

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22145 of 2014

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Dr. Deo Chandra Choudhary, S/o Late Tripta Narayan Choudhary, resident
of village- Tatuvar, P.O.- Tatuvar, P.S.- Manigachi, District- Darbhanga

.... Petitioner

Versus

1. The L.N. Mithila University, Darbhanga through its Registrar
2. Vice Chancellor, L.N. Mithila University, Darbhanga
3. Registrar, L.N. Mithila University, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Abhinav Srivastava, Advocate
For the University	:	Mr. Yugal Kishore, Sr. Advocate, Mr. Ajay Bihari Sinha & Mr. Chandra Mohan Singh, Advos.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL JUDGMENT
Date: 13-01-2015

Petitioner filed the present writ application on 16.12.2014. It was duly registered on 22.12.2014 after due service of copy thereof upon the counsel for the University.

The basic grievance, which the petitioner had at the time of filing of the writ application, was the decision of the Vice-Chancellor of the University, to transfer him from the position of Principal of M.L.S.M. College, Darbhanga to the post of Principal S.B.S.S. College, Begusarai. This order of transfer is dated 30.11.2014 and the impugned Annexure is Annexure-4. Reading of the notification issued under the signature of the Registrar indicates that the Vice-Chancellor has exercised his power under Section 10(11) of The Bihar State Universities Act,

1976.

Since this provision has significance to the challenge made by the petitioner, the said provision is reproduced hereinbelow:-

“(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”.

On a mention being made showing urgency, this matter with a couple of other writ applications was ordered to be listed and finally taken up on 06.01.2015 with a direction to list the matter on 13th of January, 2015 to facilitate filing of counter affidavit on behalf of the respondents. Counter affidavit on behalf of the L.N. Mithila University has been filed sworn by the Registrar of the University i.e. respondent no. 3.

While the matter of transfer was subjudice and under consideration of the High Court especially, this Bench, some further action have been taken by the University which compelled the petitioner to amend his writ application. He filed I.A. No. 261 of 2015 assailing them since, Annexures 7 and 8 have been issued on 05.01.2015 during pendency of the writ application and the matter being subjudice. The said I.A. is allowed. Petitioner is seeking quashing of Annexures 7 and 8 as well in addition to Annexure-4 of the writ application.



Learned counsel for the petitioner submits that efforts have been made by the Vice-Chancellor as well as the University authorities to frustrate the writ application of the petitioner by passing the orders contained in Annexures 7 and 8, dated 05.01.2015. This date has significance because it has been passed one day prior to the order recorded by this Court in C.W.J.C. No. 21776 of 2014 on 06.01.2015. On this date learned senior counsel representing the University undertook that no further precipitative action is going to be taken in the matter. The Court does not have to investigate whether the order dated 05.01.2015 was sheer co-incidence or may be even ante-dated order to ensure that the undertaking given to the Court by the senior counsel for the University is of no consequence.

Counsel representing the petitioner submits before the court that the order of transfer, contained in Annexure-4, not only suffers from the vice of lack of power of the Vice-Chancellor. A reading of the provision/ section quoted above does indicate that the said section does not empower him to transfer the petitioner in the garb of 'general control over educational arrangement of the University and the general responsibility of maintaining discipline in the University'. It is his stand that despite specific provision being in place i.e. Section 10 (14), power has been exercised otherwise. It is for the University to explain as well as defend. He further submits



that the power to effect transfer is guided by set of rules and statute duly notified by the office of the Chancellor as far back as 18.12.2008 and a subsequent Notification No. 695 dated 14.02.2009, a copy of the two notifications have been tendered to the Court as well as handed over to the learned senior counsel for the University. In addition to that, counsel for the petitioner also points out that the University authorities have themselves issued a Notification on 19.10.2013, which is in furtherance to the communication of the Hon'ble Chancellor, constituting a committee for transfer of teachers of the Universities and departments. In the present case, no decision was taken by the Committee nor the matter was referred to the Committee for a decision before the Notification contained in Annexure-4 came to be passed. In other words, the order of transfer is hit twice over.

He further submits that the order impugned also suffers from the well accepted principle of law laid down centuries ago in Taylor Vrs. Taylor and approved by the Indian Courts including the Hon'ble Supreme Court in many a cases. The golden principle is that when a statute provides for a thing to be done in a particular manner then it has to be done in that manner and in no other manner.

Learned counsel for the petitioner presses the decision rendered by the Hon'ble Supreme Court in Dipak Babaria And Another Vrs. State of Gujrat And Others, reported

in (2014) 3 SCC 502. Reliance is on paragraphs- 60, 61 and 64.

The above paragraphs reproduced herein below:-

“60. We may refer to Lord Bingham’s work titled Rule of Law where in the chapter on exercise of power, he observes that:

“Ministers and public officers at all level must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.” – (emphasis mine)

He quotes from R. v. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd., which states:

“Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely-that is to say, it can validly be used only in the right and proper way which Parliament, when conferring it is presumed to have intended.”

“61. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor v. Taylor was first adopted by the Judicial Committee in Nazir Ahmad v. King Emperor and then followed by a Bench of three Judges of this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh. This proposition was further explained in para 8 of State of U.P. v. Singhara Singh by a Bench of three Judges in the following words:

“8. The rule adopted in Taylor v. Taylor is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. – (emphasis mine)

This proposition has been later on reiterated in Chandra Kishore Jha v.

Mahavir Prasad, Dhananjay Reddy v. State of Karnataka and Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.

64. That apart, it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order. The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in Commr. of Police v. Gordhandas Bhanji in the following words:- (emphasis mine)

“9. ... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself”.

This proposition has been quoted with approval in para 8 by a Constitution Bench in Mohinder Singh Gill v. Chief Election Commr. Wherein Krishna Iyer, J. has stated as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.”

From the above quotations from the judgment of Dipak Babaria (supra), another proposition has been enunciated by the counsel representing the petitioner that



when an order has been passed, sufficient reason must emerge from the order itself. Such a reason cannot be supplemented or explained away by subsequent affidavits and averments. This proposition has been expanded by the petitioner and utilized by him in the present case because it is his contention that a bare reading of Annexure-4 does not indicate any of the reasons which has now been indicated in the counter affidavit filed in support of the said decision on behalf of the University. If the order does not provide reasons except exercise of power under Section 10(11) of The Bihar Universities Act, as the only reason then the stand taken in the counter affidavit that there were series of allegations and complaints received by the University against the petitioner, which forced the hands of the authorities, is obviously an afterthought or a desperate exercise on behalf of the University to justify may be a hasty action taken for extraneous reasons or no reason at all.

Learned senior counsel representing the University has put up a valiant fight in support of the Vice-Chancellor and the decision of the University on the basis of the counter affidavit filed today. In the counter affidavit Annexures- A, B, C and D have been annexed which are supposed to be allegations and complaints received by the University against the petitioner and his style of functioning as a Principal of M.L.S. M. College, Darbhanga. An alarming picture was sought to be painted in the counter affidavit which had forced the hands of

the Vice-Chancellor to transfer the petitioner from the College in Darbhanga to the College in Begusarai.

The position taken in the counter affidavit is an unexplainable position. There is not even a modicum of reason to explain as to how Section 10 (11) authorized the Vice-Chancellor to transfer a Principal from one College to other under the purported power conferred on him under the said statute. There is nothing to explain as to why Section 10 (14) was not invoked.

There is nothing by way of explanation even from a reading of the order of transfer which could impress this Court as to the justification. The justification given in the counter affidavit is also not reflected in the order of transfer. The Court is constrained to observe that the Vice-Chancellor has jumped the Gun by taking an action against the petitioner even before the allegations came to be even enquired or looked into. Motivated complaints are filed day in and day out by persons having an agenda or motive. Mere receiving of complaints do not make a person guilty of omissions so alleged. The Annexures annexed with the counter affidavit relate to the period 24.06.2014, 31.07.2014, 11.09.2014 and the last Annexure-D being without a date, but some kind of receiving dated as 11.10.2014 has been shown. With this flurry of complaints having been received by the University, there is nothing in the counter affidavit to show that any effort was

made by the Vice-Chancellor to even conduct preliminary enquiry with regard to the allegations received against the petitioner, which purportedly formed the basis for issuance of Annexure-4.

In other words, the justification offered in the counter affidavit not only fails to satisfy this Court on the bona fide of the decision so taken but also fails on the touchstone of legal principles enunciated and pressed into service by the petitioner in Dipak Bararia's Case (supra). The Court has no hesitation, therefore, to quash Annexure-4 and put the petitioner back on the post of Principal of M.L.S.M. College, Darbhanga forthwith.

Coming to the second aspect of the relief which the petitioner has prayed for in the I.A., which relates to acceptance of the so called resignation letter of the petitioner by the Vice-Chancellor from the post of Principal. Annexure-8 is also challenged because it is strange kind of decision taken by the Vice-Chancellor having serious consequences for the petitioner. Annexure-8 Notification is dated 05.01.2015 which indicates that consequence upon the resignation of the petitioner from the post of Principal, his appointment as a Principal issued vide notification dated **28.02.2009** stands cancelled.

Learned counsel for the petitioner explains the significance of Annexure-8 by submitting that this is a clear



case of a mala fide decision taken by the Vice-Chancellor against the petitioner with vengeance and clear motive to put down the petitioner to the lowest post he can. He fails to understand as to why and how the Vice-Chancellor can cancel the initial Notification of 28.02.2009, appointing the petitioner as a Principal. By virtue of that decision petitioner has been a Principal of two different Colleges and has been sought to be transferred to a third College. But obviously, the Vice-Chancellor wants to make it sure that the name of the petitioner is deleted and obliterated from the list of Principals and records of the University. There cannot be a better example of mala fide on behalf of the Vice-Chancellor of the University than what emerges from reading of Annexure-8. Annexure-8, therefore, is quashed as well and the conduct of the Vice-Chancellor to issue such a notification is also deprecated by the Court.

Learned counsel for the petitioner now attacks Annexure-7. Annexure-7 is the notification by virtue of which his resignation from the post of Principal has been accepted on 05.01.2005 i.e. one day prior to the University counsel seeking adjournment of the writ application for filing counter affidavit as well as giving an undertaking to the Court that no precipitative action would be taken.

In the above circumstances, coupled with the fact that the petitioner had already withdrawn his letter of



resignation as far back as 18.09.2014, a copy of which was duly received by the University where was the occasion to accept the resignation of the petitioner from the post of Principal on 05.01.2015. There is no whisper or effort to explain this position in the counter affidavit filed on behalf of the respondent authorities of the University. There is nothing on record to also to show that the letter of withdrawal of resignation dated 18.09.2014 was first rejected by the Vice-Chancellor of the University and thereafter the order of acceptance of resignation was passed. Obviously, the Vice-Chancellor was in a hurry to some how get rid of the petitioner from the post of Principal before the matter was taken up by the Court on the next adjourned date. As if in accepting the resignation of the petitioner, would make the writ of petitioner infructuous.

The law is well settled by catena of decisions that if the resignation letter stands withdrawn by the employee before acted upon and given effect to then the withdrawal will have to be accepted and the letter of resignation cannot be acted upon till it is otherwise. In the present case, resignation letter no doubt was tendered by the petitioner on 13.08.2014, but it was withdrawn on 18.09.2014. It is no mystery as to why the same came to be accepted on 05.01.2015 without passing any order on the withdrawal letter of the petitioner. By tendering a withdrawal letter the letter of resignation was made ineffective

since no decision was taken before that date. The petitioner had virtually made his letter of resignation infructuous especially, when the decision to accept the resignation letter was only taken on 05.01.2015.

For these reasons the notification contained in Annexure-7 dated 05.01.2015 is also required to be quashed.

Before parting, this Court is constrained to record that a person holding high office i.e. Vice-Chancellor of an University is required to be well versed in law and procedure and the statutes governing the power vested under him. Further such power has been vested in good faith and for proper exercise thereof. The Court would only like to remind the Vice-Chancellor of what the Hon'ble Apex Court has said in paragraph-60 of the decision rendered in the case of Dipak Babaria reproduced in earlier part of the order.

He is neither the monarch nor an absolute constitutional authority. He is as much bound by the rule of law as the petitioner because there could be an occasion where the Vice-Chancellor may himself have to surrender and invoke its majesty.

The writ application is allowed in terms of the orders passed above and for the reasons indicated therein.

(Ajay Kumar Tripathi, J)

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