

BEFORE JUSTICE S.B. SINHA (RETD.) COMMISSION

NEW DELHI

IN THE MATTER OF:

KRISHNA NAND YADAV

...CLAIMANT

VERSUS

MAGADH UNIVERSITY & ORS

...RESPONDENTS

**Present:**

For State of Bihar

1. Mr. Vijay Hansaria, Senior Advocate
2. Mr. Abhinav Mukerji, Advocate
3. Mr. Avinash, Advocate
4. Ms. Tanya Shree, Advocate

For State of Jharkhand

1. Mr. Gopal Prasad, Advocate

For T.M. Bhagalpur  
University,  
B.N. Mandal University and  
L.N. Mithila University

1. Mr. Atul Jha, Advocate
2. Mr. Praveen Chandra, Advocate
3. Mr. Amit Kumar, Advocate
4. Mr. Swasteek Shastaree, Advocate
5. Mr. Satyajit Yadav, Advocate
6. Mr. Abhay Kumar, Advocate

For BRA Bihar University

1. Mr. Rakesh Kumar Khanna, Senior Advocate
2. Mr. R.P. Singh, Advocate

For Vinobha Bhave  
University,  
Nilambar Pitambar University  
and  
Sidhu Kanhu Murmu (SKM)  
University

1. Mr. Rajiv Singh, Advocate

For Kolhan University

1. Ms. Jagriti Ahuja , Advocate

For Magadh University and  
Vir Kunwar Singh University

1. Mr. Chandra Prakash, Advocate

For Claimants

1. Mr. Amrendra Sharan, Senior Advocate
2. Mr. Ajit Kumar Sinha, Senior Advocate
3. Mr. Ashok Bhan, Senior Advocate

4. Mr. Neeraj Shekher, Advocate
5. Mr. Ashutosh Thakur, Advocate
6. Mr. Manish Kumar Saran, Advocate
7. Mr. Bijay Kumar Sinha, Advocate
8. Mr. Saket Singh, Advocate
9. Mr. Prem Sundar Jha, Advocate
10. Ms. Manjula Gupta, Advocate
11. Mr. Shashi Bhusan, Advocate
12. Mr. Pramod Kumar, Advocate
13. Mr. Ajay Kumar Singh, Advocate
14. Mr. Sushil Kumar Singh, Advocate
15. Ms. Punam Kumari, Advocate
16. Mr. Ashwarya Sinha, Advocate with
17. Mr. Himanshu Chaubey, Advocate
18. Ms. Vijaya Lakshami, Advocate
19. Mr. Prakash Kumar Singh, Advocate
20. Mr. Niranjana Swami, Advocate
21. Mr. Naveen Kumar Singh, Advocate
22. Mr. Abdhesh Chaudhary, Advocate
23. Mr. Sanjit Kumar Jha, Advocate
24. Mr. Shashi Bhusan, Adv
25. Mr. Chandra Prakash, Adv
26. Ms. Radhika, Advocate
27. Mr. S.K. Diwakar, Advocate

## **ORDER ON THE SCOPE AND AMBIT OF THE JURISDICTION OF THE COMMISSION**

### **INTRODUCTION:**

1. The reference to this Commission by the Hon'ble Supreme Court of India relates to the question of absorption of about 4,000 employees (teachers and non-teaching staff) working in 40 colleges affiliated to various universities, which were converted into Constituent Colleges in accordance with the provisions of the Bihar State Universities Act, 1976 ("**the Act**"), pursuant to the Resolution adopted by the Government of Bihar on diverse dates in the year 1986.

### **FACTUAL BACKGROUND:**

2. The State of Bihar had issued several Government Orders directing conversion of the said 40 Colleges in the fourth phase from time to time as would appear from the following:

- (a) On 7.11.1985, it was announced on the floor of the State Legislative Assembly that the State Government has taken a decision to convert 29 Affiliated Colleges into Constituent Colleges. On 13.11.1985, a teleprinter message was sent to the Vice Chancellors of the concerned universities intimating them of the said decision.
- (b) By a wireless message dated April 8th, 1986, similar instructions were sent in respect of five other Affiliated Colleges; whereafter names of two more colleges were added to the list, and similar instructions were issued.
- (c) By a letter dated 19.8.1986, the State of Bihar conveyed its decision to the Vice Chancellors of the concerned universities of converting 36 Affiliated Colleges into Constituent Colleges in the Fourth Phase. A list of the said colleges was appended in Appendix 'Ka' thereof. The conversion was to take place as per the terms and conditions laid down in Appendix 'Kha' to the said letter, with effect from the actual date of taking over of the management of the college, or the date on which the Governing Bodies of the concerned college pass the requisite resolutions and prepare statements of assets and liabilities thereof.
- (d) By reason of a letter dated 03.7.1987, three other colleges were similarly decided to be converted into Constituent Colleges. One minority educational institution was also decided to be so converted.
- (e) The Universities were instructed, in terms of the provisions of Section 4(1)(14) of the Act, to ask the Governing Bodies of the respective colleges to pass formal Resolutions for taking over their assets and liabilities, and enter into formal agreements with the Governing Bodies of the colleges for the purpose of converting them into Constituent Colleges, as also obtain requisite informations regarding the sanctioned teaching and non-teaching posts existing on the date(s) of taking over, as also gather other necessary informations touching the proposals for creation of additional posts in the

Affiliated Colleges, which were received by the State from the Universities on or before 30.4.1986, and were pending with the Government.

- (f) In accordance with the aforementioned decisions of the State contained in the said letter, resolutions were adopted by the Governing Bodies of the respective colleges. Resolutions were also adopted by the teachers and the non-teaching staff thereof. Moreover, Three-Member Committees were constituted for each college to prepare the list of sanctioned posts of teachers and non-teaching staff, and the list of teachers and non-teaching staff working therein, and submit their reports to the concerned universities.
- (g) Formal agreements were also entered into by and between the Governing Bodies of the Colleges and the concerned Universities, pursuant where to and in furtherance where of, the management of the colleges were taken over and converted to Constituent Colleges.
- (h) The list of teachers, who were appointed against such additional posts, pending for approval before the State Government, was also directed to be separately prepared for the purpose of consequential action on the part of the State Government.
- (i) By a letter dated 12.6.1987, the State of Bihar 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 sent to it upon ascertaining the necessary facts, so as to enable it to consider creation of posts, grant affiliation in respect of additional subjects, and direct absorption of teachers who were appointed thereagainst. Each University was directed to constitute three-member committees to gather all those informations.
- (j) In implementation of the said policy decisions of the State, formal resolutions were passed by the Governing Bodies of the Affiliated Colleges.

Thus, decision was taken to convert 40 Affiliated Colleges to Constituent Colleges.

3. The three-member committees constituted for these purposes, as noticed heretofore, submitted the list of sanctioned posts of teachers and non-teaching staff, and names of teaching and non-teaching employees working against the sanctioned posts, and those working against the posts creation in respect whereof, recommendations had been sent by the Universities for obtaining the sanction of the State Government, prior to the cut-off date(s) and also those working against posts for which recommendations were sent after the cut off dates, or for which no recommendation was sent.
4. The Government of Bihar constituted a separate committee on 17.1.1987, headed by the Chairman of Inter-Universities Board to examine the proposals for affiliation of subjects and creation of post received before the cut-off date, i.e. 30.4.1986, for teachers and non-teaching staff in respect of the colleges which were converted into constituent colleges.

The Committee was reconstituted by an Order dated 3.4.1987.

5. On receipt of the recommendations of the said Committees, the Government of Bihar passed an order on or about 01.02.1988 to absorb the teachers and the non-teaching staff only on a provisional basis in view of the fact that there were inter-se disputes with regard to the claims of various teaching and non-teaching staff for their absorption in various colleges, which should be resolved by constituting a committee at university level.
6. By an Order dated 8.3.1988, the State Government constituted eight-member committee(s), and thereafter five-member committee(s), to go into the question of absorption, and ascertain the number of posts duly created before the cut-off date, and the number of posts which had remained pending with the Government for grant of approval or sanction.
7. On 18.12.1989, upon obtaining recommendations from the aforementioned committees, the Government of Bihar took a formal decision to provisionally absorb

the teachers against sanctioned posts that were recommended for sanction by some of the universities.

8. With the change in the elected government, however, it appears that the process of reconsidering the said decision started.
9. Large number of employees, it was reported, got surreptitious entries into the services of the erstwhile affiliated colleges purported to be in connivance with the members of the Governing Bodies. Complaints of manipulation and fabrication were received that became a subject of hot debate in the Legislative Assembly, as also in public.

The State Government set up a vigilance enquiry to enquire into the said issue as a result whereof apprehensions arose in the minds of a large section of teaching and non-teaching staff that large scale termination and dispensation were on the cards.

10. The Bihar Rajya M.S.E.S.K.K. Mahasangh (hereinafter called and referred to as "Mahasangh"), an association of the teachers and non-teaching employees, approached the High Court of Patna inter alia for issuance of a Writ of Prohibition, restraining the State of Bihar and the universities from terminating the services of the concerned teachers and non- teaching staff.
11. The said writ petition was marked as C.W.J.C. No. 4021 of 1995.

### **THE JUDGMENT OF THE PATNA HIGH COURT**

12. Before the High Court, the State, for all intent and purport, admitted that the termination of the services of a large number of teachers and non-teaching staff was under contemplation.
13. By a judgment and order dated 31.1.1997, the High Court inter alia taking into consideration the orders passed by the State of Bihar held as under:

"In that view of the matter, the controversies have not reached finality as contemplated under Section 4(1)(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 today will continue. With the aforesaid direction this writ petition is allowed to the extent indicated above. No order as to costs."

14. The directions issued by the Division Bench of the Hon'ble High Court as contained in paragraphs 24-26 of the said judgment and order shall be noticed a little later.

#### **APPEAL BEFORE THE SUPREME COURT OF INDIA**

15. An appeal thereagainst upon obtaining special leave therefor was preferred by the State of Bihar before the Hon'ble Supreme Court of India, which, upon grant of special leave, was marked as Civil Appeal No.6098 of 1997.
16. In the meanwhile, the State of Bihar was bifurcated, and, with effect from 15.11.2000, the State of Jharkhand came into being.
17. Some of the Universities admittedly fall within the territorial jurisdiction of the State of Jharkhand, but are bound by the aforementioned decisions of the State of Bihar, all of which having been taken much prior to 15.11.2000.

#### **APPOINTMENT OF COMMISSION**

18. The Supreme Court of India, presumably with a view to give a quietus to the disputes of the teachers and non teaching staff of the constituent colleges, on the one hand, and the State of Bihar and the Universities on the other, by a judgment and order dated 12.10.2001, appointed Justice S.C. Agrawal, a former judge of the Supreme Court of India, as a one-man commission with the following 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 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?
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 19.08.1986, and Appendix 'Kha', and the agreement entered into between the University concerned and the constituent college under section 4(14) of the Act, and other orders of government?”

### **BROAD CONTOURS OF THE REPORT**

19. The Commission submitted its Report (hereinafter called and referred to the ‘**Agrawal Commission Report**’ before the Hon’ble Supreme Court of India on 19.12.2003.

The Report is divided into two parts.

20. Part I dealt with the introduction of the general aspects relating to all the forty colleges, and the common questions that arose in all the matters involving

interpretations of the provisions of the statutory enactments and the university statutes, in the context of the questions that have been referred.

21. Part II of the Report separately deals with the cases involving employees working in individual colleges.

The Report was presented before the Supreme Court of India in six volumes.

22. Some of the broad features of the said Report are as under:-

- (i) Commission took notice of the fact that different cut-off dates for different affiliated colleges with reference to the dates on which decision to convert them into constituent colleges, were specified by the State, being 30.4.1986 or 31.3.1987 or 01.06.1987, as the case may be. The Commission identified the number of sanctioned posts and the members of the staff working against each of them. It submitted separate reports in respect of one minority institution wherein, however, neither any cut-off date was specified nor determined.
- (ii) The Commission, furthermore, divided the second term of reference into two parts and answered each of them separately. Identification has been done in respect of each college which had sent proposals with regard to creation of additional posts, and which had been submitted by the concerned universities to the Human Resource Department of the State before the cut-off date.

Separate identifications were also done by the Commission in regard to proposals for creation of additional posts submitted by each college before the cut-off date and which were pending consideration before the concerned universities.

Commission concluded that the decision taken to absorb teachers and non-teaching staff of converted constituent colleges, was 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 its consideration, and there was no decision of the Government on the question of absorption of 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.

- (iii) The revised list submitted by the screening committee dated 30-1-1987, containing the names of the employees recommended for absorption, was held not worthy of acceptance. Interpolations and tampering with the records were found by the Commission. It was held that the screening committee, without assigning any reason, could not have submitted a revised list to include some more names or exclude others, and thus the same deserved no consideration.

### **PROCEEDINGS BEFORE THE SUPREME COURT**

- 23. After the said Agrawal Commission Report was submitted before the Supreme Court, objections were filed thereto not only by the State of Bihar, but also by the teachers and non-teaching staff. Several applications for impleadment and/or intervention were also filed by the employees, inter alia, contending that they have wrongly been excluded from being considered for absorption although their names appear in the lists prepared by the committees.
- 24. The Hon'ble Supreme Court of India considered the said objections, as well as constitutionality or otherwise of some of the Government Orders issued by the State of Bihar, which were the subject matter of the appeal filed by the State. It also considered the applications for impleadment/ intervention filed by a large number of employees. The judgment of the Hon'ble Supreme Court of India titled *State of Bihar & Ors Vs. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors.* (“**Mahasangh Judgment**”) has since been reported in (2005) 9 SCC 129.
- 25. Some of the findings recorded therein are as under:

- (i) The Commission has purposely, as it was expected to do, avoided expressing any opinion on the legal issues involved and which were pending decision before the Supreme Court.
- (ii) The State of Bihar cannot be permitted to question the validity of the Government Order Nos. 181(C) dated 18.12.1989, 25(C) dated 12.02.1990, and, 36(C) dated 24.02.1990.
- (iii) The High Court rightly accepted the contentions advanced on behalf of the employees that the concerned universities are empowered to take a decision on the disputes regarding the validity of their appointments in the affiliated colleges, as well as settle the question of absorption. The High Court was furthermore right in opining that in view of the non-obstante clause contained in proviso appended to Section 4(1)(14) of the Act, the requirements of prior sanction of the posts contained in section 35 of the Act providing for grant of prior approval to the creation and appointment to the posts in the affiliated colleges, would have no application to absorption of existing staff of affiliated colleges taken over by the universities on their conversion as constituent colleges.
- (iv) The High Court issued a writ directing the universities to consider absorption of the existing staff of the constituent colleges in accordance with section 4(1)(14) of the Act within a period of four months from the date of the said order.
- (v) It although noticed that the State of Bihar, as the Appellant, mainly attacked the judgment of the High Court on the ground that it placed erroneous interpretation of the relevant provisions of the Act, but rejected the same.
- (vi) So far as the objections filed to the said Report are concerned, no merit was found therein.
- (vii) No merit was also found in the objections submitted to that part [with respect to Reference No. 1 & 2] of the Agrawal Commission Report which is based on

the contents of the various resolutions of the Government. Only such employees were held to be entitled for being considered for absorption who had been working against additional posts for which proposals had been received from the universities by the State Government before the cut-off date.

- (viii) The other proposals for creation of posts which were pending at the university level were held to be outside the purview of the various decisions taken by the Government to take over the 40 affiliated colleges. Such claims, it was opined, were liable to be rejected.
- (ix) The Court also agreed with finding No. 3 of the Commission.
- (x) The decision on the absorption was held to be within the exclusive jurisdiction of the universities concerned.
- (xi) Decision in individual cases was found to be required to be taken by the universities on the basis of the findings contained in the Agrawal Commission Report, and in the light of the legal position explained in the judgment.
- (xii) List No. I and II made out by the Commission were accepted.
- (xiii) So far as list no. III is concerned, the same was seriously objected to by the State Government and, it was opined that there was sufficient justification therefor, holding that the persons featuring in that list could claim no right of consideration for absorption, whatever may be the reasons for alleged delay in sending recommendations.

**CONCLUSIONS CONTAINED IN THE SAID JUDGMENT:**

26. The Supreme Court in paragraph 73 of the said judgment concluded as under:

“

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(I)(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.

The universities concerned shall now complete the process of absorption of the staff of the affiliated colleges [teaching and non-teaching] in the manner and to the extent stated above in our judgment within a period of four months from the date of receipt/production of the copy of this order.”

## **SUBSEQUENT EVENTS / FRESH ROUND OF LITIGATION:**

27. Inter alia on the premise that the Mahasangh Judgment had not been fully complied with, a large number of contempt petitions were filed before the Supreme Court. The alleged contemnors, namely the State of Bihar, the State of Jharkhand, as also the concerned Universities, however, contended that the order of the Supreme Court of India has fully been complied with. Several I.A.(s) were also filed raising fresh claims before the Supreme Court of India.
28. By an order dated 3.8.2007, the Supreme Court, in relation to the said contempt petitions and I.As, directed as under:

“This Court in Civil Appeal No. 6098/1997 and connected matters, has passed the judgment on 10th October, 2004 and given certain directions. These appear / petitions arose out of a common judgment passed by the High Court of Judicature at Patna on 31st January, 1997. This Court has issued certain directions in the concluding paragraphs of the judgment. In these various applications / petitions it was alleged that the directions given by this Court in the above judgment dated 10.10.2004 are not complied with by the Universities / State and the lecturers / professors are not getting the benefits which have been granted by this Court. A large number of teachers are involved in this case and several universities are parties to these proceedings, in the interest of justice, it would be just and proper that these petitions be considered by the High Court of Judicature at Patna / Jharkhand and see whether the judgment passed by this Court be complied with.

The applications / contempt petitions are disposed of accordingly. The relevant papers be transmitted to the respective High Courts.

As the matter is being agitated being long, the High Courts will dispose of the matters expeditiously.”

## **FRESH WRIT PETITIONS BEFORE THE PATNA HIGH COURT**

29. Inter alia on the premise that the concerned Universities have stopped payment of their salaries, a large number of writ petitions were filed by the teachers and non-teaching staff of the concerned colleges before the Patna High Court.

One of the said writ petitions was allowed by a learned single judge of the said Court.

An intra court appeal was preferred thereagainst by L.N. Mithila University.

30. A Division Bench of the High Court by an order dated 17.2.2010 referred the matter to a larger bench, stating:

“Though the matter was listed for orders, yet on consent of learned counsel for the parties it was thought apt to commence the hearing.

In the course of hearing Mrs. Nivedita Nirvikar, learned counsel for the Mithila University, submitted that a spate of litigations are pending which pertain to various Universities, namely, L.N. Mithila University, Darbhanga, Veer Kunwar Singh University, Ara, B.R. Mandal university, Madhepura, B.R. Ambedkar Bihar University, Muzaffarpur, Talka Manjhi University, Bhagalpur, Magadh University, Gaya Kameshwar Narayan Singh University, Darbhanga and Jai Prakash University, Chhapra and the matter is of immense signification inasmuch as the manner and method of implementation of the Order of the Apex Court in State of Bihar vs. Bihar Rajya M.S.E.S.K.K. Mahasangh & Ors., 2005(1) PLJR (SC) 465 is involved.

After hearing for some time, we think it appropriate that this appeal as well as the writ petitions which have been filed by the employees of the aforesaid Universities which are pending before the learned Single Judge should be referred to a larger Bench.

Let the matter be placed before Hon’ble the Chief Justice on the administrative side for constitution of a larger bench.”

31. A Full Bench of the Patna High Court, before whom the said LPA and the pending writ petitions were listed, however, again with a view to bring an end to the controversies between the parties, appointed a two-men Commission headed by Hon’ble Mr. Justice S.N. Jha, the former Chief Justice of the Rajasthan High Court.

### **APPEAL BEFORE THE SUPREME COURT**

32. The State of Bihar preferred an appeal thereagainst before the Supreme Court of India.
33. In the aforementioned context, the Supreme Court of India again requested the Hon’ble Justice S C Agrawal to act as a one-member commission.
34. The Hon’ble Mr. Justice S.C. Agrawal, however, expressed his unwillingness to continue to act as a one-member Commission, whereafter the undersigned was

appointed on the same terms of reference constituting Justice Agrawal Commission, which are as under:

- “
- 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 MSESKK 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 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 are also permitted to make their representation before the Commission.

For the above said purpose, the Commission has to issue 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.”

35. It must, however, be placed on record that it is stated at the Bar that the contempt petitions and I.As were not the subject matter of the said L.P.A. It is furthermore stated that in some cases, contempt petitions have been allowed by the High Court and the said orders have been affirmed by the Hon’ble Supreme Court of India, and on the basis thereof appropriate relief(s) had been granted to the concerned applicants. It appears that the Hon’ble Jharkhand High Court has also disposed of some writ petitions.

#### **RE: JURISDICTION OF THE COMMISSION**

36. The learned counsel appearing on behalf of the parties, however, at the outset raised serious contentions with regard to the Scope and Ambit of the Reference to this Commission by the Supreme Court of India. They also wanted this Commission to lay down principles by way of categorization of cases or otherwise so that relevant records may be placed before it.
37. This Commission, with a view to determine its own jurisdiction as also to consider the maintainability of petitions falling within certain categories heard a large number of counsels, as also the parties appearing in person. It may be noticed that due to administrative reasons, and in particular as the records of the cases could not be placed before this Commission, it had to rely upon the compilations filed by the learned counsel appearing for some of the Claimants and the documents annexed to the written submissions filed by some of the learned counsel.
38. In other words, this Commission had no other option but to determine the issue only on the basis of the documents placed before it by the learned counsel appearing on behalf of the State of Bihar and the State of Jharkhand, as also appearing on behalf of some of the Claimants.
39. Whereas the principal contention of the State of Bihar and the State of Jharkhand on the one hand, is that on a true and proper interpretation of the Order of the Hon'ble Supreme Court of India, this Commission should confine its jurisdiction only to the cases falling under list 'S' and 'R1' categories; the learned counsel appearing for the Claimants, and some of the Universities, on the other hand, argued that the wordings of the Terms of Reference being wide, clear and unambiguous, this Commission should inquire into all categories of the disputes raised by the Claimants, irrespective of the fact as to whether their names *stricto sensu* appear in S and R1 lists, or not.

**Submissions on the Preliminary Issues:**

40. Mr. Hansaria, learned senior counsel appearing for the State of Bihar, inter alia, submitted:-

- (i) The cut-off date of 30.04.1986, save and except three colleges, shall apply to all the colleges, including Guru Gobind Singh College, a minority institution which was taken over by the Magadh University in terms of the Government Order dated 12.6.1986. The cut-off date of 30.4.1986, in other words, shall apply also to the said minority constituent college.
- (ii) The State has the exclusive privilege of creating and / or granting sanction of the posts in both affiliated and constituent colleges, in terms of Section 35 of the Act. Section 4(1)(14) of the Act does not empower the universities to appoint / absorb the services of any teachers or non-teaching staff or pass an order of regularization, beyond the sanctioned strength and it could do so only in respect of the posts sanctioned up to the cut-off date and/or recommended therefor, but not beyond the same.

In that view of the matter only those employees whose names find place in the sanctioned list (List S) and the list of recommendations up to the cutoff date (R1 in part) are entitled to be absorbed.

In terms of the Mahasangh Judgment, those employees whose names appear in list R2 (recommended after cut-off date) or in NR category (not recommended) being not entitled to absorption, the claim petitions filed by them are liable to be dismissed being not maintainable.

- (iii) The universities, in exercise of their jurisdiction under section 4(1)(14) of the Act, could make recommendations only in regard to the posts, and not affiliation of subjects and in that view of the matter no order of absorption could be passed on the basis of the recommendations made for affiliation of the 'subject' which were pending before the State at the relevant time. Thus, the concerned teachers and non-teaching staff falling in that category also were not eligible for absorption.
- (iv) The Hon'ble Supreme Court of India having not pronounced its verdict on the validity or otherwise of the Government Order No. 181(C) issued on 18.12.1989, the Government Order No. 36(C) dated 24.2.1990, and

Government Order No. 25(C) dated 12.2.1990, and having merely held that the State of Bihar cannot be permitted to raise questions with regard to the validity of the said Government Orders, this Commission has no jurisdiction to consider the merit of such petitions filed by the Claimants relying on or on the basis thereof, being beyond the purview of the reference.

- (v) In any event the Hon'ble Supreme Court of India having not issued any Writ of or in the nature of Mandamus in favour of those teachers and non-teaching staff who come within the purview of the said Government Orders, this Commission cannot consider their claim petitions relying on or on the basis thereof.

41. The learned counsel appearing on behalf of the Claimants as also the concerned Universities (except Magadh University), on the other hand, urged:-

- i. The Agrawal Commission in its Report having taken into consideration the effect of the said Government Orders, but having not reproduced the names of those teachers and non-teaching staff merely on the ground that the validity / legality thereof was pending consideration before the Hon'ble Supreme Court of India, and the same having been found to be beyond the pale of judicial review, the validity thereof must be held to have been affirmed and in that view of the matter, the concerned Universities having absorbed the services of the teachers and the non-teaching staff relying on or on the basis thereof, this Commission should consider the Claim Petitions filed by the concerned employees on their own merits.
- ii. The finding of the Supreme Court having been accepted by the State of Bihar and having been acted upon by the concerned Universities, the former cannot be permitted to raise the said contentions once over again before this Commission.
- iii. The Government Orders issued in respect of the concerned teachers and non-teaching staff having clearly mentioned that the absorption was made pursuant to the order of the Supreme Court of India, it does not lie in the mouth of the

State of Bihar now to contend that the Universities have not followed the Mahasangh Judgment.

- iv. The State, having paid the salary to the concerned employees for a number of years, is estopped and precluded from questioning the validity or otherwise of the order of the universities absorbing the services of the teaching and non-teaching staff and/or stopping payment of their salary at this stage.
- v. The State in its affidavit filed before the Supreme Court having contended that if the said Government Letter No. 181(C) dated 18.12.1989, and other letters, are given effect to, the purpose of appointing a commission would have been lost but despite the same as the validity of the said letters was upheld, the State of Bihar cannot now be permitted to raise the same question once over again.
- vi. In any event as the Term of Reference of this Commission contains the words “and other orders of the government”, there cannot be any doubt or dispute that all the orders passed by the government must be given effect to.

It is a settled law that the government cannot change its stand with the change in Government in view of the decision of the Supreme Court of India in *State of Bihar v. Sunil Prakash*, reported in (2013) 3 SCC 559.

- vii. Moreover, this Commission having been mandated to adjudge the claims of each employee for absorption of both teachers and non-teaching staff working in the Constituent College, the cases of those Claimants who come within the purview of the said Government Letters must also be considered by this Commission on their own merit.
- viii. The State, in any view of the matter, cannot take any stand contrary to and inconsistent with their own orders.
- ix. The universities having the sole prerogative to take a decision with regard to absorption of services of the employees who have been working for a long time, the State has no say in this behalf unless it is established that any

appointment has been made in excess of the sanctioned post, or any order of absorption has been passed in favour of a person who does not possess the requisite qualification.

- x. The names of the teachers and non-teaching staff, which find place in Annexure IVA appended to the Agrawal Commission Report dealing with the cases who have been declared to be entitled to absorption as and when any occasion arose therefor, must be given its full effect.
- xi. Having regard to the fact that the validity of the Government Order Nos. 181(C), 25(C), and 36(C) was in question, the Agrawal Commission did not take the same into consideration, and thus in view of the Mahasangh Judgment, there is no reason as to why this Commission would not give effect thereto.

### **THE DICHOTOMY**

42. The dichotomy as would appear from the rival contentions raised at the Bar arises inter alia in respect of the following:

- a) On the one hand, the Supreme Court having accepted the Agrawal Commission Report in its entirety, i.e. the facts found by it, the reasons assigned therefor, as also the methodology adopted by it, but on the other hand it has not been directed that the Government Order dated 18.12.1989 should be given effect to by the universities, although the question of validity thereof has not been allowed to be raised.

Moreover, in the concluding part of its judgment, the Hon'ble Supreme Court of India referred only to certain letters, but not the Letters dated 1.2.1988, 18.12.1989 and other letters following the same, as would appear from the following:

“73(4). The universities shall take a decision under section 4(I)(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.”

- b) On the one hand, the Supreme Court of India upheld paragraphs 24 to 26 of the judgment of the Division Bench of the Patna High Court, and rejected all the objections raised by the teachers and non-teaching staff of the university relying on or on the basis of the said Government Order, and other orders stating:

“71. Most of the objections to the report of the Enquiry Commission are based on the reports of the various committees set up by the State and the recommendations of the universities. Thereafter, we set up an Enquiry Commission which has given its report. It is, therefore, not possible to grant any relief or directions in favour of the objectors on the basis of the reports of the various committees and recommendations of the universities. We have now directed the universities concerned, in respect of colleges within their respective jurisdiction, to issue formal orders of absorption in the constituent colleges on the basis of the report of the Enquiry Commission and in the light of our judgment.”

but on the other hand, did not issue any specific direction in regard thereto.

- c) A writ of or in the nature of Mandamus has been issued confined to S and R1 list, but what would constitute R1 list has not been considered in the light of the Letter No. 181(c) dated 18.12.1989 or other letters following the same.
- d) The Hon'ble Supreme Court of India although has accepted the Agrawal Commission Report in its entirety and rejected all objections raised thereagainst, but in paragraphs 71 of its judgment, it has clearly rejected the claim petitions based on recommendations of various committees. While saying so, however, the Supreme Court accepted the Government Orders based on the reports of various committees including High Level Committees set up by the State of Bihar.

- e) On the one hand, the recommendations contained in the Agrawal Commission Report has been accepted in their entirety, but on the other the Supreme Court contemplated that there might be certain errors or commissions in the said Report and, thus, directed:

“73(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.”

- f) So far as the statutory qualifications of the teachers as considered by Agrawal Commission is concerned, certain interpretations have been made, but the Supreme Court directed the universities to consider the question of absorption of teachers and non-teaching staff only on the basis of qualification laid down in the Act as also the statues made by the universities, but added the words “in the light of the report of the Agrawal Commission”.

43. These questions, in the opinion of this Commission, must be resolved to the extent possible.

**RE: THE SUBSEQUENT NOTIFICATIONS:**

44. As noticed heretobefore, after 30.04.1986, the State of Bihar issued a series of Letters sanctioning posts purported to be on the basis of the recommendations made by various Universities, and the reports of the High Level Committees appointed by it.

45. The said government orders are contained in the following documents:-

- (i) Letter No. 38(C) dated 1.2.1988
- (ii) Letter No. 181(C) dated 18.12.1989
- (iii) Letter No. 25(C) dated 12.02.1990, and

(iv) Letter No. 36 (C) dated 24.02.1990

**RE: LETTER NO.38(C) DATED 1.2.1988**

46. By reason of the Government Letter No. 38(C) dated 1.2.1988, some recommendations made by Bihar University, Magadha University, Bhagalpur University, and Ranchi University, etc. with regard to sanctioning of the posts of teachers and / or non-teaching staff, and provisional regularization of services of teachers / non-teaching staff working against the posts in the Fourth Phase Constituent Colleges of the State, were accepted with a list of posts sanctioned against the proposals pending affiliation.
47. Before advertng to the contentious issues raised at the Bar, it must be noted that the State of Bihar, in its petition for grant of Special Leave to Appeal before the Supreme Court of India against the judgment of the Division Bench of the Patna High Court, did not question the validity of the Government Order No. 38(C) dated 1.2.1988, although such a contention was specifically raised in relation to the Government Orders No.181(C) dated 18.12.1989 and order issued subsequent thereto. The objection with regard to the validity of the said order dated 1.2.1988, and / or the scope and purport thereof was raised for the first time before the Agrawal Commission, which was negatived.
48. The Agrawal Commission devoted pages after pages in its report and extensively quoted from the said Government Letter dated 1.2.1988. In fact while preparing the List III and List IVA, it entirely relied upon the said Letter. The State, however, raised the question with regard to validity of the said Letter dated 1.2.1988 before the Supreme Court.
49. In paragraphs 57 to 60 of its judgment, the Supreme Court held as under:
- “57. Based on the various decisions taken by the State Government from time to time to which reference has already been made above, by order passed on 01.2.1988, the State Government on the recommendations of the Committee constituted by it to consider proposals for creation of additional posts and proposals for affiliation

which had been received from the universities up to 30.4.1986, decided to grant sanction to the proposals.

58. On behalf of State of Bihar and State of Jharkhand, learned counsel appearing have contended that the order dated 01.2.1988 granting sanction and affiliation for certain posts received by the universities before the cut-off date on recommendation of the Committee constituted by the State Government cannot be treated to be a valid order of the government sanctioning posts because there was no Cabinet approval to the same. It is submitted that the order dated 01.2.1988 was issued by the Deputy Secretary to Government of Bihar without any approval of the Cabinet. It has no legal efficacy. Any valid order of the government has to be formally expressed in the name of Governor in accordance with Article 166 of the Constitution of India.
59. Similar objection has been raised against the order dated 18.12.1989 by which, relying on the recommendations of the Committee constituted, the State Government directed absorption of incumbents working on posts sanctioned and recommended before the cut-off date.
60. The validity and authenticity of the two orders dated 01.2.1988 and 18.12.1989 of the State Government were not questioned before the High Court in the writ petition filed by the employees of the converted constituent colleges. Question on their validity was raised only before the one-member Enquiry Commission of Shri Justice S. C. Agrawal [Retd.]. On the question of validity of the order dated 01.2.1988, the Enquiry Commission delved into the notings in the government files and found that the Education Minister had recorded in one of the files that the Cabinet in its meeting held on 22.6.1988 had authorized the Chief Minister to take a decision in that regard. According to the Commission, the order dated 01.2.1988 is duly authorized order of the State Government and this fact is evident from the subsequent Resolution No. 307 dated 08.3.1988, which is duly authenticated order issued in the name of the Governor of Bihar. The subsequent Resolution formally issued in the name of Governor is a sequel to the order dated 01.2.1988 and does not disturb it.”
50. A distinction, therefore, must be made between the aforementioned Government Order No.38(c) dated 01.02.1988, and the one dated 18.12.1989, i.e., 181(C), in so far as, whereas the validity of the latter, and the orders issued subsequent to it, was questioned before the Supreme Court, no such question was raised in respect of former.
51. Mr. Hansaria, however, would contend that keeping in view the Mahasangh Judgment, it must be held that the list R1 were to be kept confined only to the

recommendations made by the concerned university upto 30.4.1986, but not thereafter.

The correctness or otherwise of the said submissions of Mr. Hansaria must be judged keeping in view, the example, which is at pages 54 to 65 of the Agrawal Commission Report. While preparing Annexure IVA appended to the said Report, reference was made to the aforementioned Government Orders dated 01.02.1988 as also 18.12.1989, whereby and whereunder additional posts were created, stating:

“For the purpose of placement in the list, the teachers who improved their qualification by availing the benefit of the relaxation made under clause (ix) of paragraph 2 of the Resolution dated May 9, 1988 have to be placed below teachers who possess the prescribed qualification though appointed subsequently. While preparing the list of teachers who are eligible to be considered for absorption the placement of teachers in the said list will have to be made on the basis of the date on which the improved qualification, viz., 52.5% marks in the Post-Graduate degree examination of Ph.D. degree was obtained.”

52. Annexure IVA at page 464 of the Agrawal Commission Report in respect of S.B.A.N. College, Darhelitta-Lari, Gaya, Magadh University, *inter alia*, contains a chart comprising of the number of posts sanctioned subject wise, name of teachers, dates of eligibility, date of appointment and nature of appointment prepared by the Commission, which appears to be exhaustive and which may be noticed for the sake of clarity on the said issue.
53. In respect of the subject Political Science, names of six persons have been mentioned against seven posts sanctioned by the State in terms of the said Government Letter No. 38(c) dated 01.02.1988, on the said page of Annexure IVA.
54. Before, however, proceeding further, it must be placed on record that at one stage, Mr. Hansaria expressed his apprehension that creation of the seven sanctioned posts in the subject Political Science in the Agrawal Commission Report may not be correct, being not based on the Government Order No.38(c) dated 01.02.1988, but during the course of hearing, Mr. Saket Singh, the learned counsel for the Claimant, has produced the said Government Order, on perusal whereof it appears that indeed seven posts in Political Science were created.

55. It is, therefore, evident that the Agrawal Commission had prepared the relevant annexures relying on/ or on the basis of the said Government Letter No. 38(c) dated 01.02.1988.
56. The Agrawal Commission, at page 458 of its Report, being Annexure IIA, referred to the letters dated 02.08.1983 and 19.3.1983, which would show that three posts were recommended; two having already been sanctioned.

Sub-para (xx) of the said Report, under the heading “terms of reference No.3”, occurring at page 453 reads as under:

“(xx) Sri Ashok Kumar was appointed as Lecturer in Political Science by order dated October 18, 1980. On the said date of appointment he did not have a consistently good academic record inasmuch as he had not obtained an aggregate of 50% marks in two previous examinations as required under the 1978 statutes, which were applicable. He also did not have high second class Post Graduation qualification have secured 44.4% marks. He obtained Ph.D degree on August 31, 1992. He became eligible for consideration on August 31, 1992.”

57. Whereas, there is no dispute with regard to the number of sanctioned posts, the universities considered the names of only three out of four persons who had been working on 30.4.1986; although there were seven sanctioned posts and one of the Claimant’s name appear at S.No.6 thereof. It may be noticed that although the concerned teacher has been shown to have been validly appointed on 31.08.1992, being the date on which he became eligible for consideration for regularization as he obtained his Ph.D degree on that date, but having not obtained the qualifying marks in his post graduation examinations, his case has not been considered for absorption. What would be the effect of his continuous service despite not being eligible to be appointed prior to 30.04.1986 may have to be considered at an appropriate stage. Suffice it to point out that the universities in cases like this, for one reason or the other, did not give full effect to the said Government Order No.38(c) dated 01.02.1988.

58. Mr. Hansaria submitted that, keeping in view the Mahasangh Judgment, this Commission must keep its enquiry confined only to five posts, i.e., two sanctioned post and three recommended posts.

However, it is possible that the Government had sanctioned the additional posts having regard to the work load and the staffing pattern. It is for the State to place, before this Commission, the materials to show as to how seven posts were created; the fact being within its special knowledge as the State has the exclusive possession of the record.

Unless rebutted, it must be presumed that while issuing the said Order dated 01.02.1988, all relevant facts had been taken into consideration, the State itself being the author of earlier orders including the one of conversion of affiliated colleges into constituent colleges. The State of Bihar is hereby directed to produce the relevant record.

59. It must furthermore be placed on record that the Agrawal Commission, keeping in view the provisional nature of the order of the appointment of the employees mentioned in the list annexed thereto, had not reproduced the names therefrom but considered the names of the teachers and non-teaching staff appearing in the screening committee report.
60. Some of the learned counsel contended that in that view of the matter the names appearing in the screening committee reports in respect of all the colleges must also be taken into consideration while adjudging the merit of the claims for absorption of the teachers and non-teaching staff irrespective of the fact as to whether their names appear in the Letter No. 38(c) dated 1.2.1988 or not. The said contention cannot be accepted as the Supreme Court of India rejected the objections taken to the Agrawal Commission Report as also the I.As in which such a contention had been raised by the concerned employees.
61. A contention has also been raised by Mr. Hansaria that the Letter No.38(c) dated 1.2.1988 clearly states that the absorptions of the employees were provisional, but it has rightly been pointed out that the same were only subject to production of the mark

sheets, and subject to verification, as would appear from Government Letter No. 181(C) dated 18.12.1989, which attained finality on 24.2.1990 when the Letter No. 36(C) was issued. Furthermore from Letter No. 1095 dated 19.8.1986, it would appear that high power committees were constituted which resulted in issuance of Letters by the State of Bihar bearing Letter Nos. 307 and 308.

62. From the affidavit affirmed on behalf of the State of Bihar in support of the objection to the Agrawal Commission Report, it would be evident that the State at all material times was aware that the Commission intended to give effect to the Government Orders issued subsequent to 30.04.1986 and in that view of the matter the Hon'ble Supreme Court of India, having rejected the said contention, this Commission has no option but to proceed on the basis that the said Government Orders, subject of course to any legal issue, should be given effect to.
63. In this view of the matter, this Commission is of the opinion that it has the jurisdiction to consider the cases of those teachers whose applications are premised on the said Government Order No.38(c) dated 1.2.1988.

**RE: LETTER NO.181(C) DATED 18.12.1989 AND OTHER LETTERS**

64. In terms of the Government Letter No. 181(C) dated 18.12.1989, addressed *inter alia* to the VCs of:
- (i) Magadh University
  - (ii) Bihar University
  - (iii) L.N. Mithila University
  - (iv) Ranchi University, and
  - (v) Bhagalpur University;

absorption of the services of the teachers appointed and working against the sanctioned and recommended posts upto 30.4.1986 in the fourth phase of conversion of affiliated colleges to constituent colleges, was granted on a provisional basis subject to certain conditions.

Clause IV of the said Letter reads as under:

- “iv) The absorption of some teachers have been kept pending due to the lack of information in regard to their appointment and different types of disputes. Final decision will be taken by the State Government after enquiry in regard to such teachers.”

65. Yet again by another Government Letter No. 36(C) dated 24.2.1990, addressed to the Vice Chancellors of Bihar University, L.N. Mithila University, Magadh University, Bhagalpur University, and Ranchi University, the State published the second list relating to absorption of services of teachers appointed and working in Fourth Phase Constituent Colleges, stating:

“In this list, some cases had been kept pending for enquiry it had also been provided that the teachers published in this list would make their applications to the HRD Department. A Departmental committee had been constituted for the disposal of pending cases and for considering the applications, the committee has given its recommendations.

After the scrutiny of pending cases and consideration of applications, the list of disposal of pending cases mentioned in letter no. 181(c) dated 18.12.89 is being annexed.

- (i) Matters still pending in the first list would be released after disposal of after collecting additional information about them.
- (ii) The supplementary list has been prepared by the committee on the basis of received representations.”

Similar letters were addressed to the Vice Chancellors of the other concerned universities.

66. It may be noticed that five names of the teaching staff in Gangadevi Mahila College, Patna had been shown in Government Letter No. 181(C) as pending for enquiry.

67. So far as the non-teaching staff is concerned, by a Government Letter No. 25(C) dated 12.2.1990, their case for absorption in services in the Fourth Phase Constituent Colleges, and working on posts created or recommended till 30.4.1986, were approved, stating:

“Drawing your attention to the above stated subject that to enquire into and report on the absorption/regularisation of the service on non-teaching employees of the Fourth Phase colleges appointed and working on post created and sanctioned till 30.4.1986, two committees had been constituted in the following manner:

- (i) The first committee which had been constituted under the Chairmanship of Acharya Devendra Nath Sharma was to enquire into Bihar University, Bhagalpur University and Ranchi University.
- (ii) The Second committee which had been constituted under the Chairmanship of Prof. Damodar Thakur was to enquire into Magadh University and Lalit Narain Mithila University. The reports received from the above stated two committees are being college-wise published were with the following conditions:
  - (1) This list is provisional.
  - (2) If someone wishes to make a representation regarding the provisional list they can do so through the university within \_\_\_\_ weeks after the issuance of the notification. Applications received after this will not be considered.
  - (3) While forwarding their applications the universities will annex relevant/documents alongwith the recommendation.
  - (4) Persons whose names are not included in the provisional list and who have been getting their salary through the colleges will continue to get their salaries until the final decision is taken in their matter.”

68. The Claimants also filed some notings from the files to show the decision making process in the matter of creation of post by the Government of Bihar. The Agrawal Commission in its Report has extensively dealt with this aspect of the matter.

69. On or about 15.11.1989, the HRD Minister, in a note addressed to Hon’ble the Chief Minister, stated as under:

- “6. The list that has been prepared College wise and University wise on the basis of principles contained in page 111-112/comm. Part “Y” is kept in the folder below. The extracts of numbers of teachers being absorbed is at Page 335/P. According to this, there are a total of 2230 names recommended for absorption. Apart from this, 190 names have been kept pending. The decision regarding their absorption would be taken after verification /enquiry. It is worth mentioning here that according to the conditions which have been laid down for absorption in the past, and which find mention at Page 104/ comm. Part “X”, the names of 1674 teachers were recommended for absorption. Now after modification in the prescribed principles, 556 additional names have been recommended.
- 7. It is also worth mentioning in this regard that 1507 posts of teachers were notified in the notification issued by the Government dated 01.02.1988. Now, the number of posts to be notified is 2230 and 190 names are pending enquiry, meaning thereby, that 913 additional

posts will have to be created which would incur an annual expenditure of 3.39 crores. This would require the concurrence of the Finance Department and the approval of the Council of Ministers.

8. The order of the Hon'ble Chief Minister is prayed for on the following points:-

(ka). There is a proposal for amendment/modification of previously prescribed principles contained in page 111-112/comm. Part "Y". It also includes the proposal regarding absorption of teachers having less than 52.5% marks recognition of proposal for creation of posts and affiliation of faculties and subjects in which proposal were received from the universities after 30.4.86, and the proposal regarding finalization of lists of controversial colleges on the basis of available documents. As I have mentioned in the previous comments it is possible that many problems would come up following the absorption of teachers having less than 52.5% marks. Therefore, it is my request to the Government to take a conscious decision on this. It is certain that teachers of colleges made constituent in the past, who were denied absorption on account of having less than 52.5% marks, will raise the demand for absorption. The second outcome of such a decision would be that those teachers of the colleges who have been appointed on adhoc basis on less than 52.% marks, will also demand their absorption. Therefore, whatever decision that is taken on this point, will have far reaching implications. On the other hand, the teachers of this category who are working, have their own problems, Therefore, the Hon'ble Chief Minister may be kind enough to take appropriate decision keeping in view of all these aspects.

(Kha). If the above said proposals (ka) and Kha) are approved, then there is a proposal for creation of 913 additional posts, which would incur an additional annual expenditure of 3.39 corers. As per rules, the concurrence of the Finance Department and the approval of the Council of Ministries is necessary for this."

70. Hon'ble the Chief Minister approved the said proposal in anticipation of the sanction of the Council of Ministers.

71. On or about 22.2.1990, the following proposal was made:

"According to the notification issued earlier, the creation of 913 additional posts had been proposed. Now, as against the proposed names, 201 additional posts will need to be created e.g. a total of 1114 posts are proposed to be created. An additional sum of Rs.4 crores 40 lacs would be needed every year, for this purpose.

The Chief Minister may kindly approve these proposals, since the Minister of State and the Education Minister are on tour and are not available and the file has been called for from the Chief Minister's Secretariat, therefore, the file is being directly placed before the Hon'ble Chief Minister."

The notings of Hon'ble the Chief Minister dated 22.2.1990, is as under:

"Approved.

The proposal for creation of posts is also approved, for which the concurrence of the Finance Department may be obtained."

(Jagannath Mishra)  
22.2.90"

72. The Agrawal Commission called for the entire records and noticed that the Council of Ministers had in fact authorized the Chief Minister to pass necessary orders.
73. The findings of the Agrawal Commission to the said effect are as under:

"In the affidavit of Dr. Chandeshwar Prasad dated January 11, 2003 filed on behalf of the State of Bihar, it has been submitted that the order dated February 1, 1988 was issued by the Deputy Secretary to the Government of Bihar and it cannot be treated as an order of the Government sanctioning the posts inasmuch as there was no Cabinet decision for sanctioning of additional posts of teaching and non-teaching staff in the Colleges. This plea was not raised earlier by the State and was raised for the first time by this affidavit, it has been stated that the relevant notings in the Government file and the relevant Cabinet decisions were not available at that time and that they have now been obtained. In the said affidavit it is stated that the Education Minister had submitted a proposal for sanction of posts and the same was simply signed by the Chief Minister. The Chief Minister did not mention that he was giving a final approval in anticipation of the decision of the Cabinet. It has also been stated in the said affidavit that in the normal course, the matter should have been placed before the Cabinet for its approval but this was never done and the concerned file was sent back to the Education Minister who had on his own made an endorsement to the effect that the Chief Minister has been authorized by the Cabinet to take a suitable decision regarding sanction of posts. The correctness of the said endorsement by the Education Minister is assailed on the ground that there is no Cabinet decision which authorizes the Chief Minister to take a decision on its behalf nor has the Chief Minister said so. Annexed to the said affidavit are copies of the minutes of the proceedings of the Cabinet meetings dated January 22, 1988, February 2, 1988 and February 9, 1988 (Annexure 1, 2 and 3) as well as the copy of the notings on the file relating to issuance of order dated February 1, 1988. The said notings in the file show that action was initiated on the basis of the report of the High-Power Committee which had been constituted to examine the matter of creation of additional posts for which recommendations had been sent by the University and which were pending consideration before the Government. The Education Minister, Shri Lokesh Nath Jha, in his noting dated January 23, 1988, after taking into consideration

the existing posts of teaching staff and non-teaching staff in the colleges which had been converted into constituent colleges, except the colleges affiliated to the L.N. Mithila University, had taken a decision for creation of 828 new posts of teaching staff, 346 new posts in class III and 486 new posts in class IV on the basis of the norms suggested by the High-Power Committee. The said noting was placed before the Chief Minister, Shri Bindeshwari Dubey whose signatures bearing the date January 23, 1988 are below the notice. Below the signatures of the Chief Minister is a noting bearing the signatures of Shir Lokesh Nath Jha, Education Minister and the date January 23, 1988 that the Cabinet in yesterday's meeting had authorized the Chief Minister to take a decision. The noting contains the direction that the notification may be issued on the same day and the list may be sent to the Universities. As per the said direction of the Education Minister the order dated February 1, 1988 was prepared and was submitted to the Education Minister who approved it on February 1, 1988 and thereafter it was issued.

It is no doubt true that in the minutes of the meeting of the Cabinet dated January 22, 1988 there is no mention about the Chief Minister being authorized to take a decision with regard to creation of additional posts in the colleges. But there appears to be no reason as to doubt the correctness of the noting dated January 23, 1988 made by the Education Minister on the file that the Cabinet in its meeting held on January 22, 1988 had authorized the Chief Minister to take a decision in that regard. That the order dated February 1, 1988 was a duly authorized order of the State Government is evident from the fact that in Resolution No.307 dated March 8, 1988, which is a duly authenticated order, issued in the name of the Governor of Bihar. By the said Resolution a committee was constituted to review the order dated February 1, 1988 insofar as it related to absorption of the members of the staff against the posts of teaching and non-teaching staff. The said resolution did not disturb the order dated February 1, 1988 insofar as it related to sanction of posts in colleges which were converted into constituent colleges.

In the circumstances, it can be said that in respect of constituent colleges of Universities other than the L.N. Mithila University, the State Government by order dated February 1, 1988, had taken a decision with regard to total number of posts to be created in various subjects in each college and the total number of posts of various categories of non-teaching staff in each college. The matter of absorption of services of teachers and non-teaching employees in these colleges can, therefore, be examined on that basis. No similar order regarding creation of posts has been brought to my notice in respect of constituent colleges which were attached to the L.N. Mithila University. Some of the Colleges which were earlier attached to the L.N. Mithila University were later attached to B.N. Mandal University after it was established. In the absence of any order of the State Government sanctioning creation of additional posts on the basis of recommendations pending consideration before the Government in respect of the Colleges attached to these two Universities, the matter of absorption of teaching and non-teaching staff has to be considered in the light of the posts sanctioned upto the cut – off date in respect of these Colleges as well as the posts for which recommendation had been sent by the University to the State Government upto the cut-off date which were pending consideration before the State Government.

As regards order dated December 19, 1989, on which reliance has been placed by the Representative Staff Associations, it has been urged on behalf

of the State Government that the said order has no legal sanctity because it was issued on the basis of the approval given by the Chief Minister in anticipation of the approval of the Council of Ministers was not obtained in respect of the said order. It has also been submitted that the validity of order dated December, 18, 1989, is under challenge before the Hon'ble Supreme Court in the pending appeal. I do not consider it appropriate to take note of the order dated December 18, 1989. Subsequent orders dated February 12, 1990 and February 24, 1990 are on the same lines as the order dated December 18, 1989 and for the same reasons, they are also not taken into account for the purpose of answering in term of reference.

The list of Teachers who are eligible to be considered for absorption has to be prepared without taking into account the names mentioned in order dated February 1, 1988, December 18, 1989 and February 24, 1990. For the purpose of placement in the list, the teachers who improved their qualification by availing the benefit of the relaxation made under clause (ix) of paragraph 2 of the Resolution dated May 9, 1988 have to be placed below teachers who possess the prescribed qualification though appointed subsequently. While preparing the list of teachers who are eligible to be considered for absorption the placement of teachers in the said list will have to be made on the basis of the date on which the improved qualification, viz. 52.5% marks in the Post-Graduate degree examination or Ph. D. Degree was obtained.”

#### **RE: SCOPE OF ENQUIRY**

74. The job entrusted to this Commission, in its opinion, includes resolving the dichotomies mentioned heretobefore. It must, therefore, to the extent possible make endeavours to construe the judgment of the Apex Court in the light of the Agrawal Commission Report.

In the opinion of this Commission, the purpose and object for which the Commission was erected must be borne in mind.

75. The claims of the teachers and non-teaching staff for one reason or the other, had not finally been adjudged by some of the universities despite having the exclusive jurisdiction vested in it under Section 4(1)(14) of the Act.
76. The Patna High Court had asked the Agrawal Commission to complete the said exercise within four months from the date of the said judgment i.e. 31.1.1997.

The Supreme Court also in its judgment gave four month's time to the universities.

But the issues unfortunately have not yet attained finality.

77. There cannot be any doubt or dispute that the cases of those who have legitimate claims, and who have approached this Commission within the time frame fixed by the Supreme Court, should be considered on their own merit.

To the said extent, it is the duty of this Commission to make all efforts in relation thereto. For the said purpose the directions of the Apex Court must be given effect to.

With that end in view, the issue with regard to the jurisdiction of this Commission should be determined.

78. Mr. Hansaria submitted that this Commission being concerned with the findings of fact, it should not delve into the questions of law.

In the opinion of this Commission, however, the jurisdictional questions raised at the Bar must be answered, and the scope, effect and purport of the Mahasangh Judgment vis-à-vis the Agrawal Commission Report must, as far as possible, be delineated.

79. If for the aforementioned purpose the questions of law raised at the Bar have to be determined, this Commission cannot shirk its responsibility to do so.
80. Facts must be determined on the basis of the Claimant's right to be absorbed and not de hors the same, and in that view of the matter interpretation of the Mahasangh Judgment, the Agrawal Commission Report, the legislative acts and the statutes framed by the universities, are required to be interpreted in their proper perspectives.
81. Only in cases where further directions from the Supreme Court of India may be required, the opinion of this Commission for the present purpose, obviously, shall not be final, so far as proceedings before it are concerned

The Mahasangh Judgment, *inter alia*, keeping in view the provisions of Articles 141 and 144 of the Constitution of India, was required to be given effect to both by the

Universities and the State. While so doing the Universities cannot prevaricate their stands from stage to stage.

They cannot, having regard to their autonomy, take a different stand at the instance of the State, which is also required to play its role within the four corners of the statute.

82. The universities obtained a legal opinion with regard to the interpretation of the Mahasangh Judgment. Much later, the State also obtained the opinion of the Advocate General of the State of Bihar, and relying on or on the basis thereof, issued the directions to the universities in 2008-09 and further arranged a meeting in the office of Hon'ble Vice Chancellor of the concerned universities.
83. In the aforementioned backdrop, this Commission feels its duty to interpret the Agrawal Commission Report and the Mahasangh Judgment.

The orders of this Commission as also the judgment of the Supreme Court must be interpreted keeping in view of the well known principles viz.,

- a) a judgment cannot be read like a statute;
- b) it must be read in its entirety and reasonably; and
- c) effect must be given to all parts of the judgment and no part thereof shall be treated to be otiose.

(See *Zee Telefilms Ltd. vs. Union of India* (2005) 4 SCC 649 at 737, *JIK Industries Ltd. vs. Amarlal V. Jumani* (2012) 3 SCC 255 at page 275 and *Voltas Ltd. vs. Rolta India Ltd.* (2014) 4 SCC 516 at 532).

84. The Agrawal Commission did not include the names of the teachers and non-teaching staff mentioned in the aforementioned Government Letters, and in particular, Letter No. 181(C), on the premise that the validity thereof was pending consideration before the Supreme Court of India. The Supreme Court, inter alia, keeping in view the fact that the State of Bihar did not raise the question of validity of the said Letters of the State of Bihar before the Patna High Court, did not allow it to raise the said question before it.

85. The core of the question which arises for consideration is whether this Commission has the requisite jurisdiction to consider the cases of such teachers and non-teaching staff whose names find place in the subsequent Letters issued by the Government as contained in its Letter Nos. 38(C) dated 1.2.988, 36(C) dated 24.2.1990, and 181(C) dated 18.12.1989.
86. For the aforementioned purpose it is not only necessary to take into consideration the reference made by the Hon'ble Supreme Court of India to Agrawal Commission, but also the reference made to this Commission. Reference to the Agrawal Commission specifically mentions the words "other government orders".

It would, therefore, be not correct to say that the Supreme Court was not aware of the existence of the order(s) passed by the Government of Bihar. The Agrawal Commission in its Report also referred thereto in extenso.

87. Shortly stated, whereas the contention of the learned Counsel of State of Bihar, and State of Jharkhand, is that this Commission cannot go beyond the List I, and part of List II, as mentioned in the Mahasangh Judgment, the stand of the Universities and the Claimants is that the findings of the Agrawal Commission and the directions in the Mahasangh Judgment, have not been given effect to in their entirety by the universities, despite the fact that the list of teachers and non-teaching staff proposed by them are based on the said Government Letters.

Before advertng to the said question, the respective stand of the Universities may be noticed.

#### **Stand of the Respective Universities**

88. Mr. Rajiv Singh, the Learned Counsel appearing on behalf of the Ranchi University, Vinobha Bhave University, Nilambar Pitambar University, and Sidhu Kahnu University, would contend that the said universities have directed absorption of only such teachers and non-teaching staff, who strictly come within the purview of the posts sanctioned by the State of Bihar and recommended by the University, and / or

had remained pending for consideration before the State of Bihar on the basis of the recommendations made by the concerned University on or before 30th April, 1986.

It has, however, fairly been pointed out that the orders of absorption are provisional in character, although the members of the teaching and non-teaching staff, at all material times, were, and still are, working.

According to the Learned Counsel, most of the Claim Petitions arise out of non-payment of due salary of the teachers and non-teaching staff.

It is furthermore contended that there are several cases, where absorption was directed subject to vacancy arising out of retirement. For example case of one Dr. Ranjit Singh, Lecturer working in the Department of History, who had directed to be absorbed when the post became vacant, as the holder of the sanctioned post Dr. A.M. Sahu retired from his services on 30th June, 2008. Absorption, according to the Learned Counsel, has also been made by the University, of some teachers and non-teaching staff, where the Claimants not only fall in the category of R2 /NR, but their names also find mention in Government Letter No. 181 (C), as also Annexure IV A of the Agrawal Commission Report.

It has furthermore been pointed out that one Sh. Bindu Pahan has claimed relaxation in the post for Lecturer, belonging to the SC/ST category, in terms of the Act in regard to his qualification, and his case has been considered by the University.

In so far as Naamdhari College is concerned, it has been submitted that the cut-off date in relation thereto being 31.03.1987, the Government Letter No. 181 (C) is not applicable. What would be the consequence thereof must be determined by this Commission when the cases falling under that category are taken up for hearing.

89. Ms. Jagriti Arora, learned Counsel appearing on behalf of the Kolhan University, contended that the said University also made inter-se departmental absorptions of teachers and non-teaching staff within the same college. In this connection example of one Dr. J.P. Narayan has been given, who was Lecturer in Department of Commerce

in ABM College, but a proposal of his absorption / regularization was made against the vacant post of lecturer in Hindi Department in the same college.

90. Mr. Atul Jha, learned Counsel appearing for B.N. Mandal University, L.N. Mithila University, and P.N. Bhagalpur University would contend:

- a) These Universities have taken into consideration all the Government Orders issued by the State of Bihar to consider the names appearing in NR category also and thus have not restricted the cases falling strictly within S and R1 category alone.
- b) The Govt. orders having not been cancelled, and in fact the Supreme Court of India having upheld the validity thereof, the University felt bound thereby.
- c) The orders of absorption of both teachers and non teaching staff having been passed in the years 2005-06, and they having been paid their salaries by the State of Bihar upto 2008-09, the State is estopped and precluded from questioning the orders of absorption passed by the universities at this stage.
- d) In any event, the State of Bihar having not issued any direction disapproving the list of teachers and non-teaching staff who come within the preview of NR and R2 category at any point of time, cannot be allowed to make any submissions contrary thereto or inconsistent therewith before this Commission.
- e) The orders of absorption issued by the University and the State having neither made any complaint thereabout with the university as regards legality or validity thereof, nor it having taken no other or further step to challenge the validity of the said orders before any other forum, it cannot now be permitted to turn around and contend that the orders of absorption passed by the said universities were illegal and without jurisdiction.

91. Mr. Chander Prakash, Learned Counsel appearing on behalf of Magadh University and Veer Kunwar Singh University, however, accepted that the University although

originally followed the Agrawal Commission Report, in view of the stand taken by the State of Bihar to the effect that it would pay salary only in respect of the teachers who fall in the S and R1 category, a revised list had been issued. The Learned Counsel furthermore accepted that Magadh University, amongst others, was a party to the decision taken in a meeting held on 21.09.2010, presided over by Hon'ble the Chancellor of the Universities and it stands by the revised list.

92. Mr. Vijay Hansaria, it may be placed on record, made extensive reference not only from the Composite-affidavit filed by the State of Bihar, but also the Counter-affidavit filed by the Magadh University before the Supreme Court of India to contend that the revised list only should be given effect to.
93. The admitted facts of the matter as would appear from various documents noticed heretobefore, at the outset may be taken note of, which are as under:
- a) The Government issued various Letters directing conversion of affiliated colleges to constituent colleges; the cut-off date in respect of 36 colleges being 30.4.1986.
  - b) The University, prior to the aforementioned cut-off date had made recommendations for absorption of teachers which have been noticed by the Agrawal Commission in Vol.4 of its Report, being Annexure-IIA thereof.
  - c) On or about 30.1.1997 a Division Bench of Patna High Court in CWJC No. 4021 of 1995 and other connected matters passed the judgment which is binding on the parties.
  - d) On 19.12.2013 Agrawal Commission submitted its Report.
  - e) On 12.10.2004 the Supreme Court of India passed its judgment in Mahasangh's case.

- f) On 8.5.2005 the Magadh University issued a list of teachers and non-teaching staff absorbing them in the service of the constituent colleges, whose names find place in Annexure IV A of the Agrawal Commission Report.
- g) On 8/13.2.2008 the State issued a letter to the Accountant General and the Universities directing them to pay salaries only to those members of the teaching and non-teaching staff who have been placed in S & R1 category, and not to those who are placed in R2 & NR category.
- h) On 21.7.2008, the universities stopped the payment of salary to those teachers and non-teaching staff that fell in R2 and NR category, stating that salary would be paid only to those teachers who are covered by the decisions of the Supreme Court of India.
- i) On 11.11.2008 the State wrote letters to the Universities, inter alia, contending that as per the opinion of the Advocate General only those teachers and non-teaching staff falling in S and R1 were entitled to receive salaries.
- j) On 6.12.2008 the Magadh University constituted a three-member Committee to find out the names of those persons who fall only in S & R1 category.
- k) On 9.7.2009, relying on or on the basis of the report of three-member committee, the Magadh University came out with a fresh notification identifying individuals who fall strictly in S and R1 category, which tally with the names contained in list I and part of the list II as referred to by Supreme Court of India. This letter of the Magadh University is not under challenge but the effect thereof, keeping in view the order passed by the Full Bench of the High Court of Patna and the Supreme Court of India, has to be considered by this Commission.
- l) On 9.1.2014 the Magadh University filed an Affidavit before the Supreme Court of India in SLP ( C ) No.12591 of 2010, annexing therewith a list of teachers and non-teaching staff who fell strictly within the S & R1 category.

As indicated heretofore, the Magadh University still stands by the said revised list.

### **Analysis**

94. There cannot be any doubt or dispute that the jurisdiction of this Commission must be kept confined to the four corners of the reference made to it by the Supreme Court of India, but while doing so, however, the purpose and object for which this Commission was constituted cannot be lost sight of. For the said purpose, the term of reference of the Agrawal Commission, and this Commission, play an important role. The terms of reference being broad ones, strict construction thereof, as has been urged by Mr. Hansaria, is not possible. They must be given purposive meaning.
95. The reference, inter alia, states that this Commission should adjudge on the claims of teachers and non-teaching staff on the anvil of the Agrawal Commission Report as also the judgment rendered by the Supreme Court of India.
96. Mr. Hansaria submits that the word 'and' having been used, the same should be read conjunctively. In other words, the learned counsel contended that this Commission's jurisdiction must emanate both from the Report of the Commission, as also the judgment of the Supreme Court, and in the event it is found that the Supreme Court has not expressly accepted the Report of the Commission, or no mandamus has been issued by it in this behalf, the same cannot be the subject matter of enquiry by this Commission.

The learned counsel in effect and substance says that the effect of only the Mahasangh Judgment may be taken into consideration by this Commission, although it has accepted the Agrawal Commission Report, and the objections thereto by the State of Bihar have been rejected.

97. The meaning of the term 'on the anvil of', in the aforementioned context, assumes some significance. As per Oxford dictionary, the meaning of the term 'anvil' is 'a heavy iron ore block on which metal can be hammered and shaped'. It has a broad meaning. It, therefore, refers to the scope of both the Agrawal Commission Report as

also the Mahasangh Judgment, which would mean that the judgment of the Supreme Court has to be read in the light of the Agrawal Commission Report. In effect and substance, the Commission has to adjudge all cases, which, one way of the other, come within the purview of the said report and the judgment.

98. The Commission at page 64 of Vol. 1 of its report stated as under:

“Since the validity of the order dated December, 18, 1989, is under challenge before the Hon’ble Supreme Court in the pending appeal, I do not consider it appropriate to take note of the order dated December, 18, 1989. Subsequent orders dated February, 12, 1990 and February 24, 1990 are on the same lines as the order dated December, 18, 1989 and for the same reasons; they are also not taken into account for the purpose of answering the term of reference.”

The terms of the reference of the Agrawal Commission have already been noticed heretobefore.

99. The Patna High Court in its order dated 1.3.2010 passed in LPA No.1304 of 2009 and other related cases, opined as under:

“21. While the debate was on, how the scrutiny can take place regard being had to the observations of the Apex Court in paragraphs 61 to 64 of the decision and the sub-paragraphs (1), (4) and (6) of paragraph 73, a suggestion was given that a committee should be constituted being chaired by a retired Chief Justice of the High Court so that there can be thorough scrutiny of the factual matrix so that employees should know where they stand and would not further nourish any unwarranted and unnecessary hope. On such a suggestion being given, Mr. P.K. Shahi, learned Advocate General after obtaining instructions fairly stated that he has no objection if a retired Chief Justice of the Hon’ble High Court is appointed as the Chairman along with a Member who has been the Vice-Chancellor of the University to be assisted by the Director of the Higher Education (retired) in the capacity of the Secretary to the two member Commission.”

The Full Bench, in its judgment, referred to paragraphs 61 to 64 of the judgment of the Supreme Court of India, as also sub-paragraphs 1, 4 and 6 of paragraph 73, which is the concluding portion thereof.

100. The questions which, however, arise for consideration are:-

- (i) In absence of any direction issued by the Supreme Court of India, despite upholding the validity of the said letters, could they be acted upon by the Universities?
- (ii) Whether in the terms of the judgment and order of the Supreme Court of India vis-à-vis the terms of reference, this Commission has the requisite jurisdiction to enter into the merit of the Claim Petitions, relying on, or on the basis of, the aforementioned Orders of the Government?

101. There cannot be any doubt or dispute that this Commission may not be bound by the stand taken by the State of Bihar or the Magadh University, as it is required to interpret the judgment of the Supreme Court as also the effect of the Agrawal Commission Report independently.

### **ESTOPPEL ISSUE**

102. Before, however, such an exercise is resorted to, it must be borne in mind that the principles of estoppel, as has been urged by the leaned counsel of the Claimants and / or some of the universities, cannot be said to have any application in the facts and circumstances of the present case, principally on the premise that there is no estoppel against statute.

If an Order passed by the University is contrary to the constitutional provisions, or the decision of the Supreme Court of India or the Bihar State Universities Act, or any other law for the time being in force, the same would be a nullity.

103. An Order passed wholly without jurisdiction, being coram non judis, cannot be sustained, relying on or on the basis of the procedural principles, like estoppel, waiver, or res judicata. (See *Chief Justice Of A.P. & Anr vs L.V.A. Dikshitulu & Ors.* : AIR 1979 SC 193 at 198) (See also *Jayendra Vishnu Thakur vs. State of Maharashtra* (2009) 7 SCC 104 (1) and *Mutavalli of Sha Madhari Diwan Walkaf v. Syed Zindasha & Ors.* (2009) 12 SCC 280). But such a question does not arise in this case as the Government order has been found to be valid.

## **BINDING NATURE OF THE JUDGMENT OF THE SUPREME COURT**

104. In the aforementioned factual and legal matrix, the preliminary issues sought to be raised by the State of Bihar are required to be considered viz. a Writ of Mandamus having been issued to the universities only in respect of List I and part of List II of the Agrawal Commission Report and no other, would this Commission confine its scope of enquiry solely to the Claim Petitions involving such a dispute, and not with reference to list IIIA or IVA appended to the Agrawal Commission Report.

The answer to the said question must be rendered in the negative.

105. At the outset, it may be noticed that the State of Bihar in its objection to the Agrawal Commission Report in this behalf, stated as under:

“If the letter dated 18.12.1989 is accepted in toto then the entire exercise before the Commission will be proved to be futile because the letter dated 18.12.1989 indicates the number of posts as well as the persons adjusted against those posts. The ultimate object of determining the number of post sanctioned and additional posts recommended under Reference no.1 & 2 was to arrive at a conclusion that how many posts are there against which immediate absorption can be directed and against how many posts absorption can be done after a decision has been taken about the same by the State Government. But if the number of posts as mentioned in letter dated 18.12.1989 is to be accepted then there was no need to make this exercise.”

The said objection was rejected.

The Patna High Court also clearly held:

- “24. 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 or regulation of the services of the teachers of the Colleges which have become constituent colleges of the different Universities in fourth phase.
25. 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.

26. In that view of the matter, this Court directs the Universities who are parties to 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 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.”

The Supreme Court in paragraph 15 of its judgment specifically endorsed paragraphs 24, 25 and 26 of the judgment of the Patna High Court dated 31.1.1997. It is stated at the Bar that Annexure-5 referred to in paragraph 26 of the judgment relates to the Government Letter No.181 (C) dated 18.12.1989.

It has not been shown by the State of Bihar that Annexure 5 in fact is a different document and not the Government Letter No.181(C) dated 18.12.2009.

106. The Supreme Court in paragraph 73 of the Judgment clearly stated that universities are to take a final decision concerning the individual employees, in terms of the Agrawal Commission Report. As indicated heretofore, the Supreme Court clearly affirmed paragraphs 24, 25 & 26 of the judgment of the Patina High Court. Therein a Writ of nature of Mandamus had been issued. It is, therefore, axiomatic that the said Order, having regard to the doctrine of merger, would form part of the directions contained in the judgment of the Supreme Court of India.

Indisputably again, the Supreme Court of India in paragraph 62 of the its judgment has rejected the contention raised on behalf of the State of Bihar, and the State of Jharkhand, in so far as the validity or otherwise of the Government Letter Nos. 38(C) and 181(C) etc. is concerned.

107. In the aforementioned context, it would be pertinent to notice the subject matter of the letter Nos.181(C) dated 18.12.1989 which reads as under:

“Absorption of services of the teachers appointed and working against the sanctioned and recommended post upto 30.4.1986 in the 4<sup>th</sup> phase Constituent Colleges.”

The said letter, therefore, clearly refers to the cut-off date of 30.4.1986. It is also not in dispute that the said letter was issued pursuant to the report of the High Power Committee constituted by the State of Bihar itself.

It was stated therein as under:

“As per the notification of the State Government and the recommendations received by different high level screening committees, constituted by the State Government the list for absorption of the services of the teachers of the fourth phase constituent colleges working against the above mentioned categories are being published here with college wise and subject wise with the following sub conditions:

- i. This list is provisional and the teachers enlisted will be deemed to be provisionally absorbed. Any objection raised in regard to this list will be finalized by the State Government within the stipulated period received through the University.
- ii. The committees have recommended for absorption of the teachers only on the production of the mark sheets and date of publication of result/date of improvement of their result by the Universities/concerned teachers and it has not been verified by their originals. University will examine the original mark sheet and the date of publication of result. And if it is found correct then the teachers will be deemed to be absorbed in the services.
- iii. In subjects like music, Home Science, Ancient History etc. it is not clear whether the teachers appointed in these subjects have got the qualifications prescribed in concerned statute for appointment in those subjects. Enquiry will be made by University regarding their qualification. Their absorption will be acceptable only on their (the teachers) having the prescribed qualification.
- iv. The absorption of some teachers have been kept pending due to the lack of information in regard to their appointment and different types of disputes. Final decision will be taken by the State Government after enquiry in regard to such teachers.”

108. According to the Claimants, Government Letter No. 36(C) dated 15.4.1990 contains the finalized list which had been issued after making proper verification of the original mark sheets and other relevant factors concerning the teaching staff.

The Supreme Court, moreover, in paragraph 26 of its judgment stated as under:

“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.”

109. The aforementioned opinion of the Apex Court must, thus, be read together with the judgment of the Division Bench of the Patna High Court. The Patna High Court not only referred to Government Letter No.181(c) dated 18.12.1989, but also the agreement entered into by and between the parties thereto.
110. So far as draft agreement is concerned, it may be noticed that the lists of the principals / professors- in charge, teachers and non-teaching staff annexed thereto, were to form part of the agreement, once finalized by the university. It is, however, stated that in view of delay on the part of the State in producing the same, the Agrawal Commission did not have the benefit of considering the said agreements.

The lists, it is stated at the Bar, were supplied by the State as per the take over letter.

111. The sixth conclusion contained in paragraph 73 of the judgment of the Hon'ble Supreme Court clearly demonstrates that the decision in individual cases with regard to the qualification of each employee and corresponding statute applicable at the relevant time prescribing qualifications for the teachers and non-teaching posts were to be taken by the universities based on the findings in the report of the Agrawal Commission, and in the light of the legal position explained therein.

It is difficult to conceive as to how the universities could ignore the subsequent orders issued validly by the State. When an executive instruction is issued, the same is meant to be given effect to. A 'State' cannot say that, it would exercise its jurisdiction while discharging its duties in terms of statutory provisions but the same shall not be given effect to.

112. The reason for not giving effect to the said letters is bizarre. The State raised the question of validity of the said letters, but it was not permitted to do so and, thus, they must be held to have been validly issued. Once there is a valid order conferring rights

on the employees of the colleges, the same become enforceable in law. It is not, and cannot be, the case of the State that the said Government Order can be enforced before a different forum, despite order of the Patna High Court and the Supreme Court.

113. Applying the principle of '*ubi jus ibi remedium*' vis-a-vis the principles akin to section 9 of the Code of Civil Procedure, 1908, as also Articles 14 and 39A of the Constitution of India, the right vested in a person cannot be held to be not justiciable.

114. Mr. Hansaria would repeatedly contend that the function of this Commission being a limited one, it should not go into the said question.

Such a contention cannot be accepted for the simple reason that even in relation to its duty to find fact, the Commission must be clear in its mind as to for what purpose the fact is to be determined, and on what material the subsequent orders are to be ignored.

115. Mr. Hansaria submitted that the Supreme Court having not declared the said Orders to be invalid, no reliance can be placed thereon.

116. The said submission cannot be accepted for the following reasons:

a) The Order passed by the Government remains valid till it is set aside. Even void orders are required to be set aside.

b) Prima facie the Government Letters have been found by the Agrawal Commission to have been issued after compliance of all statutory and constitutional requirements.

c) The Supreme Court of India having not allowed the State to raise the question of validity thereof, by necessary implication, the said Orders have been held to be valid, and, thus, must be given effect to.

d) Even the Division Bench of the Patna High Court referred to the letter dated 18.12.1989 which was annexed to the Writ Petition and marked as Annexure-

5, and termed it to be a post-facto sanction, the correctness whereof can no longer be questioned;

117. It is stated at the Bar that apart from the four letters of the Magadh University as referred to at Page 403 of the Agrawal Commission Report, there may be other letters of the University recommending for sanction of more posts by the State of Bihar. If there be any such letter, the same shall be taken up for consideration at the appropriate stage of the proceeding.
118. This commission, thus, is of the opinion that the aforementioned subsequent orders are relevant and must be given effect; but the question of the applicability thereof in the individual cases must be considered while adjudging the claims of the concerned Claimants.
119. Letter No. 36(C) appears to have been issued in continuation of letter No. 181(C) dated 18.12.1989, in as much, perusal thereof would clearly go to show that reference had been made to the teachers whose educational qualifications were under scrutiny. Furthermore, names of twelve teachers whose cases were pending inquiry were also mentioned. Similarly the name of one Anjana Verma, who was recommended after 30.04.1986 has been mentioned. The names of Surinder Singh, Pranav Kumar Singh, Kapileshwar Prasad, Saroj Singh and Ravi Naresh Mishra of Ganga Devi Mahila College, Patna, also find place therein whose cases were shown as 'pending' in the letter No. 181(C).

**RE: THE REVISED LIST**

120. It is stated that general orders dated 14.9.2009 issued by the Ministry of Human Resource Development, and the letter dated 15.9.2009 issued by the Magadh University whereby and whereunder it was directed that no work shall be taken from the employees who do not fall within the S and R1 List, has been stayed by the Patna High Court by an order dated 8.1.2010 passed in CWJC No. 12346 of 2009, *Dr Virendra Kumar Singh and Ors. vs. State of Bihar* and ors, which is in the following terms:

“Till disposal of these applications, operation of impugned orders issued by the Deputy Director, Higher Education, Government of Bihar, Patna dated 14.9.2009 and the letter issued by the Registrar, Magadh University, Bodh Gaya contained in letter No.323 dated 15.9.2009 shall remain stayed.”

Attention of this Commission has also been drawn to the notification dated 9.7.2009 whereby earlier notification dated 8.5.2005 was amended.

121. In that view of the matter, and having regard to the clear directions issued by the Supreme Court, the purported revised list shall not stand in the way of this Commission to consider the cases of the respective Claimants on their own merit.

It, furthermore, appears that even thereafter, the orders of regularization had been issued by the Magadh University by a notification dated 27.11.2009, on the basis of the Report of the enquiry committee whereby 36 teachers were directed to be absorbed and by a notification dated 28.2.2010, 36 teachers were absorbed, and they were directed to be adjusted in R1 category. Similarly by a notification dated 29.09.2009, services of 41 lecturers were directed to be absorbed in the light of Letter No. 181(C) dated 18.12.1989. Evidently, therefore, the State and the university having been taking different stands, the effect thereof must be considered by the Commission, as and when occasion arises therefor.

Prima facie, therefore, it appears that the universities have placed those employees also in R1 category whose names found place in Annexure IVA of the Agrawal Commission Report.

122. It may also be noticed that even those employees whose names appear in the aforementioned notification are not being given the full benefits thereof.

This aspect of the matter shall be considered as and when any occasion arises therefor.

**RE: AFFILIATION OF SUBJECT**

123. So far as those cases where posts have been sanctioned while granting affiliation to the subjects which were pending consideration before the State is concerned, *prima facie*, it has to be held that the posts were sanctioned with the subjects.
124. The Apex Court in paragraph 36 of the judgment has considered this aspect of the matter and opined, as indicated heretofore, that the matter relating to the absorption of teachers and non-teaching staff after the colleges in question become constituent ones, falls within the sole domain of the University.

There cannot, thus, be any doubt or dispute that ultimately it was for the concerned universities to consider the dispute raised by the teachers and non-teaching staff, so far as the same related to the absorption of teachers is concerned. Thus, subject to statutory provisions, the decision of the University would be final.

125. This Commission, *prima facie*, is of the opinion that the said Government Letters, subject to the observations made heretofore, should fall for its consideration, while taking up individual cases, and in particular having regard to the fact that the State of Bihar was unsuccessful in its attempt to question the validity of the said letters, the concerned universities cannot be said to have committed any mistake in taking the said Government Letters into account, in so far as the same clearly suggest that recommendations had been made by the concerned Universities for sanction of posts in particular subjects prior to 30.4.1986.

### **THE LISTS**

126. Although the Supreme Court of India in its judgment dated 01.03.2010 referred to 3 lists namely List 1, List 2 and List 3, the Agrawal Commission in his Report has appended several lists in the form of annexures. In terms of such lists only, the Agrawal Commission answered the references.
127. Annexure IA refers to the sanctioned posts of teachers; whereas Annexure IB refers to the sanctioned posts of both Class-III and Class- IV of non-teaching staff. This has presumably been referred to as List 1 by the Supreme Court of India.

128. Recommended posts of teaching staff have been enumerated in Annexure IIA (a). Whereas proposals submitted by the college administration upto 30th April, 1986 have been enumerated in Annexure IIA (b), and the posts recommended by the University upto 30th April 1986, and pending consideration before the State Government, are contained in Annexure II B (a). The proposals submitted by the college administration up to 30.04.1986 and pending consideration before the University are contained in Annexure II B (b).
129. Annexure IIIA refers to the teachers who were working on the date of conversion, arranged subject-wise. Annexure IIIB (a) refers to those teachers who were appointed on the basis of the recommendations of the College Service Commission; Annexure IIIB (b) refers to the teachers who have been permanently absorbed; IIIB (c) refers to the teachers who did not have the requisite qualification on the date of appointment, but became eligible at a later date; and Annexure IIIB (d) refers to teachers who did not possess the requisite qualification for appointment to the post of a lecturer.
130. Annexure IV A refers to the members of the teaching staff who have been absorbed and who have been found eligible for absorption, as the case may be.
131. In this behalf the relevant portion of the Agrawal Commission Report may be noticed:

“TERM OF REFERENCE NO. 4

Teaching Staff

Having regard to the number of sanctioned posts as indicated in the order of the Government of Bihar dated February 1, 1988; a statement has been prepared showing the names of Teaching Staff who are eligible to be considered for absorption. The names have been arranged subject-wise, in the order of the date on which they become eligible for consideration keeping in view the nature of the post in which appointment was made. The said statement is annexed as Annexure IV-A.”

132. In the said List, those teachers who have been permanently absorbed or temporarily absorbed, and who have been selected by the College Service Commission, etc. have also been mentioned.

The List also contains the names of such candidates whose records were not available. The said List contains the details as to the number of posts sanctioned subject wise, name of the teachers, date of eligibility, date of appointment, and nature of appointment.

In certain cases, the said Annexure IVA also contains the names of such employees who were not eligible for recommendations for their permanent absorption as the subject affiliation was pending approval. Annexure IVB refers to the non-teaching staff who were found eligible for absorption.

It is, therefore, axiomatic that the question as to which list shall govern the cases of teachers or non-teaching staff can be determined only when the individual cases are taken up for hearing.

133. The Supreme Court, Mr. Hansaria contended, has re-categorized those employees by referring thereto as List 3, but there is no material in support thereof. List 3 appears to be comprising of the names of those who fall in NR & R2 category.

Such Lists, I am instructed at the Bar, have been prepared by the universities concerned. While considering the cases of those who fall in the aforementioned categories, but have otherwise filed claim petitions, shall be considered at the appropriate stage. Evidently, however, the cases of those who come within the purview of negative list cannot be considered on merit. Moreover, those who have come by the back door must go through that door only.

134. It may be placed on record that it was stated at the Bar that there are 14 such Claim Petitions which have been filed by the employees by the Colleges falling under Magadh University, on the premise that although they fall in the said category, but despite there being were posts available to which they could have been accommodated, they were not absorbed.
135. Keeping in view the findings arrived at heretobefore, that Government Letter No. 181(C) dated 18.12.1989, and similar other letters, are required to be taken into consideration for the purpose of determining the merit of the Claim of the individual

employees, the Annexures appended to the Report to the Agrawal Commission will have to be taken aid of, and the same cannot be ignored by this Commission.

**Re: CREATION OF ADDITIONAL POSTS – NOTINGS IN THE FILE**

136. In the aforementioned context, the decision making process relating to creation of additional posts may be noticed.

137. Notings in a file, unless communicated to the concerned parties, it is well settled, by itself does not confer any right on any person. However, in this case, the notings in this file have been taken into consideration by the Agrawal Commission in extenso. The notings in the file start from 19.11.1989, that is after the cut-off date.

It is not known whether the posts were sanctioned pursuant to or in furtherance of any recommendations made by the University prior to 30.04.1986 or not. This aspect of the matter may have to be considered by the Commission as and when any occasion arises therefor.

138. Mr. Shekhar, the learned counsel appearing on behalf of some of the Claimants urged that 2500 total posts having been sanctioned, the universities ought to have considered the question of regularization on the said basis.

It was furthermore submitted that the officers of the appropriate departments of the State of Bihar intended to extend the cut-off date of 30.4.1986 as would appear from the following:

“As far as the question of 30.04.1986 being the cut-off date was concerned, their assertion in this regard is that due to dissolution of syndicate and Senate by the Government and also due to arbitrary decision of certain universities the proposal regarding creation of posts of teachers / non-teaching employees lawfully working therein, and the proposal regarding affiliation of essential subjects and faculties being taught for several years was forwarded to the Government after 30.04.1986.”

139. It is a trite law that the notings in the file, by themselves, do not create any right in anybody. The rights would be created only when an order by the Executive Government is passed and communicated to the person concerned.

Moreover, the cut-off of date is to be determined not only with reference to the Government Order but also with reference to report of the Commission and the judgment of the Supreme Court of India. In absence of any valid executive order, the cut off dates cannot be extended.

140. In any view of the matter, the state Bihar has not issued any notification extending the cut off date, the cut-off date must be treated to be 30.4.1986 or such other dates as would appear from the different Government Orders.

This contention of Mr. Shekhar for the aforementioned reason is rejected.

**RE: NUMBER OF POSTS CREATED**

141. So far as question with regard to creation of number of posts is concerned, in the opinion of this Commission, the same cannot be gone into in view of the fact that it is not known as to whether the posts were sanctioned on the basis of the recommendations made by the universities prior to 30.04.1986 or thereafter in as much as the Supreme Court of India clearly directed that as the cases of teachers and non-teaching staff can be taken into consideration in respect of the posts for which recommendations have been made and upto 30.04.1986 and not thereafter. It is, however, conceded by the Mr. Hansaria that in the event some letters other than those referred to by Justice Agrawal are found to have been issued by the universities prior to 30th April, 1986, the same may be considered by this Commission.

It is one thing to say that the State of Bihar has granted post-facto sanction with regard to the posts wherefor the recommendations had been made and sanction of the posts had been sought by the concerned universities, but it is another thing to say that the posts have been created by the State relying on or on the basis of the recommendations made by the universities after the cut-off date.

142. The Agrawal Commission in Annexure IIA of the Report has referred to the recommendations dated 16.4.1984, 28.6.1984, 17.01.1985 and 19.3.1986, and furthermore noted that those letters were issued in regard to creation of posts in 14 subjects mentioned in the first part thereof, wherefor 56 posts have been sanctioned. In this connection, one illustration may be taken note of.
143. It appears that in the list IVA relating to one of the colleges (See page 403 of the Report), 16 posts had been sanctioned in respect of Ancient Indian and Asian History, Sanskrit, Maithili and Sociology (subjects for which approval of affiliation was pending consideration), and 56 posts in relation to the subjects for which approval for affiliation was pending consideration, and furthermore, in regard to Labour and Social Welfare, Pali, Rural Economics, Commerce and Statistics, that is the subjects for which there was no affiliation and no recommendation for affiliation, 14 posts had been sanctioned, totaling 86 posts.
144. So far as the subjects for which there was no affiliation, or no recommendation for affiliation had been made, as referred heretobefore, 14 posts were created in terms the Government Letter No.38 (c) dated 1.2.1988. It must, however, be placed on record that a mistake appears to have been committed with regard to the subject of Statistics, in so far as no post had been created in the said subject in terms of the Government Letter dated 1.2.1988.
- Prima facie*, therefore, there does not appear to be an apparent mistake in this behalf in the Agrawal Commission Report.
145. One of the questions is as to whether the number of recommended post shall be treated to be 86 or 56.
146. I am informed that in regard to other Universities, no such question may arise for consideration.

**RE: FILLING UP OF THE POST ON SUPERANNUATION OR ON DEATH OF THE CONCERNED EMPLOYEE**

147. The dispute in this behalf gives rise to a complicated question.
148. What would be the interpretation of the provisions of the Bihar State Universities Act vis-à-vis the recommendations contained in the Agrawal Commission Report is not free from doubt.
149. On the one hand, Mr. Hansaria urged that all posts, including the posts falling vacant on the death or superannuation of a teachers or non-teaching staff, have to be filled up in terms of the provisions contained in the 1976 Act, and the concerned statute, and only because a person is working on an ad-hoc basis possessing the requisite qualification would not entitle him to be absorbed, but on the other hand Mr. Vijay Kumar Sinha, the learned counsel appearing on behalf of some of the Claimants, drew the attention of this Commission to the Resolution dated 10.5.1991, issued by the Human Resources Department of the State of Bihar whereby and whereunder, the staffing pattern had been prescribed.
150. The said resolution, however, pertains to the non-teaching staff.
151. A three judge bench decision of the Hon'ble Supreme Court of India in *Rakhi Ray and Ors. vs. the High Court of Delhi and Ors.*, reported in (2010) 2 SCC 637, held as under:

“9. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational ", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law.

14. In view of above, the law can be summarized to the effect that any appointment made beyond the number of vacancies advertised is

without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.”

152. In *Veer Kunwar Singh University, Ad-hoc teachers and Ors. vs. Bihar State University (CC) and Ors.* reported in (2009) 17 SCC 184, it is stated as under:

“25. Creation of sanctioned posts is a sine qua non for recruitment to the post of lecturers. Adherence to the statutory provisions therefor is imperative in character. No doubt the qualification for holding the post of lecturer has since been changed in terms of the ordinance promulgated in the year 1993, but then the same was done as per the directions of the University Grants Commission. The colleges whether constituent or recognized must have lecturers who are qualified to hold the post. Qualification to hold the post of lecturer is fixed by the University Grants Commission. A University can ignore the directions of the University Grants Commission in this behalf only at its own peril and risk of derecognition. Neither it is permissible for a University to contravene the directions of the University Grant Commission nor, in our opinion, is it permissible for a court of law to issue a direction contrary thereto.”

In the said decision reliance has also been placed on a Constitution Bench judgment in *State of Karnataka vs. Uma Devi* reported in (2006) 4 SCC 1, wherein the law was stated thus:

29. In *Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra* [(2005) 5 SCC 122 : 2005 SCC (L&S) 628 : AIR 1994 SC 1638] a three-Judge Bench of this Court held that ad hoc appointees/temporary employees engaged on ad hoc basis and paid on piece-rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularization of their services even if their working period ranged from one to two years. This decision indicates that if the engagement was made in a particular work or in connection with particular project, on completion of that work or of that project, those who were temporarily engaged or employed in that work or project could not claim any right to continue in service and the High Court cannot direct that they be continued or absorbed elsewhere.
30. In *State of H.P. v. Suresh Kumar Verma* [(1996) 7 SCC 562 : 1996 SCC (L&S) 645 : (1996) 33 ATC 336 : AIR 1996 SC 1565 : (1996) 1 SCR 972] a three-Judge Bench of this Court held that a person appointed on daily-wage basis was not an appointee to a post according to rules. On his termination, on the project employing him

coming to an end, the Court could not issue a direction to re-engage him in any other work or appoint him against existing vacancies. This Court said: (SCC p. 563, para 2)

“It is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily-wage basis is not an appointment to a post according to the rules.”

Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, “the judicial process would become another mode of recruitment de hors the rules”.

31. In *Ashwani Kumar v. State of Bihar* [(1997) 2 SCC 1 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120] this Court was considering the validity of confirmation of the irregularly employed. It was stated: (SCC p. 17, para 13)

“13. So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in futility.”

This Court further stated: (SCC pp. 18-19, para 14)

“14. In this connection it is pertinent to note that question of regularization in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such

an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment.”

32. The Court noticed that in that case all constitutional requirements were thrown to the wind while making the appointments. It was stated: (SCC pp. 19-20, para 14)

“On the contrary all efforts were made to bypass the recruitment procedure known to law which resulted in clear violation of Articles 14 and 16(1) of the Constitution both at the initial stage as well as at the stage of confirmation of these illegal entrants. The so-called regularizations and confirmations could not be relied on as shields to cover up initial illegal and void actions or to perpetuate the corrupt methods by which these 6000 initial entrants were drafted in the scheme....”

Some of the other judgments operating in the field shall also be noticed at the appropriate stage.

153. The said Resolution dated 10.5.1991 merely states that the non-teaching staff, who had been working prior to 10.05.1986, would be allowed to remain in service, although the posts may not exist, and their absorption may be made on the posts which may be available in future. It is furthermore stated therein, that services of all persons who have been appointed after 10.5.1986, shall be terminated.

Even in relation to the non-teaching staff, there appears to be a dichotomy.

154. It is accepted that the cut-off date is 30.4.1986. It is, therefore, difficult to conceive as to on what basis the cases of those, who were appointed after 30.4.1986 but prior to 10.05.1986, were to be considered for appointment, particularly having regard to the

fact that it was clearly stated therein, that absorption would be effected against the approved post, and in accordance with the staffing pattern.

155. It may, however, be noticed that the 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 collage on the date of conversion and are eligible for consideration for appointment against such vacancies could be considered for absorption against such vacancies.”

156. So far as the absorption in such a contingency for filling up the post in the vacancy arising out of death or retirement is concerned, the State had raised specific objections, to the report but the same had been rejected.
157. Having regard to the peculiar situation it is opined that the Agrawal Commission Report and having regard with the order passed by the Supreme Court of India, this Commission is not in a position to accept the submissions of Mr. Hansaria in this behalf.
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 Hon'ble Supreme Court of India in this behalf.

**RE: APPLICABILITY OF CUT-OFF DATE OF 30.4.1986 TO MINORITY INSTITUTIONS**

163. Indisputably, the Government of Bihar had issued three different orders directing the concerned universities to enter into agreements with the affiliated colleges so that they be converted into constituent colleges.
164. Indisputably again, whereas in respect of 36 colleges the cut-off date was 30.4.1986, so far as Madan Ahilya College, Naugachia is concerned, the cut-off date was 01.06.1987, and so far as SJS Namdhari College Garhwa, and SNSRKS College, Saharsa are concerned, the cut-off date was 31.3.1987. The effect of their cut off dates with reference to the letter issued by the State on 18.12.1989 etc. must be taken into consideration at an appropriate stage of the proceeding.
165. No cut-off date, however, was mentioned in respect of Sh. Guru Gobind Singh College, Patna City, which was a minority institution and taken over by Magadh University on 12.6.1986 as a constituent college.

The said fact although has been noticed in the Agrawal Commission Report and it has specifically been stated therein that there is no cut-off date for the aforementioned college, yet no finding on the said issue has been arrived at.

The Agrawal Commission Report in relation to the aforementioned matter does not appear to have been questioned before the Supreme Court of India.

The Supreme Court also, in its judgment, did not specifically mention any particular cut-off date with regard to the said college.

166. Mr. Hansaria would contend that in that view of the matter, 30.4.1986 should also be considered to be the cut-off date for the said colleges. According to the learned counsel, having regard to the definition of a 'constituent college' as contained in Section 2 (i) of the Act, there cannot be any doubt or dispute that the constituent colleges being managed and controlled by the University, the question of the said institution asserting any minority status independently, i.e. after becoming a constituent college, may not arise.
167. Prima facie, however, it may be observed that fixing of a cut-off date is imperative. It appears to be an inadvertent error on the part of the Executive Government. This Commission is of the view that it has no jurisdiction to fill up the gap. Furthermore, the cutoff date in respect of 36 colleges having been specified as 30.04.1986, it is difficult for the Commission to specify 30.04.1986 to be the cut-off date for the minority constituent college also. It is not the scheme of this Act that the teaching and non-teaching staff could be absorbed / recommended for absorption till the agreement is entered into.
168. This may lead to manipulation and, furthermore, there may not be any basis for preparing the list of teaching and non-teaching staff who were considered eligible for absorption. However, this commission cannot determine the cutoff date of the said minority institution.
169. Having regard to the fact that there exists a dichotomy; the State of Bihar may obtain a suitable direction in this behalf from the Hon'ble Supreme Court of India.

## **RE: ABSORPTION OF TEACHERS BEYOND SANCTIONED POSTS**

170. Mr. Hansaria rightly urged that despite the prerogative of the universities to absorb teachers in the constituent colleges pursuant to an agreement entered into by and between the Governing Body of college and the University, the number of posts, the subject, and / or its affiliation must receive the prior sanction of the State.
171. Section 4 of the Act specifies the purpose and power of the University, sub-section (14) whereof empowers the University, inter alia, to assume the management of any institution under them and take-over its assets and liabilities. The first and second proviso appended thereto read as under:

### **“4. Purposes and powers of the University-**

...

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”

172. It may be true that the Hon’ble Supreme Court of India, as was submitted by Mr. Hansaria, did not refer to the aforementioned first proviso, but in the opinion of this Commission, the same has no relevance for more than one reason.
173. Firstly, because it is not the case of the universities that they had the requisite jurisdiction to regularize the services of any number of teachers and non-teaching staff irrespective of the fact as to whether the posts have been sanctioned or not; and
174. Secondly, because in the scheme of the Act, as would appear from Section 4(19), Section 21 and Section 35 thereof, it is mandatory for the universities to obtain sanction of the concerned State Governments.

Moreover, in terms of Sections 47 and 48 of the Act, the concerned colleges and universities are required to obtain their budgets approved by the State, and in that view of the matter there cannot be any doubt or dispute that the financial liability of the constituent colleges being that of the State, prior approval is necessary so as to enable it to pay salaries to the employees working on the teaching and the non-teaching posts.

175. It may be noted that it is not the case of any of the universities and / or the Claimants that any order of absorption has been passed by them beyond the sanctioned posts.
176. The Hon'ble Patna High Court also in LPA No.1304 of 2009, and other connected matters, has specifically dealt with this aspect of the matter in the following terms:

“30. Be it noted, Mr. Rajendra Prasad Singh and Mr. Yugal Kishore, learned Senior Counsel submitted that the power of the universities is paramount and absolute to absorb the employees. The said submission does not deserve any acceptance. One may cite an example to founder and nullify the said preponement. The State Government has the power to sanction the post. All appointments are done with prior approval of the State Government. Assuming a university appoints one thousand persons through the Vice Chancellor or other appointing body and put forth a claim for the salary to be paid by the State Government. The question would be whether the State Government is under obligation to accede to such a claim. The categorical and unequivocal answer has to be in the negative. Thus, submission is totally bereft of any substance and is only noted to be rejected.”

177. In the opinion of the Commission, therefore, teachers and non-teaching staff cannot be absorbed beyond the sanctioned strength, as may be declared by the State, wherefor the respective cut off dates have to be considered, albeit with reference to the Agrawal Commission Report and the judgment of the Supreme Court of India.

**RE: ABSORPTION OF EMPLOYEES WITH REFERENCE TO LIST III**

178. The Agrawal Commission at pages 29 & 30 of its Report categorically held that the employees whose names find place in List III cannot be directed to be absorbed.

The Hon'ble Supreme Court of India in its judgment held as under:

“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, 12.6.1987 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 the State Government before the cut off date, are liable to be rejected.”

179. In that view of the matter, it is held that those Claim Petitions which are premised on NR category or recommended after 30.4.1986 must be dismissed.

**RE: LALIT NARAIN MITHILA UNIVERSITY**

180. Mr. Neeraj Shekhar, the learned counsel appearing on behalf of some of the Claimants, and various other counsel appearing on behalf of teachers and non-teaching staff of the said University, submitted that the Agrawal Commission committed a serious error in so far as it failed to take into consideration the cases of those members of the teaching and non-teaching staff in whose favour additional recommendations were made by the State.

It is stated that unfortunately the Supreme Court of India also did not ask the concerned university to consider their cases. The teachers and non-teaching staff of said universities, however, went on a hunger strike, whereafter a tripartite agreement was entered into on or about 03.04.2006, wherein the State was represented by Commissioner-cum-Secretary of the HRD Ministry and the University was, inter alia, being represented by the Vice Chancellor thereof.

181. It has been submitted that the State of Bihar also, by its letter dated 3.4.2006, directed the Vice Chancellors of the University to do the following acts:

- “1. From total 25 teachers which is adjusted in concerned college, they be adjusted in the above college, the remaining teacher according to the importance of the number of students and subject, they may be adjusted in other college according to vacancy.
2. Due to non having the post of non teaching employee in their college, the remaining non teaching employee, their quantity remain 77, in case the university is not having any power, in the light of order passed in CWJC No.6098/97 for approval of ex post send the recommendation of their name, the State Government according to obtained the consent from finance department and shall dispose of this matter.”

182. The Learned Counsel would contend that having regard to the aforementioned tripartite agreement, as also the said letter dated 3.4.2006, the State cannot resile from its position.

183. Relying on or on the basis of decision of the Apex Court in *State of Bihar vs. Sunny Prakash*, reported in (2013) 3 SCC 559, it was urged that the State Government cannot discard the agreement, and the same has become enforceable before this Commission.

184. The Apex Court in the said decision stated the law as under:

“18. In the case on hand, we have already extracted the commitment made by the State Government as early as in 1987, subsequent demands made by the Federation on various occasions and the final decision by the Minister concerned, various officers including HRD and Finance Departments, representatives of the Federation and all other persons connected with the issue in question. Added to it, directions were also issued to the Vice-Chancellors and Registrars of all the universities for implementing the said “Government's” decision. In such circumstances, as observed earlier, it cannot be open to the State to contend that it is not a Government's decision in terms of Article 162 read with Article 166 of the Constitution.

19. Mr. Venugopal, learned Senior Counsel for the contesting respondents heavily relied on the principles laid down in *State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh* [(2005) 9 SCC 129 : 2005 SCC (L&S) 460] . The said decision also arose from a dispute concerning the absorption of about 4000 employees working in teaching and non-teaching posts in 40 colleges affiliated to various universities which were taken over as constituent colleges in accordance with the provisions of the Bihar State Universities Act, 1976. It was contended on behalf of the State of Bihar that power to sanction additional posts and appointments against the same in the

affiliated colleges is within the exclusive jurisdiction and power of the State under Section 35 of the Act. It was also contended that certain decisions of the Government that were taken after the change of elected Government had no prior approval of the Council of Ministers. The decision by the Cabinet, approval by the Chief Minister on behalf of the Cabinet is sine qua non for treating any resolution as a valid decision of the Government. It was also stated that in the absence of Cabinet approval, the order dated 1-2-1988 which was issued by the Deputy Secretary to the Government of Bihar has no legal efficacy. It was further argued by the State that any valid order of the Government has to be formally expressed in the name of the Governor in accordance with Article 166 of the Constitution. In para 64, this Court has held thus: (*Bihar Rajya M.S.E.S.K.K. Mahasangh case* [(2005) 9 SCC 129 : 2005 SCC (L&S) 460] , SCC p. 153)

“64. So far as the order dated 18-12-1989 is concerned, the State being the author of that decision, merely because it is formally not expressed in the name of the Governor in terms of Article 166 of the Constitution, the State itself cannot be allowed to *resile* or go back on that decision. Mere change of the elected Government does not justify dishonouring the decisions of previous elected Government. If at all the two decisions contained in the orders dated 1-2-1988 and 18-12-1989 were not acceptable to the newly elected Government, it was open to it to withdraw or rescind the same formally. In the absence of such withdrawal or rescission of the two orders dated 1-2-1988 and 18-12-1989, it is not open to the State of Bihar and State of Jharkhand (which has been created after reorganisation of the State of Bihar) to contend that those decisions do not bind them.”

From the above conclusion, it is clear that merely because of the change of elected Government and the decision of the previous Government not expressed in the name of Governor in terms of Article 166 of the Constitution, valid decision cannot be ignored and it is not open to the State to contend that those decisions do not bind them.”

185. Mr. Saket Singh, the learned Counsel appearing on behalf of some of Claimants, moreover, submitted as under:

- a) Perusal of the report of the Agrawal Commission would clearly show that due consideration has been given to the Government Order No.38C dated 1.2.1988, but the cases of teachers and non-teaching staff of LN Mithila University and B.N. Mandal University were not taken into consideration as

the said Government Order did not mention that any post was created in respect of the concerned colleges.

- b) Having regard to the fact that the State of Bihar had appointed two committees in terms of a Government Order Nos.307 and 308 and the latter one having been in relation to the sanction of the posts and affiliation of subjects in respect of L.N. Mithila University and B.N. Mandal University and the report of the said committee having been accepted by the State of Bihar pursuant whereunto and in furtherance whereof the order dated 18.12.1989 was issued, it is idle to contend that the cases of the teachers and non-teaching staff of those universities should not be taken up for consideration by this Commission.
- c) In that view of the matter, it should be held that the conclusion of the Supreme Court contained in sub-paragraph 5 of paragraph 73 of the judgment in Maha Singh's case may not be applicable keeping in view the fact that the names of the teachers and non-teaching staff appear in the said Government Order dated 18.12.1989 who are eligible to be considered for absorption in terms of the directions contained in sub-para 1 of para 73 thereof and this could be covered in basis thereof.

186. The submission of the learned Counsel cannot be accepted for more than one reason.

187. Firstly, because this Commission is bound by the decision of the Supreme Court, secondly, because the teachers and non-teaching staff might and ought to have raised the said contention before Supreme Court of India and having not done so the principles of constructive res judicata as envisaged in Explanation IV appended to Section 11 of the Code of Civil Procedure and/or the general principle of constructive res judicata, would be attracted, thirdly, because the teachers and non-teaching staff of the aforementioned universities have accepted the said findings in as much as knowing fully well they cannot make any representation before the university, resorted to hunger strike whereafter only a tripartite agreement was entered into wherein the State of Bihar, the concerned universities and the representatives of teachers and non teaching staff were also the parties, It is true that the State of Bihar by its letter dated 3.4.2006 directed the Vice Chancellors of the concerned universities

to implement the said tripartite agreement, but there is no doubt or dispute that as things stand at present, the claim petitions are premised on the tripartite agreement and not on the Government Order No.181 C dated 18.12.1989. This Tripartite Agreement, however, shows that even at a later stage, the State had for all intent and purport gave effect to the Government Letter dated 18.12.89.

188. The jurisdiction of this Commission is limited by the reference made to it by the Hon'ble Supreme Court of India; the mandate being to adjudge the Claim Petitions on the anvil of its judgment, and the Agrawal Commission Report. It cannot, therefore, enter into a question which has been determined by the Agrawal Commission.
189. This Commission cannot, thus, enforce a Tripartite Agreement entered into by and between the State and University on the one hand, and teaching and non-teaching staff on the other.
190. The remedy of the concerned teachers and non-teaching staff would be to move the appropriate forum to enforce the said tripartite agreement. The claim petition based on the tripartite agreement, therefore, must be rejected.

**RE: MILLAT COLLEGE, SKM UNIVERSITY, DUMKA**

191. The said college was one of the 36 colleges in relation whereto the State of Bihar issued a Government Order dated 19.8.1986.
192. The validity / legality of the said Order, however, was questioned by the President of Anjuman-E-Islahul Muslemen Santhal Pragana before the Hon'ble Patna High Court, seeking a declaration for the said college to be treated as a minority college.
193. The said writ petition was marked as CWJC No. 6145 of 1985. An order of stay of takeover of the said college was passed in the said Writ Petition by the High Court on 21.12.1985.
194. The said writ petition was dismissed of by a Division Bench of the Patna High Court by a judgment and order dated 2.8.1988, stating:

“15. Accordingly, this writ application is dismissed subject to the direction that the State Government and the University shall exercise their power vis-à-vis the College treating the said College as an affiliated college till the agreement is executed between the College and the university in terms of Section 4(14) of the Act after which it becomes a Constituent College. In the circumstances of the case, there shall be no order as to costs.”

195. It is stated that the Bhagalpur University issued a letter on or about 17.9.1990 stating that the cut-off date of 30.4.1986 would not be applicable in the said case.
196. However, in Writ Petition No.6359 of 2002 filed by a section of the teaching and non-teaching staff of the college, by a judgment and order dated 13.9.2003 the Jharkhand High Court held that the question as to whether the Petitioners therein were appointed prior to the date when the college was made constituent should be considered from the date of takeover of college.

By an Order dated 1.12.2008, the State of Jharkhand sanctioned of 327 posts of teaching staff and 548 non-teaching staff, only with retrospective effect from 30.4.1986, as a result whereof it is contended that the cut-off date should have been treated to be the date of agreement and not 30.4.1986.

197. It has been urged that the Commission should treat the date of agreement as the cut-off date and not 30.4.1986.
198. Keeping in view the limited jurisdiction of this Commission, it is opined that it cannot go into the aforementioned question. The legality of the order of the State can be questioned before appropriate forum and in appropriate proceeding, but not before this Commission.
199. In any event, the said question has nothing to do with the implementation of the order of the Supreme Court vis-à-vis any order passed by the University pursuant thereto or in furtherance thereof.

200. It is, therefore, directed that all Claim Petitions of the teaching and non-teaching staff of Millat College, which are not based on the cut-off date of 30.4.1986, should be dismissed.

**IN RE: SOME CASES PERTAINING TO SOME UNIVERSITIES IN THE STATE OF JHARKHAND IN RELATION TO INTER-DEPARTMENT OR INTER-COLLEGE ABSORPTION.**

201. Absorptions of teaching and non-teaching staff were made.

- a. against posts sanctioned against other colleges
- b. in the same college but in different departments

202. Section 4(1)(14) of the Act confers jurisdiction on the university to absorb the teachers. There cannot however, be any doubt or dispute that universities are also 'States' within the meaning of provisions of Article 12 of the Constitution of India, and furthermore having been created in terms of the Universities Grants Commission Act or in terms of the Legislations enacted by the State, must exercise their jurisdiction within the four corners of the statute.

203. They cannot act arbitrarily. They are bound by the staffing pattern made by the States and the work load assessed by the State in respect of each and every subject separately. While the State grants affiliation to a subject, it has rightly been pointed out, that posts attached thereto are automatically sanctioned. The requirements of each college in this behalf must be considered separately. The staffing pattern in respect of each department is drawn keeping in view the requirements pertaining to the concerned discipline. In that view of the matter, a person working in a particular college cannot be adjusted against the sanctioned post in another college, similarly a person working in one department, namely physics department, cannot be absorbed in the Chemistry department or vice versa.

In other words, each college and each discipline must be treated as separate unit and cannot be said to have any links with other college or other department(s).

204. It is from that point of view only, the Agrawal Commission in his report has considered each of the colleges as separate units.
205. At least the Ranchi University, as indicated heretofore, accepts that such orders have been passed.
206. The notification of the Ranchi University dated 7.3.2009, reads thus:

“The Vice Chancellor has been pleased to absorb the services of the following teachers against the post available on other newly converted colleges in the respective subjects under Ranchi University service.”

Moreover, as has been rightly pointed out by Mr. Gopal Prasad that while considering the cases for absorption by teachers and non-teaching staff as contained in Annexure IIA and IVA neither the Commission nor the university could direct absorption in excess of the sanctioned or the recommended posts as identified by the Commission in Annexure IA, IB, IIA & IIB.

It is stated that in ABM College, names of four persons have been shown against three sanctioned posts, thus only three persons can be accommodated, and not the fourth person.

207. There cannot furthermore be any doubt or dispute that any proposal, submitted by the college and pending approval of the university which has not reached the concerned officer of the State, cannot be considered on the basis of Annexure IIA of the report.
208. It is doubtful as to whether the University could issue such a direction. The Commission is of the opinion that the claim petitions involving the said question should be taken up for hearing on a priority basis and should be disposed of at an early date

**RE: SALARY**

209. There are many claim petitions wherein the order of regularization is not in issue, but the absorbed teachers and non-teaching staff are getting salary at a pay-scale lesser

than the one prescribed by the university. The submission of the learned counsel for the State that it is not liable to pay the salary to the Claimants directly as lump sum payments are being made to the Universities, is stated to be rejected. However, by way of an additional written submission, documents have been annexed to show that the State of Jharkhand allotted the amount by way of salary to the teachers and non-teaching staff as was demanded by the concerned universities. Keeping in view the scheme of the Act, which has been adopted by the State of Jharkhand, the State is bound to pay the salary of the concerned teachers, to which they are legally entitled to. In other words salary must be calculated having regard to the scale of pay to which they are entitled to be placed. The cases of such teachers, it is directed, both in relation to the universities situated within the state of Bihar, as also the state of Jharkhand, shall be taken up on priority basis. To what extent, the Claim Petition are justified, therefore, must be considered on their own merit.

**RE: INTER-SE SENIORITY AND EDUCATIONAL QUALIFICATION.**

210. Three other categories of teaching and non-teaching staff are before this commission, viz:
- (i) Where claims have been made raising a dispute with regard to inter-se seniority;
  - (ii) Where claims have been filed contending that ineligible persons have been appointed by the university ignoring their cases of the claimants altogether;
  - (iii) When order of absorption has been passed without considering the seniority of the concerned teachers and non-teaching staff.
211. Although the Commission is of the view that such cases should not be decided by this Commission, as the concerned university should adjudicate on such disputes in terms of the second proviso appended to section 4(1)(14) of the Act, and as moreover, in the claim petitions where the aggrieved Claimant might not have been impleaded the occupiers of the posts as parties with a view to understand the problem those claim

petitions may be taken up on a priority basis, wherefor the records may be placed before the Commission on or before the date specified therefor.

### **PROVISIONAL ABSORPTION ORDERS- WHERE CANCELLED.**

212. It is stated that concerned universities situated in the State of Jharkhand provisionally absorbed some of the teaching and non-teaching staff subject to the approval of the State Govt. The universities, however, later on realized that such orders of provisional absorption and regularization are not in conformity with the judgment and order passed by Hon'ble Supreme Court of India, as also the Agrawal Commission Report. The orders of absorption were therefore cancelled.
213. The cases of those teachers and non-teaching staff of the State of Jharkhand should, in the opinion of this Commission, be taken up on priority basis. It is, however, made clear that such termination of service must have a direct nexus with the question of absorption. In other words, if the termination from services has been effected on the ground of misconduct, the same will be beyond the purview of the jurisdiction of the Commission.

### **THE EXTENSION OF THE CUT-OFF DATE**

214. Mr. Neeraj Shekhar, the learned counsel appearing on behalf of some of the claimants has filed before this Commission a judgment passed by a learned Single Judge of the Patna High Court in CWJC No.7781 of 1994 wherein in an order terminating the service of a non-teaching staff of KS Jha College, Katihar was set aside, stating:

“14. In view of the above discussions it is quite clear that the Petitioners' services were terminated arbitrarily by fixing a cut-off date of appointment up to 10.05.1986 and it is also in violation of principles of natural justice. Further the resolution fixing cut-off date of 10.5.1986 having been withdrawn by the Government, the very basis for termination of the services of the petitioners has become non-est. In these circumstances the impugned orders of termination of the services of the petitioners, are liable to be quashed and are quashed hereby. The petitioners shall be deemed to be continue in service. However, it shall remain open to the concerned authorities including the State Government to take appropriate decision, if the petitioners or any of them are found to be not appointed against a sanctioned

post or deemed sanctioned post within the staffing pattern up to the date of agreement on 31.10.1986. It shall also remain open to the State Government to examine the suitability and the eligibility of the incumbents of such posts, who are found to have been appointed against the sanctioned or deemed sanctioned posts within the staffing pattern without approval of the State Government and take appropriate decision in the matter.”

215. The learned counsel relying on or on the basis of the aforementioned decisions submitted that this Commission should also treat the date of entering into the statutory agreement to be the cut off date instead and in place of the cut off date specified in the concerned Government Orders as for example 30.4.1986.
216. This Commission is unable to agree with the said submission as both the Agrawal Commission and Supreme Court of India have clearly specified the cut-off dates. This Commission being bound by the judgment of the Supreme Court of India as also the terms of reference made by it, no other date can be treated to be the cut-off date.

#### **INTERPRETATION OF ANNEXURE III AND ANNEXURE IVA**

217. A writ petition was filed by nine employees of Baijnath Jalan College before the Hon’ble Jharkhand High Court questioning the denial of benefits of the recommendations of 5th Pay Commission. A learned Single Judge of the Jharkhand High Court by a judgment and order dated 28.06.2011 allowed the Writ Petition, inter alia, upon considering the question as to whether the alleged interpolations made against the names of the Petitioners therein could have been a sufficient ground for denying them the benefits of the recommendations of the 5th Pay Commission.
218. The State of Jharkhand preferred an intra-court appeal thereagainst and a Division Bench presided over by Hon’ble the Chief Justice of the said Court noticing the decision of the Supreme Court of India in Mahasangh’s case opined that the matter of absorption of the teachers and non-teaching staff of the college being within the exclusive domain of the universities, Section 35 of the Act does not act as a ‘constraint on the power of the university’ and the university can review appointment and consider absorption of its staff for direction sanction of the post.

It was held:

“It appears that while taking facts of the case with respect to the allegation of interpolation and insertion of names by interpolation, it was thought proper to prepare a list of 47 number of teaching staff and, therefore, list, Annexure III-A, was prepared by the Commission and made part of the report wherein word “interpolation” has been mentioned against the names of petitioners but their names have not been rejected. Thereafter, a list Annexure IVA was also prepared and annexed with the report of the Commission wherein also, names of the petitioners are there but without remark of any interpolation and while answering the terms of reference, the Commission clearly declared that the members of the teaching staff whose names are in Annexure IVA, are very much eligible for consideration for absorption in the order of the date on which they became so eligible. As we have already noticed that the names of these petitioners are there in the list Annexure IVA, the language Kurukh is a sanctioned subject of the State Government in view of the order of the State Government dated 29.11.2008 (Annexure 3). Therefore, the petitioners were in service since 1985, whose cases have been considered by the Commission after taking note of the allegation of interpolation and the Commission had recommended their names for absorption and that Commission’s report has been accepted by the Hon’ble Supreme Court after rejecting the State Government’s specific objection that the Commission has committed serious error by adding the names of these petitioners in the recommendation for absorption. The State now cannot re-agitate the issue after the decision of the Hon’ble Supreme Court wherein after rejecting all objections against the Commission’s report including the State Government objection of wrong inclusion of the names of the writ petitioners in the list Annexure-IVA, we are of the considered opinion that mentioning the word, “interpolation” in Annexure-III A is only mentioning of fact alleged by the State Government i.e., allegations against these persons but not a decision of the Commission and the Commission’s decision is clearly for the recommendation of the names of these persons.”

It was furthermore observed:

“Otherwise also it is not the case of the State Government that such power vests in the State Government of examining validity of appointment in the constituent colleges. In view of the above, it is clear that the appointment of the petitioners, who were appointed in the year 1985, were not found to be illegal by the Commission after considering the objection of the State Government that their names were inserted by interpolation and the Commission thereafter recommended for absorption of the writ petitioners and Hon’ble Supreme Court has already rejected all objections against the Commission’s report including the State Government’s objections which have been referred above.”

219. The said LPA was dismissed by a judgment and order dated 20.3.2012.

The State of Jharkhand filed a petition for grant of Special Leave to Appeal before the Supreme Court of India which was marked as CC 6146 of 2013.

220. By an order dated 22.3.2013, the said Special Leave Petition was also dismissed, directing:

“The petitioners are directed to implement the direction given by the learned Single Judge of the High Court, which was confirmed by the Division Bench of the High Court, within a period of three months from today and submit a report to this effect in the Registry of the High Court.”

221. The ratio of the aforementioned decision shall be taken into consideration if any occasion arises therefor. However, prima facie it appears in the said decision was rendered on the fact of the said case and does not lay down any general principle of law.

**RE: CLAIM PETITIONS BASED ON THE ORDERS PASSED BY HON'BLE THE JHARKHAND HIGH COURT.**

222. It is submitted by Mr. Gopal Prasad that such cases would not come within the purview of the jurisdiction of this Commission.

223. However, the nature of the orders passed in such cases is required to be looked into, and they cannot be dismissed at this stage.

224. The State of Jharkhand, as also the concerned universities are hereby directed to prepare a list of such cases which would be taken up as a separate category on a priority basis.

**THE CLAIM PETITIONS WHICH ARE BARRED BY LIMITATION.**

225. By a judgment and order dated 22.1.2013, the Hon'ble Supreme Court of India, inter alia, directed that each of the writ petitioners shall file their requisite representations within four weeks, with advance copies to:

- (i) Concerned university;
- (ii) Principal Secretary, Higher Education, State of Bihar and
- (iii) Standing Counsel for the State of Bihar.

It was directed that no claim made thereafter shall be entertained.

226. So far as those who are not Writ Petitioners before the High Court are concerned, were also permitted to make representations before the Commission, wherefor the Commission was directed to issue a notification in the local daily prescribing four weeks time for filing their representations.
227. So far as the State of Jharkhand is concerned, a separate order was issued by the Hon'ble Supreme Court on or about 19.8.2013 in D.A. No. 15 of 2013, granting four weeks time to file the Claim Petitions from the date of publication of the notification.
228. This Commission in terms of the notification issued in the newspaper on 4.10.2013 granted four weeks time to the Claimant to file their Claim Petitions. By its Order dated 29.10.2013, the Commission further granted four weeks' time to the Claimant to file claim petitions. This order, however, appears to have been passed overlooking the order of Hon'ble the Supreme Court of India.
229. The notifications were issued in '*Dainik Jagaran*' on 22.03.2013 in respect of the universities situated in the State of Bihar and '*Prabhat Khabar*' on 4.10.2013 so far as the same relates to the universities situated within the State of Jharkhand is concerned. The Claimants were, thus, required to file their claim petitions within four weeks from the date of publication of the respective notifications.
230. The Agrawal Commission and consequently this Commission has committed an inadvertent error in including the cases of those in the notification who were writ petitioners before the High Court and thus before the Supreme Court of India. The notification was required to be published in a news paper only in respect of those who were not parties before the Supreme Court of India.
231. However, in the said notifications, the Claimants were directed to file their requisite brief with all the details within four weeks from the said date whether they were

parties or not. It furthermore appears that this Commission also adopted the proforma of the earlier notification while publishing its notification dated 6.10.2013 in Prabhat Khabar. In the later notification however, it was made clear that the said notification has been issued in terms of the order of the Hon'ble Supreme Court of India dated 19.8.2013 passed in IA No.15 of 2013. The order of the Hon'ble Supreme Court dated 19.8.2013 being confined to the universities situated within the State of Jharkhand, the teachers and non-teaching staff serving in various colleges which are situated in the State of Bihar cannot take any benefit thereof.

232. This Commission has no jurisdiction to extend the date granted by the Hon'ble Supreme Court of India particularly having regard to the fact that in its order dated 22.01.2013, wherein it was directed as under:

- “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 4 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 11.03.2010 in LPA No. 1304 of 2009 and connected matters.”

233. Before this Commission, however, an affidavit has been filed on behalf of the Claimants affirmed by one Sh. Vinod Kumar, Lecturer in the Department of History, Darhettalari College (MU) wherein it has been categorically stated as under:

- “9. That it is humbly stated that even Standing Counsel of State of Bihar, Mr. Gopal Singh started accepting the advance copy of claim application in terms of order dated 22.1.2013 only after publication of notification on 22.3.2013 and not before that. In fact, a separate desk in HRD, Universities and office of Commission at Room NO.301 started functioning only after publication of notification on 22.3.2013 and not from before and in view of aforesaid fact it was not possible for the claimants who were even party in Supreme Court proceeding to file claim application within 4 weeks from 22.1.2013. The Hon'ble Commission itself has fixed 4 weeks for all parties, whether parties or not, to file claim application from date of publication of the Notification and any objection by States that 4 weeks has commenced w.e.f. 22.1.2013 for those who were party in

Supreme Court amounts to raising question on the power of this Hon'ble Commission which can not be allowed and is untenable.

10. In the case of Jharkhand, after the draft notification was finalized it was published on 6.10.2013. In the said notification also, it was clearly mentioned that 4 week for filing claim application (whether parties or not) is to be counted from date of publication of notification and not from 19.8.2013. This all goes to demonstrate that as for as time for filing claim application is concerned, 4 weeks time has to be counted from the date of publication of notification in the newspapers for all claimants whether they are party before Supreme Court / High Court or not and therefore there can not be two separate cut off dates for filing claim application – one for those who were party in the Supreme Court and other for those who were not party before Supreme Court / High Court.
  11. It is therefore humbly stated and submitted that stand of both the States that period of four weeks has to be counted from date of respective order passed on 22.1.2013 and 19.8.2013 is not only untenable but is also contrary to the stand of the States as well as the very reading of the Notification as published by this Hon'ble Commission which got published by the Deptt of HRD, of both the States itself.”
234. This Commission is, therefore, of the opinion that keeping in view the nature of the order passed by the Supreme Court of India a suitable clarification may be obtained by the Claimants from the Supreme Court of India. It must however be recorded that a statement had been made at the bar that even during the period when Justice S.C. Agrawal Commission was function and keeping in view the constraints in storing the record, Justice Agrawal had clearly stated that he would not accept any such claim petition. It must also be placed on record that due to same constraints, this Commission also directed the learned standing counsel for the State of Bihar and the State of Jharkhand, Mr. Abhinav Mukerji and Mr. Gopal Prasad respectively, to accept the notices also on behalf of the Commission and place it before the Commission as and when necessary, pursuant to or in furtherance of the said directions.
235. It must, furthermore, be placed on record that so far as state of Jharkhand is concerned, this Commission received some phone calls complaining that no officer in the Jharkhand Bhawan had accepted their claim petitions. If at the time of hearing it is found that any application has been filed making averments to the said effect, due weight thereto shall be given.

It is, however, stated that there may be certain cases where despite serious efforts, copies of the claim petitions were not received at any of the designated places. Cases of such claimants shall be considered on priority basis.

It furthermore appears that in many cases even applications for condonation of delay have not been filed.

236. This Commission, however, is of the opinion that the date of filing before the Commission may also be accepted, in the event, the copies thereof have been served within a period of four weeks from the passing of the order and / or date of publication of the notification dated 22.3.2013 so far as universities falling within State of Bihar is concerned and four weeks from the publication of the notification dated 6.10.2013 so far as the universities within the State of Jharkhand is concerned.
237. There is no doubt or dispute that in the event the concerned Claimants contend that they tendered the claim petitions before any officer of the Bihar Bhawan / Bihar Niwas or the Jharkhand Bhawan, as the case may be, and the same had not been accepted, the date of refusal to accept such application shall be treated to be the date of filing of such application before this Commission.
238. The learned counsel for the State of Bihar and State of Jharkhand are requested to prepare charts in respect of those claim petitions which are prima facie barred by limitation.

**QUALIFICATION: CASES WHICH HAVE NOT BEEN TAKEN INTO CONSIDERATION BY THE AGRAWAL COMMISSION AND THEY ACQUIRED REQUISITE QUALIFICATION SUBSEQUENTLY.**

239. Some claims petitions involve question whether the teachers despite possessing the requisite qualification could have been ignored so far as their claim for absorption to the sanctioned post are concerned and consequently could be denied payment of salary.

240. At the relevant time, two statutes being dated 24.2.1974 and 12.12.1983, only dealt with the qualification of the teachers and non-teaching staff, which have been dealt with at pages 38 and 34 of the Agrawal Commission Report.

They read as under:

**“Basic Minimum Educational Qualifications**

**Non-Teaching staff:**

Under the Act and the Statutes no minimum qualification had been prescribed for appointment on the post of non-teaching staff in affiliated colleges. With regard to the post of Laboratory in-charge for Science Laboratories, it has been urged on behalf of the State of Bihar that Qualification of Intermediate in Science was required to be fulfilled for appointment on the said post. Reliance has been placed on the order dated August 17, 1979 passed by the Government of Bihar. The said order relates to creation of post of Laboratory In-charge and prescribes the Pay-Scales and other conditions of services for such employees. Under Term of Reference No.3, what is necessary to be examined is whether a Non-Teaching employee possesses the basic qualifications prescribed by the Act and Statutes. Section 59 of the 1976 Act, which governs the relations affiliated Colleges with the University, lays down that the said relations shall be governed by the Statutes to be made in that behalf and that the Statutes shall provide, particular, for the exercise by the University of the powers mentioned in Clauses (1) to (6) in respect of Colleges affiliated to the University. In Clause (1), provision is made to the power to lay down minimum educational qualifications for the different classes of teachers and tutorial staff employed by the said colleges. There is no requirement in Section 59 for the Statutes being made to lay down the minimum educational qualifications for Non-Teaching Staff of affiliated Colleges. As noticed earlier, in respect of Non-Teaching Staff, in affiliated colleges, the Statutes of the Bihar University, in chapter XVII (Article 24) empowered the Governing Body of the College makes rules in regard to appointment of Non-Teaching staff and that no such rule framed by any Colleague have been brought ton record. In the absence of any provision in the Act and Statutes prescribing minimum educational qualifications for appointment on the post of Laboratory in-charge in affiliated Colleges, an appointment of a person who does not possess the qualification of Intermediate in Science the post of Laboratory In-charge cannot be regarded as an appointment not made in accordance with the provisions of the Act and the Statutes.

**Teaching Staff**

Under the 1960 Act, provision was made in Section 49(i) empowering the University to make Statutes laying down minimum educational qualification for different classes of teachers and tutorial staff employed by colleges affiliated with the University. In exercise of the said power, the University had framed Statutes. In the Statutes of the Bihar University in Chapter XVI, Article 1, the basic minimum educational qualification prescribed for the post of lecturer was “second class master’s degree in the relevant subject”. It was

stated during the course of oral submission that similar provision was contained in the Statutes of other Universities. For appointment on the post of Principal minimum teaching experience as lecturer for a period of ten years was required.

By order dated 24, 1976, the Government of Bihar introduced the revised pay-scales for University and Degree college teachers as recommended by the University Grants Commission with effect from April 1, 1973 subject to the conditions laid down in Annexure A to the said order. Annexure 'A' contained the conditions for introduction of the revised scales of pay. One of the conditions laid down in paragraph of the said Annexure A was as follows:-

“For future recruitment to the posts of lecturers in Universities as well as in colleges, the minimum qualifications shall be as may be determined by the University Grants Commission from time to time. The following qualifications shall be necessary for recruitment to the posts of Lecturers (i) in the Faculties of Arts and Social Sciences including Commerce and Science.

#### **College Lecturers**

- (a) A consistently good academic record with 1<sup>st</sup> or 2<sup>nd</sup> class (B)+ at the Master's Degree in a relevant subject or an equivalent degree of a foreign University; and
- (b) An M.Phil. degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

Provided that if a candidate possessing the qualification as at (b) above is not available or not considered suitable, the college, on the recommendation of the Commission/Section Committee, may appoint a person possessing a consistently good academic record on the condition that he will have to obtain an M. Phil. Degree or a recognised degree beyond the Master's level within five years of his appointment, failing which he will not be able to earn future increments till he obtains that degree or gives evidence of equivalent published work of high standard.

#### **Explanation**

Consistently good record would mean overall record of all assessments through out the academic career leading to the Master's Degree, which should at least be B+ or high second class.”

By order of Government of Bihar dated November 29, 1976 an amendment was made in Explanation in Annexure 'A' to the order dated January 24, 1976 as a result of which “for determining consistently good record, average of 50.55% or [B in the Sever point scale] may be expected at the two examinations prior to master's examination.

On behalf of the State of Bihar it was urged that the minimum educational qualifications as prescribed in the Statutes made under the 1960 Act ceased to be operative after the issue of the notification dated January 24, 1976 and that with effect from January 24, 1976 the basic minimum educational

qualifications application for appointment on the post of lecturers in the affiliated colleges were as indicated in paragraph 9 of Appendix 'A' to the notification dated January 24, 1976. I am unable to agree with this submission. As noticed earlier, in view of Section 49(i) of the 1960 Act the minimum educational qualifications for appointment on the post of teachers (lecturers) in affiliated colleges were required to be prescribed in the Statutes made by the University and that the qualifications thus prescribed could be altered only by an amendment in the Statutes by the Authority competent to amend the Statutes made by the University and that the qualifications thus prescribed could be altered only by an amendment in the Statutes by the authority competent to amend the Statutes. Under Section 20(2)(a) the power to amend or repeal the Statutes was conferred on the Senate. Therefore, the Senate alone could amend or repeal the Statutes. The State Government was not competent to amend or repeal the Statutes made by the Senate of the University. The notification dated January 24, 1976 does not have the effect of amending the Statutes of the University and, therefore, it cannot have the effect of altering the minimum educational qualifications prescribed in the Statutes and the same remained operative after January 24, 1976 also.

On April 24, 1978 the Chancellor gave approval to the Statutes relating to Mode of appointment, Pay Scale and Qualifications for the post of Teachers of Affiliated Degree Colleges in the Faculty of Arts, Science and Commerce. The minimum educational qualifications prescribed for the posts of Principal and Lecturer under the said Statutes [hereinafter referred to as 'the 1978 Statutes'] were as follows:

'Principal:

**MINIMUM QUALIFICATION**

A first or high second class master's degree of foreign University with consistently good academic record and not less than twelve years teaching experience, at least as a lecturer, in a Degree College/University Department.

Lecturers:

**MINIMUM QUALIFICATION**

- (a) A consistently good academic record with 1<sup>st</sup> or high 2<sup>nd</sup> class at the Master's Degree in the relevant subject, or an equivalent degree of a foreign University; and
- (b) An M. Phil. degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

Provided that if a candidate possessing the qualification as at (b) above is not available or not considered suitable, the college, on the recommendation of the Commission/Section Committee, may appoint a person possessing a consistently good academic record on the condition that he will have to obtain an M. Phil. Degree or a recognised degree beyond the Master's level within five years of his appointment, failing which he will not be able to earn future increments till he obtains that degree or gives evidence of equivalent published work of high standard.

Provided further that the qualification for a lecturer in Music, Home Science and other subjects given below shall be as follows:-

- (I) Lecturer in Music: Essential-degree or diploma in Hindustani, Karnatak, Western (vocal or instrumental) music, as may be specified, of a recognised institution or repute.

Desirable

1. Bachelor's degree in any faculty,
2. Experience of giving recitals on Radio and in Music conferences.
3. Teaching Experience.
4. Knowledge in Hindi

- (II) Lecturer in Home Science: At least second class master's degree in Home Science or a MBBS degree or Master's degree in any allied subject plus (1) a degree or diploma in Home Science of a recognised University or (2) Bachelor's degree with Home Science or Domestic Science as an optional subject.

- (III) Lecturer in Language subject: in which no University has so far offered any course leading to the Master's degree in the subject. At least a high second class Master's degree in the Faculty of Arts with proficiency in the language concerned, preferably with some publication to his/her credit:

Note: IN case of candidate belonging to Scheduled Caste/Scheduled Tribe, the requirement of high second class degree at the Master's Stage for the post of Lecturer may be relaxed to bare second class degree."

By Statutes which received the assent of the Chancellor on November 19, 1980 and were notified on November 25, 1980, the aforementioned note in 1978 Statutes was deleted and the following proviso was inserted in its place.

Provided that in case candidates belong to SC and ST possession high second degree at Master's stage for the post of lecturers are not available in sufficient number and if the candidate interviewed are found otherwise suitable, the selection committee may recommend to the Chancellor for relaxation of the requirement of his second class Master's degree and the Chancellor may relax the requirement of high second class Master's degree to bare second class Master's degree for the appointment to the posts of Lecturers."

241. Some of the claimants in this category are Gautam Kumar Singh working in Department of Music of the T.N. Parvati College, and Virendra Kumar working in SNS RKS College under B.N. Mandal University. The said claimants acquired the requisite qualification subsequent to the cut-off date and their cases could not be considered by the Agrawal Commission.

242. Similar and other cases, if any, shall be taken up under a separate category.

## **RE: STATUTORY QUALIFICATION**

243. Claim petitions have been filed by some of the claimants who are said to have acquired statutory qualifications but due to observation made in the report of Agrawal Commission, their cases were not considered by the concerned universities. These cases pertain to MLSM College, Darbangha under L.N. Mithila University. At the outset it may be observed that if the cases of the said employees are covered by the Tripartite Agreement, evidently this Commission will have no jurisdiction in regard thereto. As no clarity in this regard was available, their cases for the present purpose may be considered on the basis of the submission made at the Bar.

244. Under the Act, as per the report of the Agrawal Commission, the educational qualification for appointment of teachers in the affiliated colleges is required to be made in terms of the statutes framed by the universities as amended. The Agrawal Commission rejected the contention of the State that by reason of a notification dated 24.01.1976, the basic minimum educational qualification for appointment to the post of lecturers were indicated in paragraph 9 of Appendix A appended, thereto, on the premise that the State Government has no jurisdiction to amend the statute.

It is stated that at the relevant time the statutes framed by the senate and approved by the Chancellor as applicable on the relevant date(s) were of the years 1978 and 1983.

245. The State of Bihar, however, by reason of Resolution No. 133/C dated 09.05.1988, directed as under:-

“The teacher who possess the requisite qualification prescribed by the University Grant Commission will be absorbed in the first instance against the posts which are to be created on the basis of above computation or the posts recommend upto 30.04.1986, whichever is less and if after their absorption there are posts still available then teacher who have received less than 52.5% marks will be allowed to continue on an ad-hoc basis with the condition that within 4 years they obtain the prescribed percentage marks for eligibility or get Ph.d. The names of such teachers, without any consideration to the date of their appointment, will figure at the end of teacher who have been absorbed on the basis of having requisite qualification. Such teachers will continue to get their pay at the first stage of the pay scale till they have obtained the requisite qualification and their seniority will be determined on the basis of the above dated treating it as a date of appointment. If they fail to

improve their qualification within the stipulated period, their services will be automatically terminated.”

246. A resolution had also been passed on or about 04.04.1988 which, as noticed heretofore, was amended in terms of the State’s resolution dated 09.05.1988.

247. Mr. Naveen, learned counsel appearing on behalf of the Claimant, submitted that the Agrawal Commission despite specifying the teachers who acquired qualification at a later stage, and thus were held to be eligible for absorption and having rejected the contention of the State in regard to the said notification dated 09.05.1988, wrongly opined as under:

“The resolution dated May 9, 1988 can be regarded as a direction by the State Government to the various universities to exercise their powers in the matter of absorption of the services of the teachers of such colleges and the matter of qualifications for appointment of such teachers and any irregularity in appointment of such teachers on the basis of their lacking the necessary minimum qualifications. For the purpose of absorption, therefore, the aforesaid directive contained in the resolution dated May 9, 1988 can be taken into account insofar as it permits the teachers who did not possess the qualifications regarding prescribed marks of 52.5% in the Post Graduate degree examination at the time of appointment, to improve the said qualification so as to be considered eligible for such absorption.

Another question that arises is as to the date from which the period of four years for improving the qualification should be counted. On behalf of the State Government, it has been urged that the said period of four years should be counted from the date of conversion because absorption of services of teachers has to be with effect from that date or at any rate the said period may be counted with effect from May 9, 1988, the date of resolution and only those teachers who have improved their qualifications prescribed by the University Grants Commission first and thereafter teachers who had secured less than 52.5% marks were permitted to continue on ad hoc basis subject to their attaining the prescribed marks or Ph.d degree within four years. This shows that the period of four years has to be counted after the absorption of the teachers possessing the qualifications prescribed by the University Grants Commission. Since no final order for absorption has been passed in respect of any teacher the said period of four years for improving the qualifications has not commenced and the matter of absorption has to be considered now. In the circumstances, teachers who have improved their qualifications by obtaining the qualifications of the prescribed marks of 52.5% in the post graduate degree examination or have obtained Ph.D degree can be considered for the purpose of absorption.”

248. According to the learned counsel, the Supreme Court of India must be held to have not accepted this portion of the report of the Commission as would appear from paragraphs 22, 25 and 26 of its judgment. It was furthermore contended that even by

reason of the operative part of the said judgment, the concerned universities were directed to determine the merit of the qualification individual cases with regard to the qualification of each of the employees and corresponding statute prescribing qualification prevalent at the relevant time, if any, for the teaching and non teaching post based on the finding of Justice Agrawal Commission Report and in the light of legal position explained by it.

249. Paragraphs 22, 25, 26 of the Judgment of the Supreme Court may be noticed for the sake of clarity.

“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.

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.”

250. According to the learned counsel, the Agrawal Commission had no jurisdiction to consider the said resolution dated 09.05.1988 having been issued after the cut-off date.

251. Attention of the Commission has further been drawn to the following observation of the Agrawal Commission.

“For the purpose of placement in the list, the teachers who improved their qualification by availing the benefit of the relaxation made under clause (ix) of paragraph 2 of the Resolution dated May 9, 1988 have to be placed below teachers who possess the prescribed qualification though appointed subsequently. While preparing the list of teachers who are eligible to be considered for absorption the placement of teachers in the said list will have to be made on the basis of the date on which the improved qualification, viz. 52.5% marks in the post graduate degree examination or Ph.D degree was obtained.”

252. The aforementioned findings were arrived at while considering Reference No. 4. Similarly the Commission, while considering the cases relating to eligibility of the teachers working in the college but had not been absorbed due to non availability of the post but became entitled thereto on the death or superannuation of the teachers occupying the sanctioned post, in the following terms:

“Moreover subsequent to the date of conversion of the college into 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.”

It was furthermore held.

“If the number of sanctioned posts is less than the number of teachers who are found eligible for consideration, such teachers, who were appointed against sanctioned posts and have worked for a considerable period, may not reach the stage of consideration for absorption if all the sanctioned posts are filled by teachers placed above them. By placing all the teachers, irrespective of the nature of the post on which appointment was made into one category, this interpretation treats unequals as equals and results in denial of the right to equality. Such a consequences would be avoided if the said guidelines are construed to mean that for the purpose of absorption the teaching staff is considered keeping in view the nature of the post on which they were appointed so that persons appointed against sanctioned posts who did not possess the requisite qualifications on the date of appointment but became eligible for consideration for absorption subsequently are placed at the bottom in the category of persons appointed against sanctioned posts and teachers appointed against posts recommended upto the cut off date, on the date of appointment who did not possess the requisite qualifications but became eligible for consideration for absorption subsequently are placed at the bottom of the category of teacher who were eligible for absorption on the posts recommended upto the cut off date. It would be more reasonable and equitable to construe the guidelines in this manner. Such a construction would not be inconsistent with the object underlying the guidelines contained in the Resolutions dated April 4, 1988 and May 9, 1988. In preparing the list of teachers who were eligible for absorption for the purpose of answering this

reference, the teachers who did not possess the requisite qualifications on the date of appointment but became eligible subsequently have been placed keeping in view of the nature of the posts on which the appointment was made. In other words, teachers appointed against sanctioned posts are placed in the order of the date they became eligible for consideration followed by teachers appointed against posts for which recommendations were sent by the University of the State government upto the cut off date arranged in the order of the date they became eligible for consideration and thereafter by teachers appointed against posts for which recommendation was sent by the University to the State Government after the cutoff date or for which no recommendation was sent by the university.”

253. The learned counsel would contend that in view of the findings of the Supreme Court of India interpreting section 4(1) (14) of the Act, and the concerned universities having the exclusive jurisdiction to determine the suitability of the teachers in terms of the qualifications prescribed under the statute, the Agrawal Commission acted illegally and without jurisdiction in arriving at the aforementioned findings.

According to learned counsel in that view of the matter only, the Supreme Court did not agree with that part of the report of the Commission.

254. The following decisions have been cited by the Mr. Naveen, counsel, in support of his contentions:

- (i) *State of Madhya Pradesh & Ors. vs Shyama Pardhi & Ors.* [(1996)7 SCC 118]
- (ii) *A. Umrani Vs. Registrar, Cooperative Societies and Ors.*(2004)7 SCC 112]
- (iii) *Mohd. Sartaj and Anr. Vs State of U.P. and Anr.* [(2006)2 SCC 315]
- (iv) *Pramod Kumar Vs U.P. Secondary Education Services Commission & Ors* [(2008)7 SCC 153]
- (v) *State of Orissa and Anr Vs. Mamata Mohanty* [(2011)3 SCC 436]
- (vi) *Sasidhar Reddy Sura Vs State of Andhra Pradesh and Ors.* [AIR 2014 SC 444]

In *Shyama Pardhi* (Supra), the Supreme Court opined that no offer could be made to a person who did not possess the basic statutory qualification.

In *Sasidhar Reddy Sura* (Supra), in regard to the minimum age for appointment in the posts of District and Sessions Judge, it was held that the recommendations made by

the Service Commission, if not supported by the Rules, cannot be implemented. It was furthermore observed that the Rules being statutory in nature, recommendations, if any, at variance with the recruitment rules, the latter will be followed.

In *A. Umarani (Supra)*, the practice of regularization in services has been deprecated, *inter alia*, stating “regularization furthermore cannot give permanence to an employee whose services are ad-hoc in nature.

In *Mohd. Sartaj (Supra)*, it was opined that qualification has to be seen which the candidate possesses on the date of recruitment and not a later stage unless rules in that regard permit it.

In *Pramod Kumar (Supra)*, it was held that eligibility conditions must be fulfilled at the time of recruitment, and the lack of experience which was a basic qualification could not be cured post appointment.

In *Mamata Mohanty (Supra)*, relaxation of qualification in the absence of an enabling provision for grant thereof relaxation, it was held that no relaxation can be made, and in any event, not arbitrarily.

No exception can be taken to the ratio laid down in the aforementioned decisions.

255. It is true that if the law requires things to be done in a particular manner, the same has to be done in that manner or not at all.

It is also true that for appointment to the post of a teacher, the candidate must possess the requisite prescribed qualifications at the relevant time and not subsequent thereto.

It may furthermore be true that the state cannot amend statute framed by the universities, far less by way of executive instructions.

256. This case, however, stands on a different footing.

The concerned colleges were only affiliated colleges. The teachers were appointed although they may not have the prescribed qualification at the relevant point of time. They, however, were allowed to continue to hold the said post and acquire the requisite qualification at a later date, by reason of the policy decisions adopted by the State itself. By reason of the several orders, the State clearly and unequivocally undertook to pay the salaries of the said teachers unless a final decision on absorption is taken by the University. If during the interregnum some teachers have acquired the requisite qualifications, the same was required to be taken into consideration was the factor which must have played a role in the mind of the Agrawal Commission, while making the said observations.

The Commission, therefore, to me it appears, tried to arrived at a practical solution, directing as to how and in what manner, the concerned teachers would be placed in the list.

257. There are some cases to which the attention of this Commission has been drawn, as for example, where the concerned teachers had been appointed in 1985 but had acquired the prescribed qualifications only in 1992. The date from which they became entitled for consideration for absorption, was treated to be the date of acquisition of the prescribed qualification and thus, were placed below those who had the requisite qualification on the date of takeover of the institution, or acquired the same earlier to the teacher concerned.
258. The reason for such appointment, however, would furthermore appear from the cases of those Claimants whose claim petitions are premised on the basis that they were entitled to be granted the benefit of relaxation of qualification approved by the Chancellor on the recommendations of the inter-university Board, and recommended by the State of Bihar, as noticed hereinafter.
259. There, however, exists a dichotomy.

The dichotomy arises as the Hon'ble Supreme Court of India while directing the universities to consider the cases of those teachers and non-teaching staff who possessed the requisite qualification at the material time and whose appointments had

been approved by the State University Commission, such considerations were to be made, *inter alia*, in the light of the observations made in the Agrawal Commission Report. The universities, therefore, could not have taken a different view in the matter.

260. It has been noticed heretofore as to how the matter relating to entitlement of the teachers to be absorbed has been considered by the Agrawal Commission, while answering Reference No. 4, and in preparing Annexure IV A appended thereto.
261. So far as the Resolutions of the State of Bihar dated 4.4.1988 and 9 5 1988 are concerned, they appear to have been interpreted by the Agrawal Commission in the manner as noticed heretofore, and that is how Annexure IV A has been prepared.
262. It is not the case of the Claimants that they fell in this category or that their names appear in Annexure IV A appended to the Agrawal Commission Report. They have filed their Claim Petitions only when their cases have not been recommended by the universities for absorption, in terms of the said Report, and as such, they were not entitled to be absorbed. In essence, what is being contended is that those who have been absorbed were not entitled thereto. Such a question could have permitted to be raised, if they were also found entitled to be absorbed. Except in a very rare case, this Commission, cannot go beyond the Agrawal Commission Report, having regard to the term of reference made by the Supreme Court of India.
263. The Claimants furthermore have not impleaded those teachers who had already been directed to be absorbed by the universities relying on or on the basis of Annexure IV A of the Report of the Agrawal Commission. It furthermore appears that the State of Bihar in its objections filed before the Supreme Court of India raised a large number of contentions in paragraphs 30 to 44, thereof.

Reference in particular in this connection may be made to Paragraph 39 and 40 of the said objections, which read as under:

- “39. The so called relaxation granted under the letter dated 09.05.1988 of the State Government has been wrongly interpreted by the

Commission and the Commission has assumed that from 09.05.1988 onwards the State Government has given a complete go by to 'consistent good academic record' and has only insisted in obtaining 52.5% marks. A reading of the letter dated 09.05.1988 along with the 1978 statutes or with 1983 statutes gives a clear picture that the requirement of consistent good academic record was not given a go by rather only 4 years grace period was provided to the concerned teaching employees to improve their qualification.

40. Persons who were not holding requisite qualification and in many cases were not even post graduate degree holder on the date of appointment were appointed as Lecturer. Even in some colleges the screening committee has categorized such persons in separate list who were not fulfilling the requisite qualification. But, the Commission has totally ignored this aspect of the matter and has merely sifted their date of appointment to the date when they acquire the requisite qualification (page 52 bottom) and a separate list of such teachers in each college."

The said objections have been rejected by the Supreme Court which lead to the conclusion that the findings of the Agrawal Commission were accepted.

This Commission is, thus, not in a position to deal with this aspect of the matter, and evidently the same deserves the consideration at the hands of the Hon'ble Supreme Court of India.

264. Correction of errors purporting to occur in the Agrawal Commission Report is not within the domain of this Commission, having regard to the fact that the Supreme Court of India has accepted the Report in toto and rejected all objections thereto. In effect and substance, therefore, any attempt on the part of this Commission to correct an error purporting to have occurred in the Agrawal commission Report would, for all intent and purport, amount to interference with the judgment of the Supreme Court.
265. The submission of Mr. Naveen to the extent that the teachers who did not hold a Post-Graduate degree could not have been appointed at all as a teacher even in an affiliated college, appears to be *prima facie* correct.
266. The concerned Claimants and / or the State of Bihar may approach the Hon'ble Supreme of India for a suitable direction, in this regard, if they so desire.

**RE: RELAXATION OF QUALIFICATION**

267. Number of Claim Petitions have been filed on the premise that the Claimants were entitled to be considered for absorption in the services of the constituent colleges by the universities, keeping in view the fact that on 29.01.1986 a statute was promulgated by the Chancellor, purported to be in exercise of his power conferred on him Section 5(2) of the Inter-Universities Act following a Resolution adopted by the Inter-university Board and recommendations made by the executive government of the State of Bihar. By reason of the said purported statute, the qualification obtained by the teachers prior to 28.2.1982 for the purpose of their absorption were only possession of a second class degree, and not a higher second class degree prescribed under the statutes made by various universities in the years 1978 and 1983.

The said statute reads as under:

- “1. A purely temporary lecturer, who is in the service of the University or of a College admitted to it as a lecturer shall be appointed by the Syndicate or the Governing Body as the case may be in the regular service of the University or the College concerned, if he fulfills the following conditions:
- (a) That, he had been appointed as a lecturer in the service of the University or the College concerned on purely temporary basis on or before the 28th February, 1982 and has been since then continuing in the service of the University/ College as such
  - [(b) that, he possess at least a Second class Master’s degree in the subject]
  - (c) That, the post on which the lecturer concerned had been appointed was duly sanctioned by the competent authority [or the proposal for sanction of the post had been submitted by the University / college to the State Government in the Education Department on or before 28.2.1985 which was subsequently approved by the State Government or the said proposal is still under consideration of the State Government; ]
  - (d) that, the appointment had been made on the basis of advertisement of the post in the Indian Nation, Searchlight, Aryavarta, Pradeep or in the any other daily Newspaper of Bihar State or in a leading newspaper of India and from the panel recommended by a Selection Committee constituted by the University/ College for the purposes assisted by an expert or experts:

- (e) that, his work has been found to be satisfactory; and
- (f) that, the Chancellor, on the recommendation of a Committee constituted by him consisting of (i) the Vice Chancellor/ Pro-Vice-Chancellor of the University, (ii) an Officer nominated by the State Government and (two experts nominated by the Chancellor, is satisfied that the candidate fulfils the conditions laid down above:

Provided that the chancellor may in the case of individual hardship in respect of any lecturer appointed at the time of starting of the College against the first post in the department, relax any of the conditions prescribed in clause (d) above.

N.B. – The conditions prescribed under clause (d) above shall be deemed to be fulfilled if the name of the lecturer concerned had never been recommended by Bihar Public/ University Commission for appointment to the post of lecturer or if his appointment as lecturer had ever been made in the post on the basis of advertisement and selection as required above.”

268. Attention of the Commission has also been drawn to Paragraph 4 of the Resolution No. 133(C) dated 9.5.1986, which reads as under:

“4. The following shall be added at the end of sub-Para 2(v) of the Resolution:-

“But the absorption of teachers appointed prior to 28.2.1982 shall be done according to the Statutes issued by the Chancellor from time to time.”

Paragraph 5 of the same reads as under:

“5. Sub-Para 2(vi) of the terms and reference is substituted as follows:

“The inter se seniority, for the purpose of absorption, in respect of those who have been appointed and joined on the same date will be done on the basis of marks obtained at the Post-Graduate level.”

269. In short, the contention by the learned counsel is that such appointment being valid ones, the concerned claimants would rank senior to those who had acquired the requisite qualifications at a later date, and in that view of the matter the Agrawal Commission must be held to have committed an apparent error in not taking into consideration the cases of these teachers, who form a separate class.

270. The Agrawal Commission, however, at pages 70 to 72, dealt with this aspect of the matter, the relevant portions whereof read as under:

“In accordance with these statutes, matter relating to regularization of some of temporary lectures working in some colleges were considered and orders were passed by the Chancellor giving his approval for their appointment on regular basis and thereupon, the Syndicate of the concerned University the Governing Bodies of the colleges concerned took necessary action to regularize the appointment of such temporary lecturers. The validity of the aforementioned statutes was challenged in a writ petition before the Patna High Court and a Division Bench of the said High Court in *Dr. Shiv Narain Yadav Vs State of Bihar* (2001) PLJR 817, has laid down that the only mode of appointment of teachers in affiliated colleges is on the basis of the recommendation of Bihar University/ College Service Commission and therefore the process of recruitment/ regularization is not permissible by ignoring the procedure. The High Court has held that the Statutes cannot be given effect by circumventing the statutory provision of Section 57-A of the 1976 Act. The court has however directed that regularizations already concluded shall not be reopened. It has been pointed out that the correctness of this Judgment has been doubted and the matter has been referred to a larger bench. Till a larger bench takes a different view, this judgment operates in the field. Keeping in view of the said judgment of the High Court, lecturers whose services have been regularized in pursuance of the direction given by the Chancellor, have to be treated as regular for the purpose of absorption of their services after the conversion of the college concerned into a constituent college of the university”

271. On a query made by this Commission as to on what basis these Claim Petitions have been filed, as the matter is pending consideration before a larger bench of the Patna High Court, it was submitted that all the writ petitioners were directed to file Claim Petitions before this Commission, and having regard to the fact that the Claimants had also filed writ petitions, they have approached this Commission.

The order of the Supreme Court of India dated 22.1.2013 referred to those writ petitions which were the subject matter of the decision of the Full Bench of the Patna High Court in LPA No. 1304 of 2009, and connected matters and not other writ petitions.

The merit of the cases of the Claimants, thus, is dependent on the decision which may be rendered by the Larger Bench of the Patna High Court or ultimately by the Supreme Court of India.

272. This Commission being bound by the Report of the Agrawal Commission which has been affirmed by the Supreme Court of India; the inescapable conclusion is that these Claim Petitions cannot be entertained by this Commission.

They are rejected accordingly.

### **RE: WITHHOLDING OF SALARY**

273. Some Claim Petitions have been filed by the teachers working in JMDL Mahila College, Madhubani, Darbhanga, a Constituent College of Lalit Narain Mithila University (represented by Mr. Sushil Kumar, Advocate), wherein, *inter alia*, it has been contended that teachers and non-teaching staff having been regularized in their services, pursuant to or in furtherance of Annexure IV B appended to the Report, they could not be deprived of the benefit of salary.
274. Some Claimants who are working in different colleges in Bhagalpur University, who are represented by Mr. S.K. Diwakar, contend that although Governing Bodies of the concerned colleges have appointed them, the State having not withdrawn the Government Letter No. 36(C), and having paid salary for a long time, they are estopped and precluded from stopping payment of salary to the concerned staff. It has furthermore been contended that the universities, being an arm of the State itself; both being 'State' within the meaning of Article 12 of the Constitution of India, the appointments made by the University will be binding upon the State. The aforementioned submissions cannot be accepted by this Commission.
275. Keeping in view the Agrawal Commission Report, as also the Mahasangh Judgment, those employees who have been appointed after 30 4 1986, and / or whose names have been recommended for absorption after the said date or who had been recommended by the Governing Bodies of the concerned colleges, and pending before the concerned university, being not eligible for absorption, while examining their

cases, this aspect of the matter must be taken into consideration by this Commission at the appropriate stage.

276. The cases of these teachers and non-teaching staff shall be taken up while considering the cases falling under the appropriate category, namely the cases of the Claimants who have filed their claim petitions on the basis of said Annexure IV A and Government Order No. 181(c) dated 18.12.1989.

**RE: CASES CONCERNING AFFILIATION**

277. As on 30.4.1986, so far as, *inter alia*, some of the employees working in S.B.A.N College, Darhetta Lari, Magadh University are concerned, certain subjects were pending for affiliation before the State.

278. With regard to the cases where there was no affiliation of the subjects, nor any recommendation had been made regarding affiliation pending with the State Government or with the University, but posts had been recommended to the State government or the University. The Agrawal Commission opined that as there were sanctioned posts in those subjects, and certain teachers whose names were mentioned in the Report were entitled to be considered for absorption against those sanctioned posts. It appears, that the State of Bihar in paragraphs 11 & 12 of its objections to the said Report, stated as under:

- “11. In the non-affiliated subjects where the proposal of affiliation was pending before the State Government the Commission had taken into consideration, posts mentioned either in the inspection report or in the proposal of the college before the University as recommended posts, even though they were specifically not recommended by the University to the State Government and were pending in the University only. Commission has treated such posts as recommended post pending before the State Government which is neither in consonance with Terms of References nor in accordance with the directions of the State Government.
12. The State Government while considering the recommendations of the University for creation of were sanctioned by the State Government as per the requirement. The remaining recommendation in such cases must be construed as rejected and there is no need for passing a specific order.”

279. Item No. 5 of Annexure III appended to the Report refers to S.B.A.N College, Darhetta Lari.
280. The Agrawal Commission, in regard to the objections taken by the State that where less number of posts had been sanctioned although a higher number of posts had been recommended, the same would be deemed to have been rejected, opined that the State Government should have passed specific orders to the effect that the recommendations in respect of additional posts, which have not been sanctioned, had been rejected only as the State Government was yet to take a decision in this behalf, it was observed “in the absence of an express order by the State Government rejecting the recommendations in respect of such posts, the said recommendation has to be treated as pending consideration before the state government.”
281. Three Claim Petitions filed by Mr. Ravindra Kumar Pathak, a teacher of Pali working in the said college and said to be in the R1 category, but his name was not included allegedly on the basis of a misrepresentation that the University did not make any recommendations for the subject of Pali. The Applicant filed an application under the RTI Act before the Public Information Officer, wherein it has clearly been stated that a recommendation had been made by the said University as contained in its letter dated 26.03.1983, the relevant portion whereof reads as under:

“In view of instruction the categorization of one teacher Sri Ravindra Kumar Pathak as R-1 teacher as per Justice Agrawal Commission report Page 408 (Sl. No. 101) and Page 416 (IIIA and IVA Annexures) has been made where there is no affiliation of the subject as per Agrawal Commission Report at page 403 R-1 teachers are those teachers where the posts are recommended up to the cut-off date. It is very clear that in pali subject two posts of teachers are recommended (R-1 category) and one teacher is working against R-1 post as per eligibility of Agrawal Commission Report where there is no affiliation of the subject.

The committee constituted under My Convenership has submitted the categorization of teachers under no affiliation of the subject with the lost of R-1 teachers working in “no affiliation subject” before the syndicate for decision and it is still under process and their payments are under consideration. It is clear that committee has submitted the categorization lost. Not recommendation for rightful action.”

282. The senate also recommended for affiliation to the said subject on a temporary basis for two years. The Agrawal Commission, inter alia, in respect of the subject 'Pali' opined:

“The names of the teachers who were working in the posts in these subjects are found in the list of the Screening committee dated January 30, 1987. Amongst the sanctioned posts mentioned in the order of the Government of Bihar dated February 1, 1988 are included posts in the subjects of Public Administration, Rural Economics, Pali, Maghi, Prakrit, Labour and Social Welfare and Commerce. The names of the teachers working as lecturers in these subjects have also therefore to be taken onto consideration. As per the list dated January 30, 1987 sent by the Screening Committee, the number of teachers working in these subjects was 13. The total number of members of the Teaching Staff including the Principal thus comes to 98.”

283. It appears that there are some other Claim Petitions wherein also recommendations for affiliation of various subjects and posts had been sanctioned without specifically referring to the fact that the affiliation to the subject had also been granted.

In the opinion of the Commission the issue raised herein should be considered on merit as a separate category.

**Re: SOME COLLEGES WHICH WERE CONVERTED INTO CONSTITUENT COLLEGES AFTER 30.04.1986**

284. It appears that SJS College, Garwaha, of Sidhu Kanhu University, SNSRKS College of B.N. Mandal University, and Madan Ahilya Mahila College of Bhagalpur University, the cut-off dates not being 30.04.1986, and thus, the names of the teachers and non-teaching staff having not been mentioned in the Government Letters dated 1.2.1988 and 19.12.1989 and similar others, the question which has been raised is what standard / norm has been adopted by the concerned universities in the matter of absorption of teachers and non-teachings staff of the said colleges.

285. It is contended that Millat College would also come within the purview of the aforementioned category, but as has been indicated heretobefore, the Government of Bihar has fixed 30.04.1986 (rightly or wrongly) in respect of that institution also, but in view of the fact that it has been held by this Commission that it has no jurisdiction

to interfere therewith, the contention in respect of the said college cannot be entertained.

It is stated that the dispute in relation to the aforementioned colleges arises in so far as, whereas the teachers contend that the posts are available which have been sanctioned but lying vacant, the universities contend that no R1 post is available.

286. Reference in this connection has been made to the Agrawal Commission Report Volume VI at Page 1030, 1031, and 1040 so far as SJS Namdhari College Garhwa is concerned.
287. The Claim Petitions in relation to aforementioned three colleges may have to be heard together, although the Universities are situated both within the State of Bihar and State of Jharkhand.
288. The Sidhu Kanhu University, as also the Ranchi University, is hereby directed to produce the relevant records. Similarly, B.N. Mandal University and Bhagalpur University are also directed to produce the relevant records before the Commission within three weeks from date.
289. Government Order No. 181(c) relating to the teachers, and Government Order No. 25(C) dated 24.2.1990, relating to the non-teaching staff, refer to the cut-off date of 30.04.1986 in respect of 36 colleges and what would be the effect thereof so far as the other constituent colleges in relation whereto different cut off dates have been specified,+ would be considered at the appropriate stage of the proceedings.

### **CATEGORIES OF CASES**

290. The State of Bihar for an effective adjudication of the disputes and differences between the parties has suggested 11 categories of teachers and 8 categories of non-teaching staff. However, in the written brief prepared by Mr. Binay Kumar Sinha, and Mr. Manish Kumar Saran, 7 categories of cases of teaching staff and 4 categories covering the cases of non-teaching staff have been specified. Some other counsels, however, sought to introduce a few more categories of cases.

291. The categories of cases made by the learned counsel for the State of Bihar, and the Claimants were overlapping.
292. After the hearing was concluded, Mr. Hansaria very fairly placed before this Commission a fresh list of categories of cases, which upon hearing the learned counsel for the parties have been modified and formed part of the order of the Commission dated 29.6.2014, which reads as under:
- (i) Claims on the basis that the concerned employee is working in sanctioned and/or recommended posts upto the cutoff date, i.e. S and R1 posts referred as List (i) and List (ii) in Para 27 in the judgment of the Hon'ble Supreme Court of India.
  - (ii) Claims on the basis that the name(s) of the concerned employee(s) finds place in Annexure IVA / IVB of Justice Agrawal Commission Report.
  - (iii) Claims of absorption on the basis that the Claimants have wrongly been categorized as RII/ NR posts; whereas actually they have been working against sanctioned R1 post.
  - (iv) Claims on the basis that the names of the concerned employees find place in the agreements entered into by and between the University and the constituent colleges as per letter of the State Government dated 19.08.1986.
  - (v) Claims on the basis that the concerned employee is working in posts sanctioned as per letter no. 38(c) dated 01.02.1988.
  - (vi) Claims on the basis that the name of the concerned employees (teaching staff) find place in letter nos. 181(c) dated 18.12.1989 and 36(c) dated 24.02.1990.
  - (vii) Claims on the basis that the name of the concerned employees (non teaching staff) find place in letter no. 25 (c) dated 12.02.1990.
  - (viii) Claims of absorbed employees for placing them at correct serial no. in the absorption orders issued by the concerned universities and/ or the Report of Justice Agrawal Commission.
  - (ix) Claims of employees for rectification of errors in their name or designation.
  - (x) Claim of employees for absorption against vacancies arising out of death, retirement of otherwise.

- (xi) Claims for absorption by those who obtained qualification after the cut-off date on the basis of report of Justice Agrawal Commission and/ or the Supreme Court of India.
  - (xii) Claims for absorption on compassionate grounds by the legal representative of the employee.
  - (xiii) Dispute between two sets of employees claiming absorption in same post.  
Claims of inter se seniority disputes between two sets of employees.
293. Some other Learned Counsel, however, submitted that some of the Claim Petitions may not fall into any of the suggested categories.
294. There are, furthermore, some individual cases which have to be considered independently, as indicated in the Commission's Order dated 29.6.2014. It is, however, made clear that if during the hearing it is found, that some Claim Petitions involves question which do not fall under any of the categories noticed heretobefore, this Commission may take up the hearing of the said matters separately, and / or bunch them together under a specified category.
295. However, as to be indicated hereinafter, certain other categories of cases would also have to be considered by this Commission.

### **INDIVIDUAL CASES**

296. Some of the individual cases which may have their own peculiarities may now be considered; and as the claimants have appeared in person, their grievances may be noticed.:
- a. **Dr. Nageshwar:** He claims that he falls in the category "reconsidered IVA list". What has to be determined is whether he is statutorily eligible, and whether the claim petitioner holds statutory qualification.
  - b. **Dr. Satyendra Kumar Singh:** Where the employee, although, is working on the sanctioned post, the affiliation of subject was pending before the State government, and is covered by Letter no. 38(c).

- c. **Dr. Amiyu Kumar:** This employee was working in the department of Physics in Ganga Devi Mahila College. The point for determination is whether he should have been treated to be included in R1 category (that is recommended before 30-4-1986), although his name does not figure in the Agrawal Commission Report.
- d. **Dr. Lallan Parshad:** the point for determination in this category is whether there should be re-implementation of Letter No. 1095.
- e. **Retired and getting pension:** This category would have employees who have retired from services, and getting pension, but are not named in Agrawal Commission Report, and this is why their cases were not considered.
- f. **Lal Mohan Upadhyay:** He was appointed on a sanctioned post in 1965, and retired in 2001, but his services had not been continued. The case of the Claimant, and others like him, will have to be heard separately.
- g. **Bishwanath Singh:** He is a laboratory technician in a minority institution. He is praying for absorption on the ground that there was no cut-off date with regard to his employment. He has further been wrongly mentioned as a store-keeper in the records. Similar appears to be the situation for Dr. Prem Shankar Sharma. These cases alongwith similar other may be heard separately.
- h. **Dr. Shailesh Kumar Singh:** His case, which appears to be an individual case, and other similar ones, if any, should be heard separately.
- i. **Prashant Kumar:** He was in the Department of Physics. He holds second post. There appears a mistake in the Report. His case will have to be heard separately
- j. **Mr. Pradeep Kumar Jha:** He is in the Dept. of Economics in the B.N. Mandal University. He is demanding the benefits to which he is otherwise entitled. This case has to be taken up out of turn.

- k. **A.K. Bhushan:** He is in Bhagalpur University. He claims that he has been illegally terminated from his services.
- l. **Dr. Ajit Kumar Tiwari:** He belongs to Vinobha Bhave University. He claims that he is covered by the fourth reference of the Agrawal Committee (Page 21 of Vol I), and the Supreme Court has also not declared any cut-off date. Similar appears to be the situation of Devki Nandan Singh.
- m. **Jai Govind Prashad:** He belongs to Adarsh College of Vinobha Bhave University. He has already been absorbed but salary has not been fixed. The date of absorption is from 1.2.88, as per Government Order, but in terms of Agrawal Commission (terms of reference No. 4), he was eligible for consideration from 8.10.1985. This is an individual case, and such cases will have to be taken up separately. Similar appears to be the situation for Mr. Ravi Shah.
- n. **Mr. Subhash Chandra Singh:** In such cases the dispute is with regard to payment. Such cases will have to be taken up when questions relating to payment of salaries are determined. Similar appears to be the situation of R. P Sharma and Hemant Kumar Singh.
- o. **Mahendra Giri:** He is member of the non-teaching staff (peon). His service was terminated. His case has to be considered alongwith others falling in that category.
- p. **Mahavir Ram:** He belongs to the English Dept. His salary is being paid according to the terms of the 4<sup>th</sup> pay commission, but his job has not been regularized. This case would be taken up alongwith the cases pertaining to the colleges.
- q. **Akhileshwar Prasad:** He belongs to the Dept of Sanskrit. In his case the state has not fixed pay despite recommendation. Such cases have to be taken up along with the other cases related to payment / fixation of salary.

- r. **Avinash Sharma:** He belongs in the Dept of economics in the SKM University. He has been absorbed by the University but being denied the benefits. He has filed contempt petition but no compliance has taken place. His case has to be considered alongwith similar cases concerning the said university.
- s. **Mihir Kant Jha:** He belongs to SK College. He has been teaching from 7.4.2005. He was absorbed by University but the same was not implemented by the State, and the affiliation was still pending. Similar appears to be the situation Mr. Shyam Sundar. Prima facie it appear that he is wrongly claiming absorption. Let his case be listed separately.
- t. **Diwakar Dev:** He is a Lab in-charge. When the College was taken over, his name was recommended. The Agrawal Commission placed him in the R1 category. On 1.12.2008 the State of Jharkhand had sanctioned his post but the benefit is not being granted.
- u. **Bhola Nath:** He belongs in the Hindi Dept of SKM University. His claim is also in respect of list IV. This case may be taken up alongwith similar other cases.
297. The preliminary issues raised with regard to the scope and ambit relating to the jurisdiction of this Commission, some questions of law raised by the parties, as also the categories of the cases are determined accordingly.
298. It is, however, made clear that in relation to such matters, which this Commission directed to be heard on merit, it goes without saying, the parties shall be at liberty to bring to the notice of this Commission any other or further documents which are relevant for determination of the Claim Petitions.
299. The parties are furthermore requested to bring to the notice of this Commission any typographical or clerical error, if any, so that necessary corrections, if any, can be carried out in regard thereto.

## **EPILOGUE**

300. It is difficult to conceive as to how the process of absorption could take such a long time, having regard to the fact that the Patna High Court had directed the Universities to consider their cases within a period of four months from the date of passing of the judgment, that is, 31.1.1997. It was expected that in the event the Universities were not in a position to do so, the Hon'ble High Court would be approached for extension of time.
301. All other cases which are not covered under this Order, shall be considered at an appropriate stage.

NEW DELHI

Dated: 11.07.2014

(S.B. Sinha)