

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23036 of 2013

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Md. Akbar Son Of Md. Abdul Resident Of Azad Nagar, Ward No. 20 District-
Araria. At Present Posted As Laboratory Assistant At Forbesganj College,
Forbesganj

.... Petitioner/s

Versus

1. The B.N. Mandal University Through Vice Chancellor, Bhupendra Narayan
Mandal University, Laloo Nagar, Madhepura
2. The Registrar, B.N. Mandal University, Laloo Nagar, Madhepura
3. The Principal, Araria College, Araria
4. The Principal, Forbesganj College, Forbesganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bidhanesh Misra, Adv.

Ms. Tanuja Mishra, Adv.

For the Respondent/s : Mr. Arbind Kumar

For The University : Mr. Raju Giri, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 29-07-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application
reads as follows:-

“1(i) *For quashing the notification dated 29.4.2013 being
memo no. GS (Pro-113/12)-1485/13 issued by the
Registrar, Bhupendra Narayan Mandal University,
Madhepura by which the petitioner has been deputed to
the Post Graduate Botany Department of B.N. Mandal
University from Araria College, Araria by means of a
modification of the earlier notification dated 31.1.13
being memo no. GS(Pro-113/12)-142/13.*

(ii) *For a direction to the respondents authorities to
transfer back the petitioner to Araria College, Araria.”*

3. Mr. Bidhanesh Misra, learned counsel for the



petitioner, in support of the aforementioned prayer, has submitted that the petitioner is an employee of a constituent college of B.N. Mandal University and, as such, he could not have been transferred from his college, namely, Araria College (hereinafter to be referred to as 'the College') to Post Graduate Department of Botany of the University. Consequently, he has also prayed that the petitioner upon quashing of his impugned order of transfer should be sent back to his parent college.

4. In this case, an exhaustive counter affidavit has been filed wherein it has been sought to be explained that the impugned order dated 29.4.2013 is not one by way of transfer but only by way of deputation and that too on administrative ground. It has also been explained in the counter affidavit that the Principal of the Araria College, Araria (hereinafter to be referred to as 'the College') had reported about the undisciplined behavior of the petitioner towards both the teaching and non-teaching employees of the college and in fact on such complaint, the petitioner was summoned to the office of the Vice Chancellor and given an warning whereafter the petitioner himself had given a written undertaking that he will not again indulge in such nefarious activity. To that extent, it would be relevant to quote the following extract of the counter affidavit:-

"2. ----- At the outset it is stated that the Petitioner's behaviour reported and found undisciplined,



dereliction to duty, acting against code of conduct, creating hindrance in normal functioning of the College, irregular and whimsical presence on his duty and arrogant, as detailed hereunder and instead of taking stern disciplinary action against him and on sympathetic consideration with a view that the petitioner would change his such wrong attitude, he was brought on deputation in the said Post Graduate Department.

4. *That the petitioner was reported and found irregular and dereliction to his duty and misbehavioral attitude with other teaching and non-teaching employees. For example, the petitioner absented himself from 23.03.1988 to 30.03.1998 and from 01.08.1988 to 09.08.1988 unauthorized and without any information to the College Administration. His salaries for the abovesaid periods were held-up. The Petitioner vide his application dated 13.06.1988 in which, he himself has admitted that he was absent from 23.03.1988 to 30.03.1988, he could not apply for leave; he would be allowed casual leave for the period, he also apologized for the same and requested for payment of salary for the said period. For unauthorized absence from duty from 01.08.1988 to 09.08.1988 vide his Application dated 30.08.1988, after a long gap, he requested for sanction of of earned leave and for payment of his salary for the said period. Sri Yogendra Mishra, Librarian of the College vide his Application dated 30.09.1985 reported to the then Principal of the College that the petitioner misbehaved and abused the Applicant. Sri Ashok Kumar, Reader in Botany of the said College, vide his application dated 28.01.2011 and dated 18.09.2012 reported against the Petitioner that he*

(the Petitioner) was not sincere and he was conniving from his duty and function leaving aside the practical class work paralyzed.

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5. *That it is stated that time and again vide College Letter No. 90/88 dated 09.07.1988 dated 07.09.1988, 19.12.1988, 18.11.1999 and 09.06.2011 the petitioner was asked to show-cause for his unauthorized absence from duty, misbehavior attitude with other employees etc. Occasionally he thought proper to submit reply(s) and at some occasion he even cared not to reply. Vide College Letter No. 31/11 dated 21.02.2011, No. 173/11 dated 21.11.2011 and No. 196/12 dated 06.10.2012 a detailed report regarding the Petitioner was submitted. The petitioner was also asked to show cause even vide University Letter No. 4236 dated 26.03.2011 and Letter No. 5211 dated 11.08.2011. Reply dated 07.04.2011 to the show cause Letter dated 26.03.201 is also enclosed herewith, which, instead of submitting proper reply, itself speaks Petitioner's attitude.*
 6. *That it is stated that for misbehavioral and undisciplined activities of the petitioner, the College Teaching Employees at its Meeting dated 18.09.2012 decided and recommended to take proper action against him. The Principal vide letter no. 196/12 dated 06.10.2012 accordingly reported to the Hon'ble Vice-Chancellor of the University.*
 7. *That it is stated that the matter of such activities of the Petitioner was placed in the Disciplinary Committee at its Meeting No. 20 dated 10.09.2011 under Item No. 05 and the Hon'ble Vice-Chancellor was authorized to look into the matter and to do the needful.*
 8. *That it is stated that the Petitioner and the Principal*

of the College were directed vide Office Order contained in Memo No. G.S. 4431 dated 20.04.2011 to be present before the then Vice-Chancellor. The appeared. The petitioner was also heard and directed to work properly. The petitioner submitted written undertaking dated 21.04.2011 that in future he would be dutiful, well behaved and disciplined.

9. *That it is stated that even in the abovesaid circumstances, the Petitioner could not change his such attitude. The then Registrar visited the College, enquired about the matter and proposed to depute/remove the Petitioner from Araria College, Araria to Forbesganj College, Forbesganj. Accordingly he was deputed vide Notification contained in Memo No. 142/13 dated 31.01.2013 (Annexure-4 with the writ application) and thereafter he was deputed in the Post Graduate Department of Botany, B.N. Mandal University, Madhepura vide Memo No. G.S. 1485/13 dated 29.04.2013 as contained in Annexure-I with the writ application.*
10. *That it is stated that the activities of the Petitioner, detailed above, required to take sten disciplinary action in accordance with law after Departmental Proceeding and the charges against him might led his removal from service. But with a hope that the Petitioner would mend himself and taking sympathetic view, he was simply deputed in the said College to avoid such situation and to watch his activities, the University Administration shall have to take disciplinary action against him in accordance with law. Thus the prayers made are baseless and are fit to be rejected.”*

5. From the reading of the aforesaid averments in the



counter affidavit, it would be more than clear that the petitioner had become a menace for the administration and functioning of the college. The question, therefore, was that if the Vice Chancellor had to ensure proper academic atmosphere of the college and if, for that purpose, he has been sent on deputation from his college to post graduate department, Patna, can such order be held to be illegal?

6. Mr. Mishra was of the view that the date on which the impugned order was passed, there was no such power vested in the Vice Chancellor to de-root the petitioner by way of his transfer by leveling it to be a deputation. According to Mr. Mishra, every employee of a constituent college has his own cadre and he cannot be moved out of his college. This submission of Mr. Mishra does not find support from the provision of the Bihar State University Act. Let it be noted that the college, in question, was an affiliated college and was became the constituent college of the University. Constituent college has been defined in the Bihar State University Act to mean a teaching institution maintained or controlled by the University. In the Bihar State University Act, 1976, the Vice Chancellor is the appointing authority of all the ministerial staff in terms of Section 10(6) of the Act which also vests the power to him to have control and full disciplinary power over such ministerial staff. The Vice Chancellor again under the provision of Section 10(11) of the Act has



been vested with power of general control over the educational arrangements of the University and is responsible for the discipline of the University. In fact, Section 10(11) of the Act lays down that it shall be lawful for the Vice Chancellor to take all steps which are necessary for maintaining the academic standard and administrative discipline of the University. Additionally, under Section 19(16) of the Act, the Vice Chancellor has been vested with full responsibility to maintain good academic standard and promoting the efficiency and good order of the University.

7. Thus, having regard to the provisions made with regard to power of the Vice Chancellor under Section 10(6)(11) and (16) of the Act, reading as follows:-

“Section-10(6) *The Vice-Chancellor shall subject to the provisions of this Act, the Statutes and the Ordinances have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servants of the University not being teachers and officials of the University and have control and full disciplinary powers over such staff and servants.*

Section-10(11) *“The Vice-Chancellor shall exercise general control over the educational arrangement of University and shall be responsible for the discipline of the University. It shall be lawful for the Vice-Chancellor to take all steps which are necessary for maintaining the academic standard and administrative discipline of the University.”*

Section-10(16) *“The Vice-Chancellor have overall*

responsibility in maintaining good academic and promoting the efficiency and good order of the University.”



this Court will have no difficulty that in a given situation, the Vice Chancellor could have even transferred or deputed any employee of the institution whom he was appointing authority to transfer from one constituent college to the other constituent college or to the post graduate department. As a matter of fact, Mr. Mishra could not bring to the notice of this Court any provision under the Act or Statute which lays down that the Vice Chancellor could not have even deputed Class-III employee in respect of whom he had full powers not only to appoint but even dismiss him from service. Whatever, therefore, may have been the situation, the transfer on account of the apparent administrative exigency in the case of the petitioner on the date of passing of the impugned order, the same cannot be held to be now bad in view of the statutes framed by the Hon'ble Chancellor on 4.3.2014. This aspect of the matter has also been explained in the supplementary counter affidavit wherein it has been stated under the statute framed by the Chancellor under Clause 8(6)(X)(C) dated 4.3.2014, it has been provided that the employee of the University can be transferred to any Unit/Post Graduate Department/Constituent College on an equivalent post. The University has relied on the power given under Section 10(11) of the Bihar State Universities Act, 1976

wherein Vice Chancellor has been vested with the power of exercise general control over the educational arrangement of the University and would be responsible for the discipline of the University. To that extent, reliance has been placed not only on Section 19(11) but also Section 10(16), 10(18) & 15(g) of the Bihar State Universities Act.

8. Let it be also kept in mind that the Registrar of the University under Section 15(2)(g) has been vested with the power to take disciplinary action against an employee belonging to the cadre ministerial staff. Thus, the intention of the framers of the Act becomes absolutely clear that irrespective of any Cadre , the control of a Class III employee of the University vests in Vice Chancellor and the Registrar.

9. On the basis of these provisions, Raju Giri, learned counsel for the University, has sought to justify the impugned order on the ground of administrative exigency as has been also dealt at length in paragraph no. 5 of the supplementary counter affidavit, which reads as follows:-

“5. That as per material facts as detailed in the statements of facts dated 04.04.2014 different annexure therewith, sent earlier to the learned University Counsel for filing counter affidavit which may be taken into consideration again, the charges of misbehavioral attitude of the Petitioner, dereliction of duty, undisciplined activities created hindrance in normal and proper functioning of the College, acting against Code of Conduct etc. are

almost established charges against him. The matter was placed before the Discipline Committee and the matter of charges against the Petitioner was recommended to the Vice-Chancellor for proper action. Taking his case as a 4th Grade Employee as well as on Sympathetic consideration and to provide him chances to mend his ways, functioning of Araria College, Araria may not be disturbed or run smoothly, the then Hon'ble Vice-Chancellor, simply replaced/ transferred the Petitioner on deputation from Araria College, Araria, instead of initiating, departmental proceeding against him. Thus, if an employee even a non-Teaching Staff of University/Constituent College is left to act the way he likes, it will not be in the interest of educational system as well as in the way of smooth functioning of an educational Institution."

10. In the considered opinion of this Court, from a bare reading of the statutes, it becomes very clear that an employee of the University can be transferred to any equivalent post, inasmuch as, Clause 8(X)(C) reads as follows:-

“8(X)(c) विश्वविद्यालय के कर्मियों को विश्वविद्यालय के अन्तर्गत किसी भी इकाई/विश्वविद्यालय विभाग/ या विश्वविद्यालय के अधीन किसी भी संस्थान में समकक्ष पद पर स्थानांतरित किया जा सकता है। ”

11. That should be the sufficient answer to the submissions of Mr. Mishra, inasmuch as, even if the cadre of the employees of constituent college has been kept intact under the statute



of the University still has been vested with the power of transfer of any employee to any Unit/Post Graduate Department/constituent college on an equivalent post. Here as noted above, the petitioner has actually not been transferred but only sent on deputation and thus his any and every right that may flow on account of his cadre of constituent college is also not adversely affected.

12. That would bring this Court as to whether the impugned order of deputation of the petitioner is punitive in nature? As noted above in paragraph no.5 of the supplementary counter affidavit read with paragraph no.2 to 10 of the counter affidavit which have also not been controverted by the petitioner in any manner that there were good and germane reasons for removing the petitioner from the college. The petitioner was facing some very serious charge and his being allowed to continue in the college could have led to serious administrative problem for the University.

13. In that view of the matter, this Court does not find any error in the order of deputation of the petitioner which cannot be equated in service jurisprudence as a transfer. It is not the case of the petitioner that he has not been placed on equivalent post or that on account of such deputation, he is going to suffer in any manner including payment of salary.

14. Considering all these aspects, this Court does not

find any error in the impugned order.

15. In the result, this application is dismissed.

(Mihir Kumar Jha, J)

