
(2020) 10 JH CK 0034

In the Jharkhand High Court

Case No : Writ Petition(S) No. 6491, 6503 Of 2017

Jay Prakash Narayan And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Bihar State University Act, 1976 — Section 2(c), 2(i), 4(1)(14), 14, 35
Constitution Of India, 1950 — Article 166

Citation : (2020) 10 JH CK 0034

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : A.K. Das, Swati Shalini, Kumar Vaibhav, Ashish Kumar, Ankit Kumar, Dr. Ashok Kumar Singh

Final Decision : Allowed

Judgement

1. Heard, Mr. A.K. Das and Mr. Kumar Vaibhav, learned counsel for the petitioners, Mr. Ashish Kumar and Mr. Ankit Kumar, learned counsel for the respondent-State and Dr. Ashok Kumar Singh, learned counsel for the respondent-Kolhan University.

2. These writ petitions have been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. Both the writ petitions have been heard together in view of the facts that the facts and law points are similar.

4. The petitioners in both the writ petitions have prayed to absorb the services of the petitioners against the vacancies created in the Department of Commerce in A.B.M. college, Jamshedpur on retirement of Sri S.K. Mishra and on transfer of Sri D.K. Mitra as the services of the petitioners had previously been already regularized by the Ranchi University vide notification dated 25.06.1998 and

subsequently Ranchi University vide memorandum dated 29.11.2005 proposed to regularize services of the petitioners on the basis of resolution of the Syndicate taken on 19.11.2005. Further prayer has been made for direction upon the respondents to pay all the benefits of revised pay-scale and other consequential benefits of continuous services which the petitioners are rendering since their date of joining on 02.09.1985 and 04.10.1985 respectively.

5. The case of the petitioners in short compass, is that Abdul Bari Memorial College, Jamshedpur was an affiliated College of Ranchi University. The petitioners were appointed as lecturers in the Commerce Department pursuant to a resolution of the General Body vide 28.06.1985. Thereafter, petitioner -Jay Prakash Narayan joined on 02.09.1985 and petitioner Dharendra Dwivedi joined on 04.10.1985. The State of Bihar took a decision and vide letter dated 19.08.1986 directed all Vice Chancellors of various Universities in the then State of Bihar for converting 36 affiliated colleges including the College of the petitioners as constituent colleges. Subsequently, three other colleges were decided to be converted as constituent college under the decision conveyed vide letter dated 03.07.1987, thus, total 40 affiliated colleges were decided to be converted into constituent colleges. The decision of the State Government was conveyed to the Universities and they were accordingly instructed to create a formula of regularization in terms of Section 14 of the Bihar State Universities Act. Thereafter, various steps were taken for absorption of the number of sanctioned posts, proposal for additional post received by the University prior to cut-off date and pending approval of the Government and on 17.01.1987, the Government of Bihar constituted a separate committee issued by the Chairman of the entire University Board to amend the proposal before the cut-off date i.e. 30.04.1986 for creation of post of teachers and non-teaching employees in the affiliated colleges on the report of the said committee which was subsequently recognized on 01.02.1989 to the State Government from which an order for absorption of the employees working against teaching and non-teaching posts vide notification dated 18.12.1989 prepared a list of teachers working on the sanction and recommendation creation prior to cut-off date i.e. 30.04.1986 was disclosed by notification letter no. 181(C) dated 18.12.1989. The said decision led a series of litigations. The Union of the teachers and non-teaching employees moved the Hon'ble Patna High Court in C.W.J.C. No. 4021 of 1995, in which it has been held as under:-

"In that view of the matter, the controversies have not reached a finality as contemplated under Section 4(1)(4) of the Act. This Court, therefore, directs the universities concerned to take steps under sub-section (14) of Section 4(1) 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 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 provisions of Section 4(1)(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 today will continue. With the aforesaid direction this writ petition is allowed to the extent indicated above . No order as to costs."

6. It is further case of the petitioners that pursuant to order passed by the Patna High Court, the University had regularized the services of the lecturers of the petitioners' colleges vide letter dated 25.06.1998. Aggrieved by order of the Patna High Court, the State of Bihar moved the Hon'ble Supreme Court in Civil Appeal No. 6098 of 1997 which was heard alongwith other analogous matters and contempt applications. By order dated 12.10.2001, the Hon'ble Supreme Court appointed Hon'ble Justice S.C. Agrawal, a retired Judge of Hon'ble Supreme Court as one-man enquiry commission to enquire into the following issues:-

"Terms of reference

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 19.08.1986 of the State of Bihar?

2. How many proposals with regard to creation of posts of teachers and non-teaching employees had been submitted to the Education Department of the State of Bihar or Universities before 30.04.1986, the cut-off date mentioned in Appendix' Kha' (p. 208 of SLP) with respect to 36 colleges converted into constituted colleges as per government letter dated 19.08.1986 ?. (List of colleges is at pp. 206-07 of SLP and other dates mentioned in the government communication 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 Colleges Service Commission and whether they possess the basic qualification prescribed by the Act and status ? this exercise will be without prejudice to the contention of the respondents that Section 57-A 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 19.08.1986 and Appendix 'Kha' and the agreement entered into between the university concerned and the constituent college under Section 4(1)(14) of the Bihar State Universities Act, 1976 and other orders of the Government.

7. It is further case of the petitioners that the Commission of Hon'ble Mr. Justice S.C. Agrawal submitted a detailed report wherein the petitioners have been placed in R-II/NR category in Annexure-IV/A and it has been mentioned that the petitioners have been appointed against the post recommended to the University much prior to the cut-off date and the petitioners have been eligible to be considered for absorption. The relevant portion of report of Hon'ble Mr. Justice S.C. Agrawal Commission has been brought on record by way of Annexure-4 of the writ petition. On the basis of the report of the Hon'ble Commission, the Hon'ble Supreme Court by a detailed judgment reported in (2005) 9 SCC 129 (State of Bihar & Ors. Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh) issued certain directions and directed the universities concerned to complete the process of absorption of the staffs of affiliated colleges (teachers and non-teaching) in the manner and to the extent stated in the said judgment within four months from the date of receipt/production of a copy of the order:-

"Conclusions.

:

1. The judgment of the High Court, to the extent of the interpretation placed by it on the provisions of Section 4(1)(14) and Section 35 with the directions issued in paras 24 to 26 therein, is hereby confirmed for the reasons recorded by us above.
2. The report of the Commission of Enquiry of Hon'ble 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 (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 (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 25-8- 1986 and 12-6-1987.

In 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. The appointees mentioned in List (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 may be 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 (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 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.

8. It is further case of the petitioners that the Ranchi University vide its Memo dated 29.11.2005 proposed to regularize the services of the petitioners and others on the basis of a resolution of the Syndicate held on 19.11.2005 against the posts available in other subjects. At page 65 of the Volume 1 of the report of Hon'ble Mr. Justice S.C. Agrawal Commission, it has been specifically mentioned that on post becoming vacant due to death/retirement of the incumbents after conversion of the colleges into constituent colleges, the other persons who have been found suitable for absorption will be absorbed. It has been contended that one Sri S.K. Mishra retired from the post of lecturer in the Department of Commerce on 30.11.2011. Subsequently, large number of objections to the report of Enquiry Commission, were filed and this gave rise to a second round of litigation before the Hon'ble Patna High Court and the matter was referred to the Full bench of Hon'ble Patna High Court who appointed Two Men Commission to advert to following terms of the reference:.

"(i). The employees whose names figured in List-III as has been held by Apex Court in subparagraph-5 of paragraph 73 shall stand excluded.

(ii). The Commission shall adjudge the cases of each of the employees on the anvil of the Justice Agrawal Commission Report and the decision of Mahasangh case (supra), especially keeping in view the paragraphs 61 to 64 and paragraphs 73 and 74.

(iii). The Commission shall also look into the cases of non-teaching staff on the anvil of the judgment passed in Mahasangh case (supra) and the recommendations of Justice Agrawal Commission.

(iv). Each of the writ petitioners shall file their requisite brief before the Commission. The Registrar of the Universities shall produce all relevant records as directed by the Commission failing which they shall be liable for contempt of this Court.

(v). The Commission shall carry out the exercise and finalize the matter by the end of June, 2010."

9. It is further case of the petitioners that the matter moved before the Hon'ble Supreme Court and several Special Leave Petitions were filed against the said order and the Hon'ble Supreme Court by order dated 22.01.2013 once again appointed Hon'ble Mr. Justice S.C. Agrawal to enquire into the following issues:-

"(a)The Commission shall adjudge the claim of each of the employees (both teaching and non-teaching) for absorption in constituent colleges on the anvil of Justice Agrawal 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 four 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 11.03.2010 in L.P.A. No. 1304 of 2009 and concerned matters.

In addition to the same, the persons who were not a party are also permitted to make their representation before the Commission.

For the above-said purposes, 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."

10. It is further case of the petitioners that in view of the inability by Hon'ble Mr. Justice S.C. Agrawal he declined to enquire into the matter, hence, Hon'ble Justice S.B. Sinha, a retired Judge of Hon'ble Supreme Court was appointed to enquire into the matter vide order dated 19.08.2013 who submitted report vide order dated 08.05.2015 and allowed the claim of one similarly situated employee Shailendra Kumar Ishwar whose name figured in List IV/NR in the Hon'ble Justice Agrawal Commission report on the ground that Hon'ble Mr. Justice Agrawal Commission in its report directed the adjustment of such teachers in event of death or retirement of incumbent of the post. However, the claims of the petitioners were rejected vide order dated 08.05.2015 holding that the decision of the University to adjust the lecturer appointed in one subject against the vacant post of other subject is illegal and the persons having been appointed as lecturer in the Department of Commerce could not have been adjusted against

the vacant post of other Department. The University on being noticed appeared and filed a detailed affidavit before the Hon'ble Mr. Justice S.B. Sinha Commission. Subsequently, one Sri D.K. Mitra, Assistant Professor working against the sanctioned post in the Department of Commerce in the college of the petitioners was transferred to the Post Graduate Department of University with effect from 11.03.2015. It has been contended on behalf the petitioners that one more post in the said Department of Commerce fell vacant. Further, 02 more posts became vacant in the Department of Commerce, in the college of the petitioners. It has been contended on behalf of the petitioners that in Mandar College also, similar proposal were moved by the University wherein they sought the absorption of one Sri S.N. Prasad who was appointed as a lecturer in the Department of Economics against a vacant post of lecturer in the subject of Mundari. Similarly, one A.S. Prasad, who was appointed as a lecturer in the Department of Sociology, was sought to be absorbed against the vacant post for the subject of Sanskrit. These two lecturers also filed a similar application before the Hon'ble Mr. Justice S.B. Sinha Commission and their application was allowed and their services were directed to be absorbed. Similarly, one Shishir Kumar, who was appointed as lecturer in the Department of Anthropology in Mandar College was absorbed against a vacant available post for the subject of English at B.N. Jalan College, Sisai and proposal for his absorption has also been approved by Hon'ble Mr. Justice S.B. Sinha Commission. However, on similar grounds, the proposal for absorption of the services of the petitioners was rejected. The name of seven persons including the petitioners were recommended by Hon'ble Mr. Justice S.C. Agrawal Commission for whose sanction a recommendation/request had been made to the University prior to the cut-off date. Out of seven persons, services of 04 persons have already been absorbed and presently only the petitioners are left out and thus the petitioners are receiving salary at unrevised scale i.e. as per the 4 th Pay Revision and are also not getting increment awaiting settlement of dispute. The services of the petitioners have already formally approved and regularized in the year, 1998 in view of the order of the Division Bench However, the benefit of increment and pay revision are not being provided to the petitioners and accordingly, the petitioners have been compelled to moved before the of Hon'ble Mr. Justice S.B. Sinha Commission but the claims of the petitioners have been rejected. The petitioners along with others filed objection before the Hon'ble Supreme Court in Civil Appeal No. 2703 of 2017. The Hon'ble Supreme Court considered objection of the petitioners and similar other persons who have been labeling their claim that on same post which had fallen vacant due to transfer, have been ordered to be given to the incumbent who were found eligible. The Hon'ble Supreme Court observed as under:-

"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 persons to hold the posts. As such, for aforesaid reasons, thus, we find the objection to be untenable.

20. In our opinion, the incumbents with respect to whom the favourable direction have been made by Justice Sinha, have to be acted upon the State Governments, and as such, they be implemented forthwith without any further delay within the outer limit of three months.

21. 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, it is expected that petitions would be dealt with as expeditiously as possible preferably within a period of one year."

On the basis of liberty granted by the Hon'ble Supreme Court, the petitioners have filed the present with petitions before this Court.

11. Learned counsel for the petitioners assailed the impugned action on the ground that the college had recommended the University for sanction of additional two posts in the Department of Commerce for the colleges of the petitioners much prior to cut-off date i.e. 30.04.1986. They submitted that after constituent of colleges, the cut-off date was fixed as 30.04.1986 whereas the petitioners were admittedly appointed prior to the said date. They submitted that Hon'ble Mr. Justice S.C. Agrawal Commission found the petitioners to be eligible for the absorption and the absorption of the petitioners was regularized vide notification dated 25.06.1988 and 25.06.1998 respectively. They further submitted that two posts of lecturer in the Department of Commerce in the college of the petitioners fell vacant on retirement of Sri. S.K. Mishra and on transfer of Sri D.K. Mitra. They submitted that in view of the recommendation made by Hon'ble Mr. Justice S.C. Agrawal Commission, which was accepted by the Hon'ble Supreme Court, the services of the petitioners are liable to be absorbed against the said vacant post. They submitted that that Hon'ble Mr. Justice S.B.Sinha Commission, on one hand, allowed the claim of similarly situated persons, whereas, on the other hand, arbitrarily rejected the claim of the petitioners and therefore, the Hon'ble supreme Court has given liberty to the petitioners to move the their respective High Courts for redressal of their grievances. Thus, the petitioners are entitled for absorption of their services. They further submitted that due to pendency of dispute, the Ranchi University had not given the benefits of 5th and 6th Pay Revision to the petitioners and other annual increments to which the petitioners are entitled. The petitioners are continuously working since 1985 in the colleges and during the relevant time they were full time engaged in the colleges. The petitioners have been appointed against two posts already recommended for sanction by the Ranchi University prior to the cut-off date, they are entitle for regularization of their services. They submitted that the petitioners are working since 1985 in view of the recommendation made by the Hon'ble Mr. Justice S.C. Agrawal Commission, the services of the petitioners are liable to be regularized. The rejection by Hon'ble Mr. Justice S.B.Sinha Commission is not tenable in view of the fact that similarly

situated persons have been provided benefit by Hon'ble Mr. Justice S.B.Sinha Commission whereas the petitioners have been left out. Lastly, it has been submitted on behalf of the petitioners that issue is question has been set at rest in view of the judgment "Akhilanand Singh & Ors. Vs. The State of Bihar & Ors." rendered by the Hon'ble Patna High Court in C.W.J.C. No. 17670 of 2017 dated 17.07.2018. It has been argued on behalf of the petitioners that these writ petitions were decided by the Hon'ble Patna High Court after liberty given by the Hon'ble Supreme Court and thus the case of the petitioners are fully covered with the said judgment.

12. Per contra, Dr. Ashok Kumar Singh, learned counsel appearing for the respondent-Kolhan University submitted that petitioners were working on the vacant sanctioned post of lecturers and the absorption of claimant is pending with the Government of Jharkhand and approval of pay fixation by the department still not been obtained. He submitted that the petitioners may kindly be directed to approach the Government by way of representation and the Government can consider the same.

13. Learned counsel appearing for the respondent-State submitted that the State has got no role in the dispute in question as University has to consider this aspect of the matter.

14. In view of above submission of the learned counsel for the parties, the Court proceeded to examine the contention of the parties. The Hon'ble Apex Court in the case of "State of Bihar Vs. Bihar Rajya MSESCK Mahasangh" reported in (2005) 9 SCC 129 considered the following aspect which are reproduced here-in-below:

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 the universities concerned in a phased manner.

5. The words "affiliated college" and "constituent college" are defined in Sections 2(c) and 2(i) of the Bihar State Universities Act, 1976 (for short "the Act"). Every institution recognised 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-Chancellors 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 3-7-1987. 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 the 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 pro forma 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 pro forma 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 the Chairman of the 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 was subsequently reconstituted on 1-2-1988, 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 an 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 abovementioned 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. A large number of employees, it was reported, got surreptitious entry into the services of the erstwhile affiliated colleges in connivance with the members of the 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 the 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 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 the 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 the 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(1)(14) of the Act. This Court, therefore, directs the universities concerned to take steps under sub-section (14) of Section 4(1) of the said Act in respect of regularisation 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(1)(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 today will continue. With the aforesaid direction this writ petition is allowed to the extent indicated above. No order as to costs."

15. In view of decision taken by the Hon'ble Apex Court in 'Mahasnagh' (supra) case and considering the factual aspects, the Apex Court had constituted a one-Man Committee as discussed above.

16. After recommendation and report of Justice Agrawal Commission, the Hon'ble 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 Hon'ble 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 Hon'ble Apex Court after accepting the report of Justice Agarwal Commission directed the Universities to take decision in terms of Section 4 (1) (14).

17. The Hon'ble Apex Court in 'Mahasangh' (supra) case issued the following directions in para 73 of the Judgments which is reproduced here-in- below:-

"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. Patna High Court CWJC No.17670 of 2017 dt.17-07-2018

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."

18. After judgment of the Apex Court in Mahasangh (supra) case, the University after due deliberation in the meeting of the Syndicate, decided to finalize the list of teaching and non-teaching employees for absorption. The University considered letter no. 181C, 38C, 36C, and 35C of the State Government. So far as letter no. 181C is concerned, Justice S.C. Agrawal Commission has not considered it authoritatively on the ground that matter is pending before the

Hon'ble Supreme Court. The contention raised with regard to letter no. 181C on behalf of State of Bihar and Jharkhand was considered by the Hon'ble Supreme Court in para 41, 57 and 62 of the Mahasangh case with reference to the government decision dated 18.12.1989, the Hon'ble Supreme 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 Hon'ble Supreme 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 and according, the Hon'ble Apex Court accepted the letter no. 181 C as a governmental decision.

19. A Full Bench judgment of the Patna High Court as already been discussed above, in view of inability expressed by the Justice S.C. Agrawal Commission, Justice S.B. Sinha Commission was appointed. pursuant to objection of the Report of Justice S.B. Sinha Commission, the liberty was provided to the petitioners.

20. In view of the statements made in the writ petition, it is manifest that two vacant posts are available for absorption for those teaching employees as it has been indicated that vacancy created in the Department of Commerce in A.B.M. College, Jamshedpur on retirement of Sri S.K. Mishra and on transfer of Sri D.K. Mitra. The Hon'ble Patna High Court in the case of "Akhilanand Singh & Ors. Vs. The State of Bihar & Ors." (C.W.J.C No. 17670 of 2017) dated 17.07.2018 reported in 2018 (3) PLJR 1029, came to the following conclusions:

"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.

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. Patna High Court CWJC No.17670 of 2017 dt.17-07-2018 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.

34. In matters where the name of individual teaching and nonteaching employee figures in the provisional list of absorption contained in letter No. 181 C, 38C and 36 C and so far as the nonteaching employees 25C are concerned, the University was required to recognize their cases as eligible for absorption in view of the judgment in Mahasangh's case and the University was required to issue appropriate notification in the light of the letter Patna High Court CWJC No.17670 of 2017 dt.17-07-2018 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 Mahasangh'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 Yadav'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 Patna High Court CWJC No.17670 of 2017 dt.17-07-2018 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.

21. As a cumulative effect of the discussion made above and in the light of law laid down by the Hon'ble Apex Court as well as Patna High Court, the respondent-University is directed to absorb the petitioners and render 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).

22. It is needless to say that once the University takes favourable decision on the claim of the petitioners, the University will work out for the entitlement and request the State Government for grant of additional fund so that the consequential monetary benefit may be extended to the petitioners.

23. With the aforesaid observation and direction, these writ petitions stand allowed and disposed of. Pending I.A., if any, stands disposed of.