

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21776 of 2014

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Dr. Narayan Jha, son of Late Bilat Jha, resident of Professors' Quarters
No. 6, Quila Ghat, P.S.-Laheriasarai, District-Darbhangha

.... Petitioner

Versus

- 1.The Lalit Narayan Mithila University Darbhanga through its Registrar
- 2.Vice Chancellor, Lalit Narayan Mithila University Darbhanga
- 3.Registrar, L.N. Mithila University, Darbhanga
- 4.Principal, C.M. College, Darbhanga

.... Respondent/s

with

Civil Writ Jurisdiction Case No.22146 of 2014

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Dr. Ashok Kumar Jha, son of Shri Jai Bhadra Jha, resident of Lakshmi
Sagar, Baban Bigha, Manuasthali, Road No. 4, P.S.-University, District-
Darbhanga

.... Petitioner/s

Versus

- 1.Lalit Narayan Mithila University, Darbhanga, through its Registrar
2. Vice Chancellor, Lalit Narayan Mithila University Darbhanga
- 3.Registrar, Lalit Narayan. Mithila University, Darbhanga
- 4.Principal, C.M. Science College, Darbhanga

.... Respondent/s

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Appearance :

(In CWJC No.21776 of 2014)

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.

For the Respondent/s : Mr. Chandra Mohan Singh, Adv.

(In CWJC No.22146 of 2014)

For the Petitioner/s : Mr. Abhinav Srivastava, Adv.

For the Respondent/s : Mr. Yugal Kishore, Sr. Adv.

Mr. Chandra Mohan Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR
TRIPATHI**

ORAL JUDGMENT

13-01-2015

There are two writ petitioners in the two writ applications, which have been taken up together for adjudication as both the writ applications assail common notification, contained in Annexure-6 and Annexure-2 dated 08.12.2014 respectively.

They form the cause of action and subject of challenge. Both the petitioners want quashing of the said notification, be cause contrary to the settled principles of law as well as concept of deputation, the two petitioners have been sent on deputation under the orders of the Vice Chancellor of L.N. Mithila University.

Counsel representing the two petitioners have assailed the impugned order dated 08.12.2014 on many a grounds. One such ground is that the so called power by virtue of which the notification has been issued is not the repository of that power vested in the Vice Chancellor of the University. The notification talks of Section 10 (11) of the Bihar State University Act, 1976. Section 10 (11) of the Act is reproduced hereinbelow:

“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.”

It is the contention of the counsel for the petitioners that a plain reading of the provision quoted above, in no manner, can be interpreted to mean conferring power upon the Vice



Chancellor to send a Teacher on deputation to a College whatever be the explanation offered in the counter affidavit. It is also pleaded and urged that the notification is a mala fide exercise of power on behalf of the Vice Chancellor to settle scores with the petitioners under certain controversies, which was created by his own conduct, which vitiates the atmosphere in the University. In support thereof various newspaper clippings have been annexed with the writ applications, which are neither complementary to the Vice Chancellor nor does speak very high in the manner the University is being run by the Vice Chancellor.

Dr. Narayan Jha, one of the petitioners, who is an associate Professor in the Department of Maithili, C.M. College, Darbhanga also happens to be an office bearer of the Teachers Association of the College. It has been pleaded that because of the protest/resolution having been taken by the Association against the conduct of the Vice Chancellor, the Vice Chancellor out of spite has innovated and issued a notification for deputation of the petitioner with some other teachers, which is a colourable exercise of power and cannot be sustained under law and statute.

There is no dispute with regard to the notification, as such, because the notification clearly talks in terms of deputation on so called academic and administrative ground until further

orders.

It has to be understood as to what does the term 'deputation' means in service jurisprudence.

Counsel for the petitioner has drawn the attention of this Court to Hon'ble Supreme Court decision rendered in the case of State of Punjab and Others Vs. Inder Singh and Others reported in 1997(8) SCC 372. We are not concerned with the factual aspect of the dispute of the said decision but what the Bench had to say with regard to the word deputation and the concept of deputation is of significance.

This Court does not have to offer or add any thing over and above what the Hon'ble Supreme Court has said in paragraph 18 of the said decision, which is reproduced hereinbelow:

"18. The concept of "deputation" is well understood in service law and has a recognized meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. "Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to



his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above". (emphasis mine)

Another decision, which has been relied upon by the petitioner is the case of Indu Shekhar Singh & Ors. Vs. State of U.P. and Ors. reported in AIR 2006 Supreme Court 2432. In this case paragraph 39 has been pressed into service, which is also reproduced hereinbelow:

"The State can (cannot) compel an employee to go on deputation from its parent department to another Public Sector Undertaking unless a statutory rule exists in this behalf. In absence of such a rule, no employer can force an employee to join the services of another employer. Thus, K. Madhavan (supra), in our opinion, has no application in the instant case."

However, there seems to be an obvious typing or printing mistake because the word “cannot” is required to be read in the said paragraph and not “can” because the proposition becomes absurd.

Applying the touchstone and the principle of deputation, the petitioner submits that there has neither been any consent demanded or given by them before their deputation. There has been no demand from any of the institutions or units for the services of these petitioners and that no terms and conditions as such, have been specified with regard to the terms of deputation if it is a case of deputation. In fact to press home the point that this order has been passed for oblique reason, counsel for the petitioner has drawn the attention of the last line added to the said notification, which reads:

“They are directed to join their place of deputation within twenty four hours and Principals are also directed to relieve them immediately.”

Obviously there was some kind of haste in not only issuing the notification but also ensuring that the above notification was put into effect so that no kind of impediment could be created by any body including the petitioners. It is an order, therefore, to move the petitioners from their present place of

posting, where the headquarter of the University is located rather than with the object and purpose of interest of students of the Colleges where these petitioners have been deputed.

Counsel for the petitioner of Dr. Narayan Jha submits that the petitioner has been sent to a College, which had no students in Maithili and the reason given in the counter affidavit that a senior teacher like him is required for the interest of the students in the said College is not even borne out from the actual facts, which any way was never verified. Counsel for Dr. Narayan Jha also submits that he was posted at the said College earlier before he was brought in the year 2010 as Associate Professor of Department of Maithili in C.M. College, Darbhanga. For more than three years while he was posted there, there were no students, who were enrolled in the said subject in the said College. That position, may not have altered at all. The reason, therefore, assigned in the counter affidavit of the University for sending the said petitioner to Narhan is, therefore, a contrived reason and not a bona fide reason.

Same kind of make believe explanation has also been issued with regard to Dr. Ashok Kumar Jha.

It is also urged that there are set of statute, which govern such transfer and posting of teachers in the University. There is no



provision for deputation as such but even if for sake of argument the notification is treated as a transfer, it violates the provisions or the statute and guidelines for transfer of teachers and Principals of the Colleges and the teachers of Post Graduate Department of the University, which is dated 22.07.1982. Emphasis is on (iii) and (v) of the said statute.

An identical kind of counter affidavit has been filed on behalf of the University. The University takes a plea that complaints have been made before the State Government and before the Human Rights Commission that students are being admitted in different Colleges in different subjects including the fact that there are no teachers in the subject concerned. The University is also taking examination of those students, who have not attended classes due to absence of teachers.

No such instance or complaint has been brought on record on behalf of the University. The Court appreciates the sensitivity of the Vice Chancellor on a gigantic problem, which all Universities are facing but then shifting of teacher here or there, who have been identified for reasons, which are evident cannot resolve the shortage of teachers in various Colleges and senior teachers like the present petitioners cannot be an answer to the problem much less a solution.

Obviously, it is a camouflage to remove certain uncomfortable teachers from their present place of posting by taking actions, unauthorized in law and statute.

The Court is satisfied that the explanation offered by the University for issuance of notification so impugned is not for bona fide administrative reason, which has been talked about. Further, the powers are not vested in the Vice Chancellor under the concerned statute to send the petitioners on deputation and in the manner it has been done.

An illegal order must suffer the fate of being quashed, which the Court does by allowing the two writ applications and quashing the notification dated 08.12.2014 issued under the signature of the Registrar of L.N. Mithila University in so far as it relates to the two petitioners.

Vats/-

(Ajay Kumar Tripathi, J)

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