

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4492 of 2013

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Rangeshwar Singh, Principal, Veer Kunwar Singh College Dharupur,
Bikramganj, District - Rohtas

.... Petitioner/s

Versus

1. The Vice Chancellor Veer Kunwar Singh University Ara, District - Bhojpur
2. The Registrar, Veer Kunwar Singh University, Ara, District - Bhojpur
3. Uma Shankar Singh S/O Sri Srinath Singh R/O Village + P.O. Dharupur, P.S. - Bikramganj, District - Rohtas

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

(Date-28.01.2015)

Heard learned counsel for the parties as with
regard to the following relief, prayed in this writ
application:-

“for setting aside the order dated 04.02.2013, issued by the Registrar of Veer Kunwar Singh University, Ara, which has been passed in light of order dated 5.09.2012 in C.W.J.C No. 14507/2012, wherein and where the Vice Chancellor has wrongly directed to reinstate the Respondent No. 3, specific direction given to the Principal Secretary, Govt. of Bihar, Human Resources Development Department, Govt. of Bihar to pass an order with regard to grievance of petitioner of C.W.J.C No. 14507 of 2012 after calling necessary information form the University and the college.”

2. Learned counsel for the petitioner in support of the aforementioned prayer has straightway questioned the jurisdiction of Veer Kunwar Singh University (hereinafter referred to as the University) in either interfering or taking the decision as with regard to



service condition of a teacher of an affiliated college. According to him, it is under the Statutes it is the Governing Body of the affiliated college which has power to make appointment and/or take any decision as with regard to service condition of a teacher of an affiliated college and if such teacher is aggrieved by any of the decision of the governing body, the Syndicate of the University and not the Vice Chancellor can take a final decision. Based on aforesaid premises the learned counsel for the petitioner is of the view that either the impugned orders passed by the Principal Secretary of the Education Department and/or the Vice Chancellor of the University are wholly without jurisdiction and would confer no right upon the Respondent no. 3.

3. Mr. Mishra, appearing on behalf of respondent no. 3, does not dispute the aforementioned settled position in law but he would submit that such jurisdiction having been conferred on Principal Secretary of Education Department by this Court in view of the order of this Court dated 25.09.2012 in a writ petition being

C.W.J.C No. 14507 of 2012, filed by respondent no. 3, the same cannot be questioned by the petitioner in capacity of the Principal of the affiliated college or even as representing the interest of the governing body.

4. This Court would find that something is amiss in the mindset of the authorities of the State Government and the University as with regard to status and independence of the affiliated colleges which under Bihar State University Act 1976 (hereinafter referred to as the Act) has its own independent status and existence and infact it is only for a very limited purpose including for holding university examination of its students that it comes within the purview and control of the University. The relationship of affiliated college with the University therefore, has infact been laid down under Section-59 of the Act, which reads as follows:-

“59.Relation of affiliated College with the University- *The relations of the affiliated Colleges with the University shall be governed by the Statutes to be made in that behalf, and such Statutes shall provide in particular for the exercise by the University of the following power in respect of the Colleges affiliated to the University:-*

(1) to lay down minimum educational qualifications for the different classes of teachers and tutorial staff employed by such colleges;

(2) to approve the action taken by the governing

bodies of such colleges in regard to creation of posts of teachers, their appointments, dismissal, discharge, removal from service, termination of service and determination of term of post [and to approve the deputation of teachers to the Intermediate College delinked from the affiliated College;]

(3) to co-ordinate and regulate the facilities provided and expenditure incurred by such Colleges, in regard to libraries, laboratories and other equipments for teaching and research;

(4) to require such Colleges, when necessary, to confine the enrolment of students to certain specific subjects;

(5) to regulate conditions of service of teachers of such colleges including the grant of leave with or without allowances and the constitution of pension insurance, and provident funds for the benefit of such teachers; and

(6) to require satisfactory arrangements for tutorial and similar other work in such Colleges and to inspect such arrangements from time to time:

Provided that such colleges shall supplement such teaching by tutorial or other instruction of training in a manner to be prescribed by the Regulation to be made by the Academic Council."

5. A bare reading of the aforementioned provisions of Section-59 of the Act, will leave nothing for speculation that either the State Government or the University does not become the appointing authority of teaching staff of the affiliated college which alone has the power to also take any decision in respect of their service condition being from appointment and ending with termination of service. As a matter of fact this aspect of matter was also gone into in the earlier writ application filed by the Respondent no. 3 being C.W.J.C. No. 11453

of 2013 in which he had prayed for issuance of direction for payment of salary wherein it was held as follows:-

"There is a Statute framed by the Chancellor with the heading "Number, Grades, Qualification, Pay scale and other Condition of Service of Teachers of Admitted Colleges and their regulation by the University." In the said Statute though the power of appointment and consequential removal has been vested in the Governing Body of an affiliated college, under Clause 19 of the same Statute a right has been vested in the teachers of the admitted college to make a representation regarding condition of service which has to be considered by the Syndicate, inasmuch as the Syndicate has been vested with power to cancel any order or to quash any proceeding of the Governing Body of the College or pass any order affecting the condition of service of any such teacher. Clause 19 of the Statute being relevant is quoted hereinbelow:

“19(1) Every teacher of an admitted college shall have the right to make representation, regarding his conditions of service, covered by the laws of the University, to the Governing Body through the Principal of the college concerned and to send a copy of the representation direct to the Syndicate. (2) The Syndicate may, whether the said representation is taken into consideration by the Governing Body of the college concerned or not, cancel any order or quash any proceedings of the



governing Body of the college or pass any order affecting the conditions of service of any such teacher, provided that before taking action under this clause, the Syndicate shall call upon the Governing Body concerned to state why the order or proceedings should not be set aside or quashed and if any statement is received within a reasonable time allowed for the purpose, the Syndicate shall consider the same and pass necessary orders, which shall be final. (3) The Syndicate shall from time to time satisfy itself, by enquiry or otherwise, that the conditions of service of teachers of admitted colleges are being properly enforced and adhered to in the admitted colleges; and may from time to time if necessary, make statutes for better regulating the condition of service."

Thus, from the reading of the aforementioned Clause 19 of the Statutes it can be safely said that a teacher of an affiliated college in the event of his being denied payment of salary' which is again part of his condition of service, can file a representation which has to be disposed of by the Syndicate of the University in the manner indicated above."

6. Thus under the statutes it is the Syndicate of the University which gets the power to decide any matter in respect of service condition of a teaching employee of affiliated college in which the governing body has taken



a decision. The statutes infact clearly lay down that the order of the governing body can be assailed before the Syndicate of the University. Thus a teaching employee of an affiliated college in respect of any condition of service has to firstly approach the governing body and if his such grievance is not redressed by the governing body, he may approach the Syndicate of the University whose decision will be final and binding to both the parties.

7. However in the present case something contrary has happened, bereft of the provisions made in the statutes inasmuch as the impugned orders as with regard to setting aside termination order of Respondent no. 3 has been passed by the Vice Chancellor on the basis of an order passed by the Principal Secretary of Education Department. Learned Counsel for Respondent no. 3 however has sought to defend the impugned order has been passed in view of a direction given by this Court to the Principal Secretary to decide the dispute. Such submission of learned counsel for Respondent no. 3 however can not be accepted for more than one reason.



8. This court on an earlier occasion was made to believe that the State Government has the ultimate power in respect of service condition of a teaching employee of affiliated college. The order of this Court dated 25.09.2012, in fact proceeds on the basis of earlier order passed in C.W.J.C No. 12303 of 2010 filed by respondent no. 3, where a direction was given that the grievance of the Respondent no. 3 should be examined by the Principal Secretary of Human Resources Development Department. The Principal Secretary of the Human Resources Development Department however being aware of the provisions of the Act and the Statutes had no other option but to direct respondent no. 3 to approach firstly, the governing body and thereafter the Syndicate. If that was not done, it was not possible for the respondent no. 3, to obtain a direction to get his decided by the Principal Secretary of the Education Department.

9. Let it be noted in the earlier order dated 29.05.2012 the Principal Secretary had himself in the



case of Respondent no. 3 refused to interfere in the decision of Governing Body and had remitted the matter to the University. Thus this time also the Principal Secretary could not have nothing more than that because this Court infact does not find any such power vested to the Principal Secretary or even in the State government to decide the service condition of a teacher of an affiliated college. In that view of the matter, this Court can only say that when the matter was again remitted to the Principal Secretary in view of the order dated 25.09.2012, passed in C.W.J.C No. 14507 of 2012 filed by respondent no. 3, his answer could have been no different but only to stick to the provisions of law and direct respondent no. 3 to approach the Syndicate.

10. As noted above, the respondent no. 3 has a grievance that he was a teacher in the College and was being not given his due by the governing body. The governing body on the other hand has come out to say that the services of the respondent no. 3, were already terminated in the year 1998 and after a period of 13 years



in 2010, he has raised his grievance for claiming benefit of payment of salary and continuation in service. All these things are matter of detail and this Court would refuse to go into all these aspects for the present because it is for the respondent no. 3 to initially satisfy the governing body and thereafter if still aggrieved he could have moved syndicate for establishing that though his appointment was made in the prescribed manner i.e. under Section-57A of the Act and pursuant to such appointment, he was continuing in service and yet was given an unfavoured treatment by the governing body of the College which had given him the cause of action to take the matter to the Syndicate.

11. At this stage learned counsel for the University has sought to find out a solution by pointing out that the University has constituted a three man committee in respect of working out of the impugned order in favour of respondent no. 3. Admittedly, such order on the face of record goes to show that the Committee was constituted by the Vice Chancellor by



taking help of the two orders of this Court. This Court however in none of the orders has asked the Vice chancellor to constitute a Committee and therefore, the plea of three man committee vide notification dated 17.10.2014, cannot come in the way of the petitioner in assailing the impugned order dated 04.02.2013, which must be held to bad only due to want of jurisdiction.

12. Infact learned counsel for respondent no. 3 himself very fairly submits that in yet another case filed by the petitioner himself, the issue relating to payment of salary was referred to by the order dated 25.06.2013 of this Court to the Syndicate through governing body. Thus, in order to maintain parity as also for allowing the law to take its own course, this Court will have no other option but to quash the impugned order dated 04.02.2013 and allow this writ application.

13. It is however made clear that nothing said in this order will come in the way of respondent no. 3 in availing the same remedy which he is already seeking in view of the order of this Court dated 25.06.2013 passed

in C.W.J.C No. 11453 of 2013 before the Governing Body and thereafter if needed before Syndicate in respect of the continuance of his appointment and consequent seniority and payment of salary for the period which is not covered by earlier order of this court dated 25.06.2013 in C.W.J.C No. 11453 of 2013.

14. With the aforementioned observation and direction, this application is allowed.

15. Let a copy of this order be sent to Principal Secretary Education Department as also to the Chancellor's Secretariat for ensuring that service condition of teaching employee of an affiliated college is dealt strictly as per the provisions made in the Act and the Statutes as discussed above.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 28th January 2015
N.A.F.R./Ranjan/-

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