

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1987 of 2016**

Sudhir Kumar Ojha, son of Kri Krishnadeo Ojha, Resident of village-  
Lahladpur Patahi, P.S.- Muzaffarpur Sadar, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Health Department, Government of Bihar, Patna
3. The Joint Secretary, Health Department, Government of Bihar, Patna
4. The Bihar Public Service Commission, Bihar, Patna through the Chairman
5. The Secretary, Bihar Public Service Commission, Bihar, Patna

... .. Respondent/s

**Appearance :**

For the Petitioner/s	:	M/s Vijay Kumar Singh Pankaj Kumar Singh, Advocates
For the State	:	Mr. Lalit Kishore, AG Mr. Ranjan Kumar Singh, AC to PAAG 2
For the B.P.S.C.	:	Mr. Ragni Kanth Jha, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE DR. JUSTICE RAVI RANJAN**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 21-08-2018**

1. The present public interest litigation has been preferred for issuance of an appropriate writ in the nature of mandamus commanding and directing the respondents to fill up the vacant and sanctioned posts of teaching staffs of Rajkiya Tibbi College, Patna, Rajkiya R.B.T.S. Homeopathic College Muzaffarpur, Rajkiya Unani Colleges and Rajkiya Ayurvedic Medical Colleges forthwith which are vacant since long.



2. The case of the petitioner is that by not filling up the sanctioned and vacant posts of Tibbi, Unani, Homeopathic and Ayurvedic Colleges of the State since long, it has badly affected the education of the students who are prosecuting the studies. It is the case on behalf of the petitioner that not appointing the teaching staff in the aforesaid colleges of the State ultimately affects the future of the students and also it affects not the present generation but the future generation also. Today's students are the next generation. Therefore, it is the case on behalf of the petitioner that non-appointment of teachers or teaching staff would be violating the fundamental rights of the students guaranteed under Article 21 -A of the Constitution of India.

3. Learned counsel appearing on behalf of the respondents – State authorities as well as Bihar Public Service Commission are not disputing that there are number of sanctioned vacant posts of teaching staff / faculty in the Tibbi, Unani, Homeopathic and Ayurvedic Colleges of the State. In the last counter filed on behalf of the Bihar Public Service Commission, it is stated that all endeavours shall be made by the Bihar Public Service Commission to complete the recruitment process and send the recommendation to the State Government, on or before 31<sup>st</sup> January, 2019. Learned Advocate General appearing on behalf of



the State stated that thereafter within a period of four weeks, the aforementioned appointment shall be made on the basis of the recommendation made by the Bihar Public Service Commission after following due process but not later than four weeks from the receipt of such recommendation.

4. Heard learned counsel appearing on behalf of the respective parties.

5. While considering the issue involved in the present petition, the observations made by the Hon'ble Supreme Court in a few decisions are required to be referred to.

5.1 In the case of **Unni Krishnan. J.P. And Ors. v. State of A.P. And Ors.** reported in (1993)1 SCC 645, it is observed and held by the Hon'ble Supreme Court that though right to education is not stated expressly as a fundamental right, it is implicit and flows from right to life guaranteed under Article 21 of the Constitution having regard to the broad and expansive interpretation given by Courts. It is further observed that right to education has been treated as one of the transcendental importance. It has fundamental significance to the right of an individual and the nation. It is further observed that without education being provided to the citizens of this country, the



objectives set forth in the preamble to the Constitution cannot be achieved, and the Constitution would fail.

5.2 In the case of **Secretary, Mahatma Gandhi Mission And Another v. Bhartiya Kamgar Sena And Others** reported in **(2017)4 SCC 449**, recently, the Hon'ble Supreme Court had an occasion to consider the importance of the role of education in the life of human beings. The Hon'ble Supreme Court has observed and held in Paragraphs 34 to 48 as under:

“34. Importance of the role of education in the life of human beings is well known to the society which invented the concept of ‘Zero’. Even the colonial Rulers established educational institutions and encouraged the establishment of educational institutions by non-state actors by introducing a system of supporting them by providing financial aid to some extent. The very fact that the makers of the Constitution of India chose to refer to “aid out of State funds” to educational institutions in Article 29(2)[17] and “aid to educational institutions” in Article 30(2)[18], is proof of the fact that the makers of the Constitution took note of the need to financially support educational institutions established even by non- state actors.

35. Education is one of the most vital elements for preservation of the democratic system of



Government. The Supreme Court of America in Wisconsin v. Yoder, 406 US 205 (1972) observed:

“ 25. ... some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. ...”

36. Education becomes a basic tool for individuals to lead an economically productive life. An economically productive life of the individual not only improves the quality of life of the individual and his family but also contributes to some extent to the benefit of the society at large. Production of goods and services to a large extent depend upon the availability of technically qualified human resources. Technical education therefore has the potential to directly contribute to the economic prosperity of a technically qualified individual as well as the society.

37. This Court in Unni Krishnan, J.P. & Others v. State of Andhra Pradesh & Others, (1993) 1 SCC 645, took note of the fact that “education is the second highest sector of budgeted expenditure after the defence” and also that it constitutes “3 per cent of the Gross National Product is spent in education”.

38. This Court took note of the mandate of Article 41 “to illustrate the content of the right to education flowing from Article 21” and the fact that:



“182....The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development”.

Finally, this Court held that:

“183. .... the right to education is implicit in the right to life because of its inherent fundamental importance”.

and therefore an aspect of Article 21 of the Constitution. Parliament endorsed the conclusion of this Court and amended the Constitution to make an express declaration of the fundamental right to education by inserting Article 21A.

39. Education is an important factor for maintaining democracy and the economic well-being of the society. Therefore, the Constitution of India bestows considerable attention to the field of education. It recognizes the need for regulating the various facets of activity of education and also the need for not only establishing and administering educational institutions but also providing financial support for the educational institutions run by private / non-state actors.

40. A brief sketch of the development of the system of college education in this country would certainly help to understand the problem on hand. Establishment of colleges imparting education based on the English Education System[21] predated the establishment of universities in this country. Colleges were and are still being established by individuals,



societies, trusts, etc. (hereinafter collectively referred to as “non-State actors”) apart from the Governments or other instrumentalities of State. Universities were established in the provinces of British India in imitation of London University as it then was. They all began as purely examining bodies with the power to confer degrees. They were not teaching universities. In 1902, the Indian Universities Commission was appointed. It was followed by the Indian Universities Act, 1904. Under Section 3 of the Act, Universities were enabled to instruct students. Sections 20 and 21 authorised the Universities to affiliate colleges. While Sec. 20 declared that colleges affiliated to any University prior to the 1904 Act “continue to exercise the rights conferred upon it by such affiliation”, Section 21 provided for the grant of affiliation by the university upon an application by a college (obviously not earlier affiliated to the university) and matters incidental thereto. Section 19 of the said Act declared that “...no person shall be admitted as a candidate at any University examination .....unless he produces certificate from a College affiliated to the University,... that he has completed the course of instruction prescribed by regulation”.

41. Over a period of time, prior to the advent of the Constitution, number of Universities came into existence in various parts of the country. Each of them was created either by or under a statute. After the advent of the Constitution by virtue of the power



under Article 246 read with Entry 32 of List II of the Seventh Schedule legislative competence to establish universities vested exclusively with the State Legislatures. Many universities came to be established by or under various enactments made by the different State Legislatures. There is a discernible pattern in the scheme of all these enactments. Each of these enactments prohibits the conferment of any degree on any person by any body other than by the University. Universities are authorised to (i) establish teaching colleges, (ii) grant affiliation to colleges established by non-State actors. Correspondingly, colleges established by non- State actors are obliged to secure affiliation to the Universities. Affiliated colleges are permitted to train students for examinations to be conducted by the University (to which college is affiliated) for the purpose of the conferment of degrees in a given discipline. Universities are vested with considerable power to regulate the administration of the affiliated colleges. In exercise of such power, Universities have been making subordinate legislation stipulating the terms and conditions subject to which colleges could be administered and seek affiliation, etc.

42. Under the Constitution of India, both the Parliament and the Legislative Assemblies of the States are conferred with the power to legislate upon various aspects of education. The power to legislate with respect to the field of education vested basically with the State Legislatures under Article 246 (3) read





with Entry 11 of List II of the Seventh Schedule as it stood prior to the Constitution 42nd Amendment. Parliament is exclusively authorised under Article 246(1) to make laws with respect to various educational institutions specified under Entries 63 to 66[26] (both inclusive) of List I.

43. Original Entry 25 of the List III indicated the concurrent field of legislative authority (of the Parliament as well as the State Legislature) with reference to certain aspects of the education came to be substituted.

44. By the 42nd amendment of the Constitution, Entry 11 of List II[28] was omitted and Entry 25 of List III was substituted. Entire field of legislation with regard to education became the subject matter of Concurrent List. Entry 25 now reads:

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

45. The availability of such legislative authority to the States (both before and after the 42nd Amendment) necessarily carried with it co- extensive executive authority which authorised the States to establish and administer colleges.

46. Parliament also made laws exercising its exclusive authority over the field indicated under Entries 63, 64 and 65 of List I of the Seventh Schedule to the Constitution. By the said laws, educational institutions were established and their



administration was entrusted to either the Government of India or some other authority.

47. Schedule VII List II Entry 32 indicates that State legislatures have exclusive legislative competence to make laws dealing with “incorporation, regulation and winding up of...universities”. In exercise of such legislative authority, laws are made by the State Legislatures bringing into existence Universities.

48. Various non-state actors including minorities established large number of colleges and other educational institutions in this country, both before and after the advent of the Constitution (spanning over a period of about 200 years). Certain aspects of establishment and administration of colleges by non-state actors have always been regulated by the legislature. Various enactments (by or under which universities are established) command that colleges should secure affiliation to an appropriate university. However, after the 42nd Amendment, Parliament also became competent to regulate the activity of education. Some of the laws made by the Parliament do regulate. The All India Council for Technical Education Act (AICTE Act) is one such.”

5.3 In the case of **State of Orissa And Another v. Mamata Mohanty** reported in (2011)3 SCC 436, the Hon’ble Supreme Court had an occasion to consider the importance of academic excellence of teachers themselves. In the said decision, it



is observed by the Hon'ble Supreme Court that the excellence of instruction provided by the educational institutions mainly depends directly on the excellence of teaching staff and therefore, unless they themselves possess a good academic record / minimum qualifications prescribed as an eligibility, standard of education cannot be maintained/ enhanced. It is further observed in the said decision that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. It is observed that therefore, it is necessary to maintain a high academic standard and academic discipline along with academic record for the progress of a nation. It is further observed that democracy depends for its own survival on the high standard of vocational and professional education. That Article 21A has been added to the Constitution with a view to facilitate the children to get proper and good quality education. It is observed that however, the quality of education would depend on various factors but the most relevant of them is excellence of teaching staff. In Paragraphs 29 to 33, the Hon'ble Supreme Court has observed and held as under:

“29. Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the



whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling. The excellence of instruction provided by an educational institution mainly depends directly on the excellence of the teaching staff. Therefore, unless they themselves possess a good academic record/minimum qualifications prescribed as an eligibility, it is beyond imagination of anyone that standard of education can be maintained/enhanced.

"18. We have to be very strict in maintaining high academic standards and maintaining academic discipline and academic rigour if our country is to progress.

... ..

"30. ...Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of 'learning with search for new knowledge with discipline all round must be maintained at all costs". (Vide: **The Sole Trustee Loka Shikshana Trust v. The Commissioner of Income Tax, Mysore, AIR 1976 SC 10**; **Frank Anthony Public School Employees' Association v. Union of India & Ors., AIR 1987 SC 311**; **Osmania University Teachers' Association v. State of Andhra Pradesh & Anr., AIR 1987 SC 2034**; and **Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh & Ors. v. Vaibhav Singh Chauhan, (2009) 1 SCC 59**).

30. In **Meera Massey (Dr) v. S.R. Mehrotra (Dr) & Ors.**, this Court extensively quoted the Report of the **University Education Commission, i.e.,**



Radhakrishnan Commission, wherein grave concern was expressed observing that "there is negligence in applying criteria of merit in the selection" of teachers. The Court also quoted from another Report of the Committee on some problems of University Administration 1964(1967) as:

"26. ....'The most important factor in the field of higher education is the type of person entrusted with teaching. Teaching cannot be improved without competent teachers. ... The most critical problem facing the universities is the dwindling supply of good teachers. ... The supply of the right type of teachers assumes, therefore, a vital role in the educational advancement of the country'.

31. The Court in Meera Massey further observed as

Under:

"24. University imparts education which lays foundation of wisdom. Future hopes and aspiration of the country depends on this education, hence proper and disciplined functioning of the educational institutions should be the hallmark. If the laws and principles are eroded by such institutions it not only pollutes its functioning, deteriorating its standard but also exhibits to its own students the wrong channel adopted. If that be so, how could such institutions produce good citizens? It is the educational institutions which are the future hope of this country. They lay the seed for the foundation of morality, ethics and discipline. If there is any erosion or descending by those who control the activities all expectations and hopes are destroyed." (emphasis added)



32. In Chandigarh Administration & Ors. v. Rajni

Vali & Ors., this Court observed as under:

"6. ....It is a constitutional mandate that the State shall ensure proper education to the students on whom the future of the society depends. In line with this principle, the State has enacted statutes and framed rules and regulations to control/regulate establishment and running of private schools at different levels. The State Government provides grant-in-aid to private schools with a view to ensure smooth running of the institution and to ensure that the standard of teaching does not suffer on account of paucity of funds. It needs no emphasis that appointment of qualified and efficient teachers is a sine qua non for maintaining high standards of teaching in any educational institution."

(emphasis added)

33. In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the



smooth running of the institution so that the standard of teaching may not suffer for want of funds.”

5.4 In the case of **Society for Unaided Private Schools of Rajasthan v. Union of India** reported in **(2012)6 SCC 1**, the Hon’ble Supreme Court has observed that education is a process which engages many different actors: the one who provides education (the teacher, the owner of an educational institution, the parents), the one who receives education (the child, the pupil) and the one who is legally responsible for the one who receives education (the parents, the legal guardians, society and the State). It is observed that these actors influence the right to education.

6. Identical issue came to be considered by the Division Bench of this Court in recent decision dated 20.08.2018 rendered in **C.W.J.C. No.11265 of 2017 [ Shree Prasad Sharma Versus the State of Bihar & Ors.]** and it is observed and held as under:-

“ 7. Applying the law laid down by the Hon’ble Supreme Court in the aforesaid decisions, the issue involved in the present petition is required to be considered. As observed hereinabove, there are approximately six hundred fifty (650) girl students, who are studying in the aforesaid school in the secondary as well as higher secondary section. It is also required to be noted that against 19 required sanctioned posts of teachers, there are only six (6) teachers, who are imparting the education. Without the teachers/eligible qualified teaching faculty, the



students may not get better education. It is the need of the day to have qualified teachers/teaching faculty in the school/schools. Today's students are the next generation. Therefore, a quality education is must and the same shall be in the larger interest of the country. Not providing the quality education will, ultimately, affect the career of the students as well as the next generation which cannot be tolerated and permitted any more. Only constructing the building/schools is not enough. Without the eligible teaching faculty/staffs would be like the constructing the hospitals without doctors. If the hospitals are there, patients are there but there are no doctors who can treat the patient. No fruitful purpose will be served in establishing the hospitals without doctors. Similarly, if the schools are there, the students are there, the teachers/teaching faculty is not there, then what is the use/purpose of such schools without teachers. It is the duty of the State authorities to appoint and fill up all the posts of teachers in the respective schools and there shall be required number of eligible teachers in the schools. Quality education shall depend upon qualified number of faculties/teachers. There cannot be any compromise with the quality of education. In absence of required number of faculties/teachers and that too, not appointing the required number of teachers and that too subject wise teachers, education shall hamper and shall be affected too. As observed in above, nobody can be permitted to play with the future of the students of this generation as well as next generation. Not appointing the required number of qualified and eligible teachers would be affecting the fundamental rights of the students guaranteed under Article 21-A of the Constitution of India.”

7. Learned counsel appearing on behalf of the State as well as the Bihar Public Service Commission are not disputing that there is also delay in filling up the posts of teaching staffs in





Tibbi, Unani, Homeopathic and Ayurvedic Colleges in the State of Bihar, more particularly, in Rajkiya Tibbi College, Patna, Rajkiya R.B.T.S. Homeopathic College Muzaffarpur, Rajkiya Unani Colleges and Rajiya Ayurvedic Medical Colleges, still they are asking for time till 31<sup>st</sup> January 2019, as observed in above. Non-filling of the sanctioned teaching staff in the educational institution may affect the fundamental rights of the students guaranteed under Article 21-A of the Constitution of India. It affects the career and future of the students. Nobody can be permitted to play with the future of the students who are the next generation. Non-appointment of teaching staff shall not be in the larger public interest and in the interest of the country. All efforts should be made to fill up all the sanctioned teaching staffs and that to the earliest.

8. Therefore, it is directed to the Bihar Public Service Commission to complete the recruitment process of teaching staff / teaching post in Tibbi, Unani, Homeopathic and Ayurvedic Colleges in the State of Bihar, more particularly, in Rajkiya Tibbi College, Patna, Rajkiya R.B.T.S. Homeopathic College Muzaffarpur, Rajkiya Unani Colleges and Rajiya Ayurvedic Medical Colleges and also in the entire State and send the recommendation to the State Government on or before 31<sup>st</sup>



December 2018. Thereafter, the State shall make the appointment after considering the recommendation made by the Commission on merits and after following due process, as required, on or before 31<sup>st</sup> January, 2019.

9. In view of the above and for the reasons stated above, the present petition is allowed. Accordingly, all concerned are directed to see that the present direction is complied with in true spirit and in toto, failing which the matter shall be viewed very seriously. However, there shall be no order as to cost.

**(Mukesh R. Shah, CJ)**

**( Dr. Ravi Ranjan, J)**

Sanjay/- Spd

<b>AFR/NAFR</b>	AFR
<b>CAV DATE</b>	NA
<b>Uploading Date</b>	24.08.2018
<b>Transmission Date</b>	NA

