, the learned Advocate General referred to the report of Justice S.B. Sinha Commission. The relevant part of the submission of the learned Advocate General in this regard is in sub para (vii) of paragraph 6 of the written notes of arguments which is quoted below:-

“(vii) That it is stated that it has clearly been observed by the Hon’ble Justice Agrawal Commission in the aforesaid para that only those teachers who had been working in the college on the date of conversion, eligible for consideration for appointment against such vacancies could be considered for absorption against such vacancies.”

28. In view of the aforesaid, it is manifest that the vacant post is available for absorption of those teaching and non-teaching employees if they were appointed on date of conversion and they were eligible for consideration if the vacancies occurred on account of death, retirement or transfer of the incumbents working on sanctioned post.

29. In view of the aforesaid submission, which by and large accepts the position that not only justice Agarwal Commission report but in addition thereto letter of government including letter 181C and other letters is relevant for the purpose of considering the case for absorption. The matter of affiliation pending is also relevant for the purpose of consideration of sanction and consideration of the additional post, as per the stand of the State Government in view of the consideration of the written notes of the arguments.

30. It is also admitted on behalf of the State that the sanction post if falls vacant on account of death, retirement or transfer subsequent to the cut off date may be available for consideration of case of those incumbents who were appointed on the date of conversion and were eligible on the date of appointment for their consideration against the post which fall vacant on account of death, retirement or transfer.

31. On behalf of the Magadh University, Mr. Shivendra Kishore, learned Senior

advocate apart from other submissions as discussed herein above has drawn distinction between review and correction. He submits that review is not permissible under the University Act but at the same time the University has jurisdiction to correct the mistakes which has occurred.

32. In the instant case, the court has no hesitation in holding that the University took conscious decision after due deliberation in the meeting of the Syndicate and as such the submission that correction was made by the University does not appeal to this Court as this is a case of due exercise of diligence before taking decision and once they have taken decision, it is not a clerical mistake and as such review in the name of correction is impermissible. Correction is always admissible if it is correction of patent error or clerical error. The Court does not find in the fact scenario that the decision which was reviewed by the University was correction of error clerical in nature but in substantive nature.

It is a case of review and in the absence of statutory provisions authorizing the University to review, the Court does not approve the action of the

University particularly in those cases where the earlier decision of University sought to be reviewed is backed up by the report of Justice Agarwal

Commission and the judgment of Apex Court which authorized the University to take decision in terms of Section 4 (1) (14) and while taking such

decision if the University has taken into consideration the letter no. 181C and similar such letters of the State Government whereby the State

government has decided to provisionally absorbed the services of teaching and non-teaching employees, the decision of absorption by the university

does not fall in the category of correction and accordingly the Court holds and declare that action of the University reviewing the previous notification

of absorption is nullity as without jurisdiction. In addition thereto the decision to review the notification of absorption at the dictate of the State

Government is nullity in the eye of law in view of the discussion in Para 25 of this judgment.

33. In view of the discussion made above, the Court hereby clarify that in the case of correction of clerical error the University has competence and

jurisdiction but correction does not confer the University the power of review decision of substantive nature.

Teaching and non-teaching employees whose cases recommended favourably

and find reference in the report of Justice S.C. Agrawal Commission and judgment in Mahasanghâ??s case are entitled to absorption in terms of the judgment of Mahasanghâ??s case. In view of the limited scope of discretion of the University under para 72 and para 73 (4) of judgment of Mahasanghâ??s case, the University was only required to examine the claim of those teaching and non-teaching employees, whose names were not mentioned in the report of Justice S.C. Agrawal Commission. If posts are available or if there is any error in categorization, for instance in a case where Justice Agrawal Commission has noted availability of the post but while considering the case of individual, wrongly categorized in RII instead of RI. Correction was available at the level of the University in terms of the direction of the Apex Court including question of qualification.

34. In matters where the name of individual teaching and non-teaching employee figures in the provisional list of absorption contained in letter No. 181

C, 38C and 36 C and so far as the non-teaching employees 25C are concerned, the University was required to recognize their cases as eligible for

absorption in view of the judgment in Mahasanghâ??s case and the University was required to issue appropriate notification in the light of the letter

No. 181 C, 38C, 36C and 25C and as such the Court does not approve the action of the University in reviewing the notification of absorption taken by

the University if supported by the report of Justice Agarwal Commission, Judgment in Mahasanghâ??s Case, letter No. 181 (C), 38 (C), 36 (C) and

25 (C).

35 So far as the submission that the order of review of notification of absorption is unsustainable as it was taken without opportunity of hearing is

concerned, the Court finds it difficult to record any finding in the absence of specific pleading in this regard although the principles is well settled by

the catena of judgments of Apex Court that no order visiting evil or civil consequence can be passed without opportunity of hearing.

36. In view of the report of Justice S.B. Sinha and the decision of the Apex Court in Krishnandan Yadavâ??s case, the University is now required to

include the case of those who were appointed in the college before the takeover in case where the affiliation of the particular subject was pending

before the Government before the cut off date, the University is hereby directed to consider the case of those teaching employees who were

appointed against the post admissible in terms of letter dated 30.1.1979 of the State Government which clarifies that due to delay in the process of

sanction of post on affiliation itself, one post shall be deemed to be sanctioned, on affiliation at intermediate level there should be two posts on

affiliation at graduation level and three posts on affiliation at honours level.

37. In view of the above letter of the State Government dated 30.01.1979, the University is required to consider the case of those teaching employees,

who were appointed in the subject concerned where recommendation for affiliation was pending before the cut off date.

38. Lastly the University is required to consider the case of those employees who were appointed in the erstwhile affiliated college on the date prior to

take over having the eligibility for the post, if the post was sanctioned and now available on account of death, retirement or transfer. Necessary

decision in this regard may be taken by the University on consideration of the individual cases within a period of four months from the date of

receipt/production of a copy of this order.

39. In view of the above, the University is directed to take decision with regard to the individual cases in the light of the discussions above within a

time frame of four months and in case the individual is found covered by the aforesaid discussion, necessary decision and notification may be issued

by the University within the time frame indicated above.

40. It is needless to state here that in the matter of absorption the Supreme Court has categorically held out that the University has last say in the

matter and the dictate of the State in the matter of absorption is unsustainable and held to be without jurisdiction.

In view of the above the direction issued by the State Government not to make payment to the people who were absorbed is also held to be

unsustainable. The State responsibility is to provide fund for payment in terms of the obligation under the Bihar State Universities Act.

41. The respondent-University is directed to restore the petitioners the status of absorbed employee in terms of the original decision of absorption and

notification considering the fact that the name of the petitioners figure in the letter No. 181(C).

42. So far as, petitioner Nos. 5 and 6 in the aforesaid writ petition is concerned, the University is required to work out the entitlement of the heirs of

the petitioner Nos. 5 and 6 for payment of monetary benefits admissible to the heirs of the ex-employees. Necessary decision in this regard must be

taken by the University within a maximum period of four months from the date of receipt/production of a copy of this order.

43. It goes without saying that once the University takes favourable decision on the claim of the respective teaching and non-teaching employees, the

University will work out the entitlement and request the State Government for grant of additional fund so that the consequential monetary benefit may

be extended to the petitioners.

44. With the aforesaid, writ petition stands allowed and disposed of.