

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.266 of 2015

IN

Civil Writ Jurisdiction Case No. 10938 of 2011

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Akhilesh Pandey son of Shree Kalika Prasad Pandey resident of -Akhodhi Gola, P.O- Akhodi Gola, P.S. - Akhodi Gola , District-Rohtas, Presently posted as Assistant , Mahila College, Dalmianagar, P.S- Dehri-on-Sone- District- Rohtas (Sasaram)

.... Appellant

Versus

1. Veer Kunwar Singh University. Arrah, through its Registrar.
2. Vice Chancellor, Veer Kunwar Singh University, Arrah.
3. Registrar, Veer Kunwar Singh University, Arrah
4. Principal, Mahila College, Dalmia Nagar, , P.S. Dehri-on -Sone, District-Rohtas(Sasaram).
5. Sachida Nand Prasad working as Assistant in Mahila College, son of Late Balkrishna Ram, Dalmianagar, P.S-Dehri-on-Sone, Distt-Rohtas(Sasaram).

.... Respondents

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Appearance :

For the Appellant : Mr. Kundan Kumar Mishra, Advocate
Mr. Gopal Govind Mishra. Advocate

For the University : Mr. Sarva Deo Singh. Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-02-2015

This Letters Patent Appeal is filed against the order dated 18.11.2014 passed by the learned Single Judge in CWJC No. 10938 of 2011. The facts in brief are that the 5th Respondent herein by name Sachidanand Prasad filed the writ petition challenging the order dated 31.05.2011 passed by the Vice Chancellor of the Veer Kunwar Singh University, Ara (hereinafter



referred to as 'the University' for short) i.e. the 2nd Respondent. Through the said order the Vice Chancellor ordered that the 5th Respondent was functioning only as Accounts Clerk, whereas the appellant herein who figured as 5th Respondent in the writ petition, was working in the post of Accounts Clerk-cum-Cashier. Though both the posts are in Class III, the post of Accounts Clerk-cum-Cashier carries higher emoluments than that of the Counter Clerk.

There was a long standing litigation in relation to the question as to who among the appellant and the 5th Respondent is eligible to hold the post of Accounts Clerk-cum- Cashier. Committees were constituted and proceedings were initiated before this Court and the Hon'ble Supreme Court and ultimately the Vice Chancellor passed order dated 31.05.2011. The 5th Respondent pleaded that he was holding the post of Clerk-cum-Cashier and there was no basis to deny him the status. The learned Single Judge called for a report from the Registrar of the University, to go to the root of the matter. The Registrar of the University filed a counter affidavit stating that the 5th



Respondent i.e. the writ petitioner was working against the post of Clerk-cum-Cashier between the period from 1988 to 2005. The learned Single Judge found that the claim of the appellant herein that he was worked on the post of Accounts Clerk-cum-Cashier till 1986 and onwards cannot be treated as correct and the writ petition was allowed. The order dated 31.05.2011 of the Vice Chancellor was set aside and the matter was remanded to him for fresh consideration and disposal on the basis of materials on record and after affording opportunity to parties. The learned Single Judge has also directed prosecution of the appellant herein, on the ground that he made a deliberate misrepresentation.

Heard Sri Kundan Kumar Mishra, learned counsel for the appellant and Sri Sarvadeo Singh, learned counsel for the Respondent University.

Two aspects arise for consideration. The first is about the validity of the direction issued by the learned Single Judge remanding the matter to the Vice Chancellor of University and the second is about the prosecution of the appellant.



As regards the first, we do not find any basis to interfere. It may be true that on several occasions Committees were constituted to redress the grievance of the appellant and the findings were already recorded. However, in view of the version presented in the second counter affidavit filed by the Registrar of the University, on the controversy, the learned Single Judge remanded the matter to the Vice Chancellor. We do not any basis to interfere with the same.

So far as the second aspect is concerned, it may be true that the learned Single Judge did not accept the contention of the appellant herein. However, if one takes into account, the nature of proceedings that are instituted in various Courts, and the pleadings therein, it is difficult to conclude that there was any deliberate attempt on the part of the appellant herein to mislead the Court. The said observation made in paragraph 16 of the order of the learned Single Judge deserves to be set aside.

Hence, this appeal is partly allowed. The order as to remand the matter to the Vice Chancellor of the University for fresh consideration and disposal of the matter, is upheld, but the

observation made in paragraph 16 of the order of the learned Single Judge for prosecuting the appellant herein, is set aside.

Interlocutory Application, if any, stands disposed of.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

Chandran/Md.Ibrarul

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