
(2018) 10 PAT CK 0055

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.20790 of 2014

**Dayanand Jha @APPELLANT@Hash Vice Chancellor Kameshwar Singh
Darbhanga**

Date of Decision : 29-10-2018

Acts Referred:

Bihar State Universities Act, 1976 — Section 35

Citation : (2018) 10 PAT CK 0055

Hon'ble Judges : Anil Kumar Upadhyay, J

Bench : Single Bench

Advocate : Ravindra Kumar Sinha, Awadhesh Prasad Sinha, Amarendra Kumar

Final Decision : Disposed off

Judgement

Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel appearing on behalf of the respondent-University.

This writ petition is pending since last four years. The petitioner has filed the instant writ petition for quashing of the order dated 06.09.2014 passed by

the Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga, whereby the claim of the petitioner for payment of salary has

been rejected.

The petitioner had earlier approached this Court in CWJC No. 23303 of 2011 which was disposed of by a Co-ordinate Bench of this Court vide order

dated 13.05.2014. While disposing of the writ petition the Court noted the basic fact that the petitioner is working as Section Officer. The University in

its counter affidavit has not disputed the fact that the petitioner is working in the college. From the pleadings of this case it is admitted factual position

that the petitioner has continuously been working in the college for last nearly 37 years.

The college in question was earlier an affiliated unit. From paragraph-14 of the

counter affidavit filed by the Director, Higher Education, the respondent State has admitted the fact that the college in question was converted into constituent unit in the year 1982-83. Once the college was made a constituent unit in the year 1982-83 the question of sanctioned strength in terms of 1976 Circular lost its significance.

The respondents are not justified in harping on the Circular dated 18.10.1976 to contend that only two posts of Clerk are admissible in Sanskrit

College. Once the college is made a constituent unit by the University, the University is under obligation to take care of staffing pattern and the

workload in the matter of sanction of post and the State is under obligation to accord sanction and adopt posts while exercising jurisdiction under

Section 35 of the Bihar State Universities Act.

Posts are admissible according to the workload and the respondents cannot proceed on the basis that limited posts are available in Sanskrit College

including the college in question whereas other colleges are receiving grant-in-aid including minority institutions. The University is free to increase the

working strength of non-teaching staff based on workload.

Considering the aforesaid, this Court by order dated 08.08.2018 directed the respondents to file counter affidavit pointing out as to how the State can

restrict the post of non-teaching employee in Sanskrit College contrary to need based and allow other institutions receiving grant-in-aid to increase

number of non-teaching employee on need basis as State is State in all activities and cannot adopt different yardstick. There is no answer by the

respondents in the present counter affidavit whereas the respondents by their sweet will have admitted the fact that the petitioner is working in the

college which was made a constituent unit in 1982 for the last 37 years.

The respondents are required to work out the entitlement of the petitioner for payment of salary considering the workload of the college in question

and the fact that the petitioner has been regularly working for nearly 37 years, particularly in view of the principles laid down by the Apex Court in the

case of Amarkant Rai vs. State of Bihar & Ors. [(2015) 8 SCC 265]. Necessary decision with regard to approval of the service of the petitioner and

consequential benefits may be taken by the respondent University within sixty days and thereafter the State Government may take appropriate

decision in the light of the policy decision contained in letter no. 1820 dated

18.11.1998 which was formulated in terms of the case of Braj Kishore Singh

vs State of Bihar & Ors. [1997(1) PLJR 509] within a further period of two months from the date of decision of the University. The State

Government is also required to consider the case of the petitioner in the light of the decision of the Apex Court in the case of Amarkant Rai (supra).

With the aforesaid, the writ petition stands disposed of.