



S. Balasubramanian

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

File No. MK/8/2011/MHRD1/DEEDUC/RU-III

छठी मंजिल, 'बी' विंग, लोक नायक भवन  
खान मार्केट, नई दिल्ली - 110003  
6<sup>th</sup> floor, 'B' Wing Loknayak Bhawan,  
Khan Market, New Delhi-110003  
दिनांक 18.03.2016

To,

1. The Principal Secretary,  
To the Hon'ble Governor of Jharkhand,  
Raj Bhawan, Ranchi Jharkhand
2. The Vice Chancellor,  
Ranchi University,  
Ranchi, Jharkhand
3. The Secretary,  
Higher Education of Department,  
Govt. of Jharkhand,  
Ground Floor, Engineer's Hostel - I,  
Near Golchakkar, Dhurwa, Ranchi,  
Jharkhand

Sub: Representation of Dr. Meena Kujur, Lecture, P.P.K Colleges, Bundu, Ranchi,  
Jharkhand regarding fixation of seniority.

Sir

I am directed to refer to this Commission's letter of even number dated 14/07/2015 on the subject and to enclose herewith a copy of the proceedings of the Sitting held in this Commission on 04.08.2015 for necessary action and to send the action taken report to the Commission an early date.

Yours faithfully,

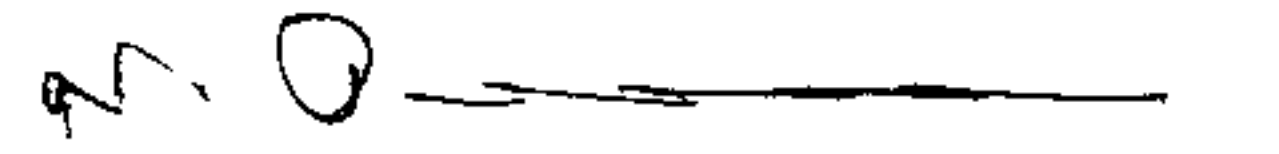
(N. Balasubramanian)  
Research Officer

Copy to:

1. Dr. Meena Kujur, lecture,  
P.P.K Colleges, Bundu, Ranchi,  
Jharkhand, Deputation At RLSY College, Ranchi

**Copy for information to:**

1. Director (Admn., RU-III, & RU-IV,) Dy. Secretary (RU-I & RU-II), All Units of Head Quarter, Director/ Assistant Director/Research Officer of Regional Offices of NCST
- ✓ 2. SSA, NIC, NCST

  
**(N. Balasubramanian)**  
**Research Officer**

NATIONAL COMMISSION FOR SCHEDULED TRIBES

File No. MK/3/2011/MHRD/DEEPUC/RU-III

Proceedings of Sitting chaired by Dr. Rameshwar Oraon, Chairperson, NCST on 04.08.2015 in the matter of representation from Dr. Meena Kujur, including an anomaly caused in the inter-se-seniority of lectures, due to grant of relaxation of educational qualifications.

Date of Sitting: 04.08.2015

List of the officers present: (Annexure- I)

The applicants in the instant case, belonging to SC/ST category, are working as lecturers in different disciplines in different colleges under Ranchi University, Ranchi, Jharkhand. The applicants were appointed to the posts of lectures during 1984-85 following a due process of selection. They were selected by the Governing Body and their appointments were approved by the University. The applicants are discharging their duties since their initial appointment till date without any interruption. Initially, these colleges were run by the private management but were affiliated with Ranchi University and therefore, bound by the rules and regulations framed by the UGC.

2. It would be significant to note that, the applicants were appointed under SC/ST category which is evident from their selection process. The minimum qualification, as prescribed by the UGC for appointment to the posts of lecturers under general category, was 52.5% in M.A/M.Sc. Since, no candidates having 52% marks in M.A/M.Sc., were available under SC/ST category, the qualifying marks was relaxed from 52.5% to 47% to fill up the quota prescribed for SC/ST candidates as mandated under Article 335 of the Constitution of India.

*Rameshwar Oraon*


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अध्यक्ष/Chairperson  
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National Commission for Scheduled Tribes  
राज्य सरकार/Govt. of India  
ई. विस्तार/...

3. The grievance of the applicants herein, is that, despite the fact that they were appointed about 30 years back against the posts reserved for SC/ST and there was a decision taken by the government to absorb the employees who were appointed till the date on which the decision to take over the colleges as constituent colleges, was taken by the government, they have not yet been regularized as yet. The universities and the government are expressing their inability to redress the grievance of these applicants taking a plea that, the matter is sub judice before the Supreme Court of India awaiting the S.B. Sinha Commission's report.

4. The applicants contend that, their case was never a subject matter of controversy either in the previous litigation leading to appointment of S.C. Agarwal Commission or in the present litigation leading to appointment of S.B. Sinha Commission. The case of the present applicants were never placed by the university either before the S.C. Agarwal Commission or before the present S.B. Sinha Commission. The inference, which could be drawn from this fact is that, there was no controversy with regard to appointments of the present applicants against the reserved category and this could be the reason that, the case of the applicants was kept away from the controversy. Then the question arises as to why the applicants, though in continuous service till date, are not being regularized and given the benefits of a regular employee.

5. In order to ascertain as to, whether the contention of the applicants is correct, it would be pertinent to go into the background of the case.

i. It is in the year 1986, 40 colleges including 4 minority colleges were taken over as constituent colleges vide a government resolution dated 30.4.1986. The colleges in which the present applicants are teaching, were amongst the newly converted constituent colleges. Subsequently, vide a letter dated 19.8.1996, the State of Bihar conveyed its decisions to all the Vice- Chancellors of various universities in the erstwhile undivided State of Bihar converting the affiliated colleges into constituent colleges. In order to implement the said decision, the Universities were directed by the government to obtain from each of the newly constituent colleges, the details regarding sanctioned strength of

  
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teaching and non teaching posts existing on the date of take over of the colleges as constituent colleges and to also ascertain as to whether any proposals for creation of additional posts in the affiliated colleges were received from the universities by 30.4.1986 or pending with the government of Bihar. The list of teachers appointed against such additional posts pending for approval of the State Government were also directed to be separately prepared for the purposes of consequential action on the part of the State Government. Steps were taken pursuant to aforesaid decision to absorb the teaching and non teaching staff working on the sanctioned as well as additional posts pending sanction with the government.

- ii. While the implementation of the aforesaid decision of taking over the private colleges as constituent was in process, there was a change in the government with different political ideology. It is probably, due to such a change, the aforesaid decision was decided to be reviewed and a vigilance enquiry was ordered to look into the legality and genuineness of appointments made in the colleges taken over as constituent. Vigilance Enquiry submitted its report indicating large scale manipulation in the appointment of teaching as well as non teaching staff. Apprehending the malafide intention of the government to frustrate the previous decision of the government to absorb the lecturers working in these colleges, an association of teaching and non teaching staff filed writ petition before the High Court of Patna. The said writ petition was allowed by the High Court directing the concerned universities to take necessary steps to regularize the service of the teachers of the colleges which had become constituent.
- iii. The State of Bihar challenged the High Court's decision before the Supreme Court vide Civil Appeal No. 6098 of 1997. To put an end to the entire controversy, the Supreme Court, vide an order dated 12.10.2001 appointed S.C. Agarwal as one man Commission to look into the controversies as per the terms of reference given below:

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 19.8.1986 of the State of Bihar?

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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 judgement?

4. How many teachers and non teaching employees would be entitled to absorption on the basis of government letter dated 19.8.1986 and Appendix 'Kha' and the agreement entered into between the University concerned and the constituent college under section 4(14) of the Bihar State University Act, 1976 and other orders of government?

6. The Agarwal Commission submitted its report on 19.12.2003 categorizing the teaching and non teaching staff into three part vide three lists. The first List is S1 which included the teaching and non teaching employees, who were appointed by the University against the sanctioned strength up to the cut off date. The second list called as R-1, included such teaching and non teaching employees, whose names were recommended by the university upto the cut off date and decision was pending with the government. The third list called as R-II included the teaching and non teaching employees who were recommended beyond the cut off date. The employees included in S1 and R1 lists were held to be entitled for absorption whereas the persons listed in R-2 were held to not entitled for absorption. The Agarwal Commission's report dated 19.12.2003, was accepted by the Supreme Court vide its order dated 12.10.2004 with following directions:

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1. 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.
2. The Universities shall take a decision under section 4(1) (14) of the Act in the matter of absorption of appointees named in the 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 report of the enquiry commission and the present judgement of this court.

3. 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 may be the fortuitous circumstances or otherwise in the matter of not sending recommendations for sanction in their cases. The negative report of the enquiry commission with regard to list no. iii is accepted and the universities are directed to exclude all such appointees named in list no. iii from the consideration for absorption.

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7. Relying upon the Agarwal Commission Report and the judgement dated 12.10.2004, passed by the Supreme Court several persons filed their claims for absorption before the High Court of Patna. The Hon'ble High Court of Patna vide its order dated 11.03.2010, passed in LPA No. 1304/2009 ordered the setting up of two member commission to decide the fate of employees placed in List (iii) i.e. category R-II-NR of the Hon'ble Justice S.C. Agrawal Commission Report and in the meanwhile, the government was directed to pay the salaries of the employees who were currently working on their respective posts. However, the working of the two member Commission was stayed by the Hon'ble Supreme Court vide its order dated 07.05.2010 passed in SLP (C) No. 12591/2010 titled as Krishna Nand Yadav & Others vs. Magadh University and Others. Thereafter, the Hon'ble Supreme Court vide order dated 12.10.2011 passed in SLP (C) No. 27964-65, stayed all the contempt proceedings pending before the Hon'ble High Court of Patna. Considering the nature of controversies, the Hon'ble Supreme Court vide its order dated 22.01.2013, once again appointed Hon'ble Justice S.C. Agrawal as one man commission to enquire into the following aspects of the matter:
- a) The Commission shall adjudge the claims of each of the employees (both teaching and non teaching) for absorption in constituent colleges on the anvil of Justice Agarwal Commission report dated 10.12.2001 and the decision of the Supreme Court in State of Bihar versus 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 4 week 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" -7- 11.03.2010 in LPA No. 1304 of 2009 and connected matters."

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However, as Hon'ble Justice S.C. Agrawal expressed his inability to continue as one man commission, the Hon'ble Supreme Court vide its order dated 19.08.2013 appointed Hon'ble Justice S.B. Sinha as one man Commission to enquire into the issues mentioned in order dated 22.01.2013.

### Conclusion,


After having gone through the back ground of the case, it is clear that, the present applicants, who belonged to reserved category STs quota, were appointed against the posts reserved for SC/ST well before the date of cut off as determined by the Agarwal Commission and as also approved by the Hon'ble Supreme Court.

2. Despite that their names were not sent by the respective universities to the government after these colleges were taken over as constituents by the government by a due notification as a result of which their names could not figure in the list worked out by the Agarwal Commission.

3. The Commission noted that this is a serious lapse on the part of the university. However, the fact remains that, these applicants have been working as lecturers uninterruptedly, since their appointment till date as such the only inference which can be drawn is that, neither the government nor the university had ever any objection to the appointments and continuance of these applicants as lecturers.

4. The grievance of the petitioner is that, they have not yet been regularized by the government on one or other pretext. One such pretext is that, the matter of appointments is sub-judice before the S.B. Sinha Commission of Enquiry. This is not an acceptable plea.

5. The candidates appointed under the reserved quota was never a subject matter either before the High Court or the Supreme court or even before the commissions as appointed by the Supreme court.

  
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6. Needless to say that, as per the mandate under the provisions of Article 335 of the Constitution of India, representation of candidates belonging to reserved ST category has to be consistently maintained as per the policy decisions taken by the government in pursuance of the mandate under the said provision of the constitution.

7. In the present case, though the representation of the candidates belonging to reserved ST candidates has been taken care of at the appointment but denial of their regularization even after a long period of continuous service frustrates the said mandate of the Constitution.

8. It is not yet clear as to whether, the quota of 23% as determined by the government has been achieved or not at the time of appointments. However, so far as the present applicants are concerned, are entitled to absorption under the SC/ST quota under which they were appointed. There is no hindrance in the way of the government from taking a decision to regularize the service of the present applicants and grant consequential benefits of regular employee since their initial appointment.

9. Denial of such benefits to these applicants is not only violative of principle of equal pay for equal work as settled by the Hon'ble Supreme Court of India but is also violative of the letter and spirit of the provisions of Article 335 of the Constitution of India.

10. Commission advised that, the Government of Jharkhand shall regularize these applicants on their respective posts since the date of their initial appointments as per the mandate of the Constitution of India by following rule of reservation. The Commission also advises that Reservation policy of Government of India should be implemented in true spirits as mandated and action initiated against the officers who have not exercised due care in implementing the rule of Reservation.

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## NATIONAL COMMISSION FOR SCHEDULED TRIBES

File No: MK/3/2011/MHRD1/DEEDUC/RU-III

Sub: Representation from Dr. Meena Kujur, including an anomaly caused in the inter-se-seniority of lecturers, due to grant of relaxation of educational qualifications.

Attendance of participants in the Sitting held on 04.08.2015 at 3:00 PM in the National Commission for Scheduled Tribes, HQ, New Delhi.

Sl. No.	Name & Designation	Contact No	Signature
<b>National Commission For Scheduled Tribes</b>			
1.	Dr. Rameshwar Oraon, Hon'ble Chairperson	In chair	
2.	Smt. K.D. Bhansor, Director		
3.	Shri H.R. Meena, Senior Investigator		<i>H.R. Meena</i>
4.			
<b>Principal Secretary to Governor of Jharkhand</b>			
1.	<i>Abhinav Kumar</i> O.S.D (J) to Governor	9431129704	<i>Abhinav Kumar</i>
2.			
3.			
<b>Ranchi University</b>			
1.	<i>Ramesh Kumar Pandey</i>	Vice-Chancellor	<i>R.K. Pandey</i> 4/8/15
2.			
3.			
<b>Petitioner</b>			
1.	<i>Dr Meena Kujur</i>	8969363872	<i>Meena Kujur</i>