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2026 INSC 1271

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (CIVIL) NO.18222 OF 2025)

BRIJ KUMAR MISHRA …APPELLANT

VERSUS

NILAMBER PITAMBAR UNIVERSITY & ORS. …RESPONDENT(S)

J U D G M E N T

APARESH KUMAR SINGH, J.

Leave granted.

2. The appellant herein is aggrieved by the final judgment dated 08.05.2025 passed by the Division Bench of the Jharkhand High Court (hereinafter referred to as *"Appellate Court"*) in Letters Patent Appeal No.18 of 2022 (*"impugned judgment"*), whereby the Appellate Court had set aside the judgment dated 21.12.2021 of the Single Judge in W.P.(S) No.1850 of 2018 (hereinafter referred to as *"Writ Court"*) whereunder the respondent-University herein was directed to consider the case of the appellant and pass appropriate order

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regarding fixation of date of absorption in the S.J.S.N. College, Garhwa from the date of acquiring eligibility i.e. 05.12.1987.

3. The material facts as are borne out from the record indicate that the appellant was appointed as a Lecturer in the said college on 22.02.1986 on the fifth post in the department of Hindi. On that date, the appellant did not have the basic minimum qualifications to be appointed as a University teacher, which he subsequently acquired on 05.12.1987. In the meanwhile, the college was converted into a constituent college of Ranchi University in pursuance of the Government of Bihar's letter dated 03.07.1987, with 31.03.1987 as its cut-off date. By the said cut-off date of 31.03.1987, only three posts of Lecturer in Hindi had been sanctioned in the said college, i.e. on 05.03.1980, 06.08.1985 and 30.03.1987. The fourth post was sanctioned on 13.11.1987. These four posts were held by Sh. Ram Naresh Pathak, Sh. Subarn Mahto, Sh. Ghanshyam Pandey and Sh. Baij Nath Rai respectively, all of whom were working in the college before the appellant was appointed. The respective dates of their appointment are 20.07.1975; 26.07.1981; 25.06.1983 and 25.06.1985. All these four persons were later absorbed on the said four posts of Hindi lecturers in terms of the recommendation of the One-Man Commission headed by Justice S.C. Agrawal (Retd.) (hereinafter referred to as "Justice Agrawal Commission"). The Justice Agrawal Commission was appointed by this Court vide order dated 12.10.2001 in C.A. No.6098 of 1997 titled as "***State of Bihar & Ors. Vs. Bihar Rajya MSESKK Mahasangh & Ors***", to resolve long standing dispute

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regarding absorption of teaching and non-teaching staff in the college converted into constituent units.

4. The Justice Agrawal Commission submitted its comprehensive report on 19.12.2003 in two parts. Part I dealt with general principles applicable to all cases and Part II dealt with individual colleges and specific staff members. The Commission while laying down the criteria for absorption held that teachers who had secured less than the qualifying marks were permitted to continue on an ad hoc basis subject to their attaining the prescribed marks or a Ph.D. degree within four years; those who have improved their qualifications by obtaining the requisite qualifications subsequently can be considered for the purpose of absorption. It was further held that in cases where teachers had been appointed during the pendency of their post-graduate results, would be considered eligible for absorption from the date of declaration of result.

5. On this basis, the appellant was identified by the Justice Agrawal Commission to be eligible for absorption on 05.12.1987 i.e. the date on which the appellant obtained M.A. degree with the required qualifying marks; the eligibility criteria for absorption in accordance with the prevailing criteria laid down by University Grants Commission (UGC) and adopted by the University and the State Government. His name was included in Annexure IV-A of the Report at Sr. No.4 in the Hindi department, which, as per the appellant, showed that he was appointed against the sanctioned post and became eligible for absorption from the said date.

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6. The findings of the Justice Agrawal Commission were accepted by this Court in ***Bihar Rajya MSESKK Mahasangh & Ors. (supra)*** with a direction to undertake the absorption of the teachers and staff strictly in accordance with law.

7. The conclusions arrived at by this Court in the aforesaid judgment at paragraph 73 are extracted hereunder:

> "1. *The judgment of the High Court, to the extent of the interpretation placed by it on the provisions of Section 4(1)(14) and Section 35 with the directions issued in paras 24 to 26 therein, is hereby confirmed for the reasons recorded by us above.*
> *2. The report of the Commission of Enquiry of Hon'ble Justice S. C Agrawal (retired), is accepted and all objections filed against the said report are rejected.*
> *3. The members of the staff in various affiliated colleges identified and named in List (i) being appointees against the sanctioned posts shall be absorbed and formal order to that effect shall be issued by the universities concerned.*
> *4. The universities shall take a decision under Section 4(1)(14) of the Act in the matter of absorption of appointees named in List (ii) of the Report of the Commission, being appointees against posts for which recommendations were sent by the universities to the State up to the cut-off date in accordance with the decision of the State Government conveyed in its letter dated 19-8-1986 followed by letters dated 25-8-1986 and 12-6-1987.*
> *In considering the question of absorption of appointees named in List (ii) of the report of the Enquiry Commission, the universities concerned shall rely on the contents of the report of the Enquiry Commission and the present judgment of this Court.*
> *5. The appointees mentioned in List (iii), being the appointees against posts for which recommendations were sent by the universities to the State Government after the cut-off date or those working against posts for which no recommendations were sent for approval of the State Government, have no right of being considered for absorption - whatever 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 (iii) is accepted and the universities are directed to exclude all such appointees named in List (iii)*

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

8. The controversy in relation to the absorption by some of the aggrieved persons did not come to an end even after the acceptance of the report of Justice Agrawal Commission by this Court. Therefore, vide order dated 19.08.2013, this Court appointed another One-Man Commission headed by Hon'ble Justice S.B. Sinha (Retd.) (hereinafter referred to as "Justice Sinha Commission") to examine individual claims in light of the Agrawal Commission's Report. It considered claims relating to the instant college in question i.e. S.J.S.N. College, Garhwa including the appellant's claim. The findings of the said Commission vide its order dated 08.05.2015 in respect of the appellant are extracted hereunder:

> *"So far as the case of Dr. Brij Kumar Mishra is concerned, he has been absorbed in the services of the University w.e.f. 01.06.2003, having regard to the fact that a post had been fallen vacant. It is stated that there was no recommended posts, and unfortunately the relevant documents could not be produced before Justice Agrawal Commission, the absorption of Dr. Brij Kumar Mishra, therefore, is upheld w.e.f. 01.06.2003"*

9. Justice Sinha Commission affirmed that only three posts of Lecturer in

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Hindi department were sanctioned by the cut-off date of 31.03.1987, and one was sanctioned on 13.11.1987, thus totaling four posts. Relying on the Justice Agrawal Commission Report, Justice Sinha Commission noted that no recommendation of the University for any additional post was pending before the State Government on the cut-off date. The fifth post, therefore, had not been recommended by the University to the State Government before the cut-off date.

10. The claimants, including the appellant, relied on a purported University letter dated 27.03.1987, which was found not to be genuine. Justice Sinha Commission therefore upheld the absorption of the appellant with effect from 01.06.2003 when one post had become vacant following the retirement of Sh. Ram Naresh Pathak on 31.05.2003, one of the four lecturers absorbed in the said college and working against a sanctioned post.

11. Being aggrieved, the appellant herein preferred W.P.(S) No.1850 of 2018 seeking quashing of the Notification contained in Memo No.317/05 dated 05.08.2005 whereby the appellant was absorbed with effect from 01.06.2003. He sought absorption with effect from 05.12.1987 i.e. the date of eligibility as per the recommendation of the Justice Agrawal Commission.

12. The Writ Court quashed the impugned Memo No.317/05 and directed to consider the case of the appellant herein by passing appropriate order regarding fixation of date of absorption with effect from 05.12.1987. The Writ Court held that the name of the appellant herein appeared in Justice Agrawal

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Commission Report in Annexure III-A at Sr. No. 44 and as against his name the remarks were 'R-1' which means that the post was recommended upto the cut-off date. The Writ Court was of the opinion that the Justice Agrawal Commission treated the appointment of the appellant herein as against the sanctioned post in terms of the date of eligibility and seniority.

13. The Writ Court further held that the plea raised by University about qualification was misconceived as appellant had acquired eligibility on 05.12.1987. Reference was made to the decision in case of ***Babusaheb Jha & Ors. vs. The State of Bihar & Ors. CWJC No.3017 of 2006*** that the University cannot change the date for eligibility for absorption as recorded in the Justice Agrawal Commission report. Further in ***Manju Chaudhary vs. Bhupendra Narayan Mandal University through the Registrar & Ors. CWJC No.9440 of 2009*****,** the Patna High Court held that the issue decided by the Apex Court and the finding recorded by the Supreme Court neither can be reopened, altered or scrutinised by any forum including the High Court. It also took note of the case of ***Ram Pravesh Rai & Ors. vs The State of Bihar & Ors., CWJC No. 21232 of 2014*** wherein it was held that it is not open to the State to change the date for absorption or appointment as provided by Justice Agrawal Commission under the pretext of non-availability of posts or sanction of the same.

14. The Writ Court also referred to ***Smt Kanti Mishra vs The State of Jharkhand & Ors., W.P. (S) 7555 of 2012****,* wherein the Jharkhand High Court

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while also considering the decision of ***Bihar Rajya MSESKK Mahasangh (supra)*** held that the fixation of substantial date of appointment has to be done in view of Justice Agrawal Commission's report.

15. The Writ Court held that the Report of Justice Sinha Commission is not binding and that the University had acted contrary to Justice Agrawal Commission's Report. The respondent No.1 University, being aggrieved, preferred Letters Patent Appeal No.18 of 2022 inter alia taking the following grounds:

i. That the Writ Court ignored the findings of Justice S.B. Sinha Commission which found error in his eligibility.

ii. Even on the basis of Justice Agrawal Commission Report, there were four sanctioned posts in the Hindi department and all were filled up on 05.12.1987.

iii. Appellant herein was appointed on a fifth unsanctioned post, therefore, he could not be absorbed with effect from 05.12.1987 as his eligibility could not confer any right for absorption.

iv. The appellant herein could be absorbed only upon the post falling vacant on 01.06.2003 upon retirement of Sh. Ram Naresh Pathak.

v. Justice S.B. Sinha Commission noticed an element of fraud in misrepresenting the fact on the part of the appellant herein.

vi. No absorption could be made without a sanctioned post.

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vii. The Writ Court failed to render any finding on the observations made by Justice Sinha Commission's Report.

16. The appellant herein contended that since his name was shown as in the recommended list at Annexure IV-A at Sr. No.4 (Hindi) by the Justice Agrawal Commission Report, he was eligible for absorption on 05.12.1987 i.e. the date of his eligibility. He further contended that recommendations of Justice Agrawal Report were adopted in entirety by the Supreme Court. Therefore, the impugned order does not need any interference.

17. The Appellate Court held that the appellant herein was working in an unsanctioned post. The State Government had not recommended creation of fifth post as would be evident from Annexure II-A. Under the captioned head, "recommendation made by the University upto the cut-off date pending consideration before the State Government" has been shown as nil. Therefore, the Government had not approved the creation of fifth post in the said college.

18. The Justice Agrawal Commission Report had held that teachers who were appointed for the posts for which recommendations were made after the cut-off date and where no recommendation had been sent by the University, can claim no right for confirmation of absorption, whatever may be the reasons for alleged delay in sending recommendation.

19. Such appointees working on posts recommended after cut-off date can claim no right of being considered for absorption. There cannot be an appointment beyond the sanctioned post.

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20. The appellant had also not disputed that only four posts were sanctioned as on 05.12.1987 when the appellant attained eligibility. Moreover, the absorption of the appellant from 01.06.2003 on the retirement of Sh. Ram Naresh Pathak was sustained by the Justice Sinha Commission. The Writ Court fell into error in considering only the eligibility and not the availability of a sanctioned post while ignoring the findings of the Justice Sinha Commission. The Appellate Court accordingly set aside the judgment of the Writ Court.

21. The appellant herein has preferred the present Special Leave Petition being aggrieved thereby inter alia taking the following grounds:

i. The Appellate Court erred in not holding that the appellant herein was entitled for absorption from the date of acquiring eligibility as per the principles laid down in the Justice Agrawal Commission Report, which had been accepted by this Court in ***Bihar Rajya MSESKK Mahasangh & Ors. (supra).***

ii. The absorption of appellant herein from date on when a post fell vacant i.e. 01.06.2003 instead of date of eligibility i.e. 05.12.1987 is contrary, illegal and in violation of Articles 14 and 16 of the Constitution of India. The Appellate Court failed to correctly interpret the law laid down by this Court that appointments made against sanctioned or recommended posts must relate to the date of eligibility, and not an arbitrary later date when a post fell vacant.

iii. The Appellate Court erred in appreciating that the findings of Justice Sinha Commission, which were made without proper consideration of the documents and recommendations of Justice Agrawal Commission. Justice Sinha Commission Report cannot be given primacy over the findings of Justice Agrawal Commission, which has

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been duly accepted by this Court; Justice Sinha Commission was constituted only to verify compliance with Justice Agrawal Report and not to re-determine eligibility.

iv. The absorption order dated 05.08.2005 vide Memo No.317/05 issued by Ranchi University is per se illegal as it does not give any reason for departing from Justice Agrawal Commission's findings, nor does it follow the directions issued by this Court in ***Bihar Rajya MSESKK Mahasangh & Ors. (supra).***

v. Non-application of mind by the Appellate Court to the statutory and judicially accepted basis of absorption under Section 4(1)(14) of the Jharkhand State Universities Act, 2000. Therefore, the impugned judgment deserves to be set aside and the decision of the Writ Court be restored.

22. We have considered the submissions of the learned counsel for the parties and perused the materials on record including the recommendation of the Justice Agrawal Commission and findings of Justice Sinha Commission specially on the case of the present appellant.

23. It is pertinent to note that the appellant did not question the findings of the Justice Sinha Commission before the Writ Court while seeking quashing of the Memo No.317/05 dated 05.08.2005 directing his absorption with effect from 01.06.2003 issued by the respondent-University. The Justice Sinha Commission was appointed by this Court to examine individual claims in the light of Justice Agrawal Commission's Report. The appellant had also lodged a claim before the Justice Sinha Commission regarding the date of absorption.

24. Justice Sinha Commission had categorically held that the fifth additional

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post on which the appellant was appointed had not been recommended by the University to the State Government before the cut-off date. The report of Justice Agrawal Commission also recorded only four sanctioned posts of lecturers in the Hindi department against which four incumbents were working, all of whom were appointed before the appellant.

25. Justice Sinha Commission also recorded that forged and fabricated documents were filed by the claimants, including the appellant herein, regarding the claim of absorption on additional posts, which could not be relied upon.

26. Justice Sinha Commission therefore upheld the absorption of the appellant with effect from 01.06.2003 when the post became vacant following the retirement of Sh. Ram Naresh Pathak, one of the four lecturers absorbed against the sanctioned posts in the Hindi department.

27. It is important to take note of the observations made by this Court in a similar case of absorption of teaching and non-teaching staff in a college converted into constituent unit in the light of the recommendation of the Justice Agrawal Commission followed by the report of the Justice Sinha Commission appointed by this Court on 19.08.2013. The relevant observations of this Court in ***Krishna Nand Yadav & Ors. vs Magadh University & Ors. CA No.2703 of 2017*** at para nos. 7 and 18 are extracted hereunder:

> *"7. An elaborate adjudication process had been undertaken by Justice Sinha. The decisions and various orders passed by this Court have been taken into consideration including the Government Order dated 18.12.1989. The cases of incumbents holding the posts, which were recommended prior to the cut-off date, have been accepted. The Commission has rejected the cases in which*

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recommendations had been made after the cut-off date. After going into each and every case, decisions have been rendered following the due procedure of adjudication and permitting them to file their documents…

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

28. On a factual note, it is not in dispute that four persons namely Sh. Ram Naresh Pathak, Sh. Subarn Mahto, Sh. Ghanshyam Pandey and Sh. Baij Nath Rai were working in the college as lecturers in Hindi department before the appointment of the appellant as lecturer on fifth post, which was not sanctioned.

29. The report of the Justice Agrawal Commission, as accepted by this Court, indicates that teachers working on posts recommended after the cut-off date, or for which no recommendation was sent by the University to the State Government, have no right to absorption as per List (iii).

30. Annexure I-A of the Justice Agrawal Report shows individual sanctioned post for lecturer in University.

31. Annexure III-A contains the names of teachers who were working on the date of conversion subject-wise. In the said annexure, the name of the appellant appears at Sr. No. 44, below the names of the four persons Sh. Ram Naresh Pathak, Sh. Subarn Mahto, Sh. Ghanshyam Pandey and Sh. Baij Nath

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Rai at Sr. Nos. 40-43, who were shown as appointed before the appellant against the four sanctioned posts.

32. Annexure IV-A contains the name of teaching staff who were eligible to be considered for absorption wherein the name of the appellant appears at Sr. No. 4 in the Hindi department above the name of Sh. Ghanshyam Pandey with his date of eligibility being 05.12.1987. The appellant had set up his case on this list contained in Annexure IV-A. However, the appellant was appointed on the fifth unsanctioned post in Hindi department in the said college.

33. Annexure IV-A of the Justice Agrawal Commission Report does not, by itself, entitle the appellant to absorption from 05.12.1987. Its heading itself reads "Teaching staff who are *eligible* to be considered for absorption", and the names of the teachers are arranged with reference to their respective dates of eligibility. Eligibility is merely a qualifying condition and cannot create a right where no post exists. Annexure IV-A merely records the academic eligibility of the teachers for the purpose of consideration of absorption and does not determine the category of the post against which each teacher was appointed. The column for 'Nature of appointment' is left blank in the said Annexure. The question of absorption has to be examined with reference to the three categories recognised by this Court in paragraph 73 of ***Bihar Rajya MSESKK Mahasangh & Ors. (supra)***, namely, (i) appointees against sanctioned posts, (ii) appointees against posts for which recommendations were sent by the Universities to the State Government up to the cut-off date and (iii) appointees

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against posts for which recommendations were sent after the cut-off date or for which no recommendations were sent to the State Government. Annexure IV-A itself lists six Hindi teachers against only four sanctioned posts, which, as the Justice Sinha Commission observed, was presumably on the assumption that the number of sanctioned and/or recommended posts was higher. Annexure III-A shows four teachers working against the four sanctioned Hindi posts in the College (Sr. Nos.40-43) and the appellant herein at Sr. No.44, whose post was not sanctioned and was not recommended by the University up to the cut-off date. The remark 'R-1' against the appellant's name in Annexure III-A cannot create a recommendation which the Justice Agrawal Commission itself found did not exist. Thus, the placement of the appellant herein at Sr. No.4 in Annexure IV-A, above Sh. Ghanshyam Pandey, reflects only his earlier date of eligibility. It therefore cannot be the basis for absorption from 05.12.1987.

34. Therefore, the claim of the appellant based on his eligibility of having acquired the minimum qualifying marks of 65% in M.A. Degree on 05.12.1987 before Sh. Ghanshyam Pandey, based upon Annexure IV-A of Justice Agrawal Commission Report alone cannot form the basis for his absorption, since the four sanctioned posts were held by teachers appointed before him. As per the Justice Agrawal Commission Report, as accepted by this Court, such teachers could not claim a right to consideration for absorption on posts recommended after the cut-off date or for which no recommendation has been sent to the State Government.

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35. Since the claim of the appellant herein for absorption had remained unresolved even after the report of the Justice Agrawal Commission, individual claims such as his were examined by the Justice Sinha Commission appointed by this Court, which rejected his claim to absorption against a fifth post, as the document relied upon by the claimants was not genuine.

36. It is not disputed that only four posts were sanctioned in the Hindi department. The Justice Agrawal Commission found that, on the cut-off date of 31.03.1987, no recommendation of the University for any additional post was pending before the State Government. The request for the 5th to 8th posts in Hindi was only a proposal sent by the College to the University on 20.01.1987, which the University forwarded to the State Government on 11.07.1987, after the cut-off date. The absorption of the appellant with effect from 01.06.2003, on the post falling vacant on the retirement of Sh. Ram Naresh Pathak, was therefore upheld by the Justice Sinha Commission.

37. The opinion of the Writ Court based upon Annexure IV-A of Justice Agrawal Commission's Report hence does not stand the test of judicial scrutiny. The Appellate Court has correctly observed that appellant herein could not claim to be absorbed on the fifth post on the basis of eligibility alone as only four posts were sanctioned as on 05.12.1987 when the appellant herein attained the minimum qualifying marks for eligibility.

38. The findings of the Writ Court on the question of absorption of the appellant herein were erroneous and cannot be upheld in the eyes of law.

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39. The impugned judgment rendered by the Appellate Court having taken the correct view of the matter, therefore, needs no interference.

40. Accordingly, this appeal stands dismissed.

41. Pending application(s), if any, shall stand disposed of.

……J.
[VIKRAM NATH]

……J.
[APARESH KUMAR SINGH]

NEW DELHI
NOVEMBER 25, 2026