

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16680 of 2014

Ram Tawakya Singh, Son of Late Jageshwar Singh, Retired as a Head, Department of Chemistry, Veer Kuer Singh University, and as Dean, Faculty of Science Veer Kuer Singh University, Bhojpur at Ara. Presently residing at Jai Prakash Nagar, Ara, Police Station- Ara (Town), District- Bhojpur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Department, Higher Education, Patna Secretariat, Patna
2. The Chancellor- cum- Governor of Veer Kuer Singh University, Raj Bhawan, Patna
3. The Principal Secretary to Governor-cum-Chancellor, Raj Bhawan, Patna
4. Md. Azhar Hussain, son of not known, Presently the Vice Chancellor, Veer Kuer Singh University, Bhojpur at Ara
5. The Veer Kuer Singh University, Ara, through its Registrar
6. The Registrar, Veer Kuer Singh University, Ara

.... Respondents

Appearance :

For Petitioner : Mr. Baxi S R P Sinha, Sr. Advocate
Mr. Sanjay Kumar, Advocate
For the State of Bihar : Mr. Lalit Kishore, Principal Addl. Advocate General
For Respondent No. 2 : Mr. R K Giri, Advocate
For the University : Mr. Sarvadeo Singh, Advocate
For Respondent No. 4 : Mr. Vinod Kanth, Sr. Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 18-12-2015

When a person, not fulfilling the basic prescribed requirements of a public office of very high order, comes to be appointed to the office, it is not only unreasonable, but arbitrary too. Such an appointment not only takes the sheen of the office, but also demeans the majesty and dignity of the office, which such a person holds. Inescapably, therefore, in such a case, it is

the larger public interest, which suffers; more so, when the appointment is in the field of education, for, education lays the foundation of a good, disciplined and progressive society.

2. In the present case, as the facts unfold, it would become transparent that the person, occupying the high office of the Vice Chancellor, Veer Kuer Singh University, is a person, who does not fulfill the minimum required qualification and his appointment is, therefore, not only contrary to law, but also in violation of public interest and he needs to be removed from the office by a *writ of quo warranto*.

3. The petitioner herein, who claims to have retired as a senior academician of Veer Kuer Singh University, Ara (hereinafter referred to as 'the University'), has come to this Court with the present application, made under Article 226 of the Constitution of India, in the nature of Public Interest Litigation, seeking quashing of the Notification, dated 30.01.2014, issued by the Governor's Secretariat, Patna (Governor of Bihar as being the Chancellor of the Universities of Bihar), appointing respondent No. 4, Mohd. Azhar Hussain, as the Vice Chancellor of the University. The challenge to the appointment of respondent No. 4 as Vice Chancellor of the University is primarily based on the stand of the petitioner that respondent No. 4 is not a person of highest level of competence, integrity and morals nor has he been a distinguished academician meeting the minimum

prescribed qualification of 10 years of experience as Professor in a University in terms of the provisions of the Bihar State Universities Act, 1976.

4. In effect, the petitioner has sought for issuance of a writ, in the nature of writ of *quo warranto*, from this Court requiring respondent No. 4 to establish his eligibility for becoming Vice Chancellor of the University and, after having held him not being eligible for the said position as per the mandatory statutory provisions, quash the impugned Notification appointing respondent No. 4, as Vice Chancellor of the University.

5. Respondent No. 4 has entered appearance through his learned counsel and has also filed his counter affidavit in opposition to the reliefs sought for in the writ application.

6. We have heard Mr. Baxi S R P Sinha, learned Senior Counsel, appearing on behalf of the petitioner, and Mr. Vinod Kanth, learned Senior Counsel, appearing on behalf of respondent No. 4. We have also heard Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the State of Bihar, Mr. R K Giri, learned Counsel, representing the Chancellor, and Mr. Sarvadeo Singh, learned Counsel, appearing on behalf of the University.

7. Before we advert to the pleadings on record, it would be apposite to consider, first, the statutory provisions as

contained in the Bihar State Universities Act, 1976 (hereinafter referred to as 'the Act'), which deal with the qualification and manner of appointment of a person to the post of Vice Chancellor, in a University, covered by the Act. Section 10 of the Act, as amended with effect from 10.8.2013, reads thus:-

"10. The Vice-Chancellor.- (1) (i)

Persons of the highest level of competence, integrity, morals and institutional commitment are to be appointed as Vice-Chancellor. The Vice-Chancellor to be appointed should be a distinguished academician, with a minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

(ii) The selection of Vice-Chancellor should be through proper identification of a Panel of 3-5 names by a Search Committee through a public notification or nomination or a talent search process or in combination. The members of the above Search Committee shall be persons of eminence in the sphere of higher education and shall not be connected in any manner with the University concerned or its colleges. While preparing the panel, the search committee must give proper weightage to academic excellence, exposure to the higher education system in the country and abroad, and adequate experience in academic and administrative governance to be given in writing along with the panel to be submitted to the Chancellor.

(iii) Following shall be the constitution of

the Search Committee –

- 
- (a) A member nominated by the Chancellor, who shall be an eminent Scholar/Academician of national repute or a recipient of Padma Award in the field of education and shall be the Chairman.*
 - (b) The Director or Head of an institute or organization of national repute, such as, Indian Institute of Technology, Indian Institute of Science, Indian Space Research Organization, National Law University or National Research Laboratory or Vice-Chancellor of a statutory University nominated by the Chancellor as Member.*
 - (c) A member nominated by the State Government who shall be an eminent Academician and have full knowledge of the academic structure and problems of higher education of the State.”*

8. From a reading of the provisions as contained in Section 10 of the Act, it becomes transparent that for a person to be appointed as Vice Chancellor of a University, he/she shall be –

- (i) a person of highest level of competence, integrity, moral and institutional commitment;
- (ii) He/she should be a distinguished academician;
- and
- (iii) He/she should have minimum ten years of experience as a Professor in a University system or ten years of experience in an equivalent position in a

reputed research and/or academic administrative organization.

9. From the pleadings brought on record by the petitioner, it appears that the appointment of respondent No. 4, as Vice Chancellor, has been challenged on the ground that he is not a distinguished academician and does not have the minimum of ten years of experience as a Professor. It is also the petitioner's case that respondent No. 4 misrepresented before the Search Committee/Selection Committee by furnishing incorrect information as regards his teaching experience as Professor and it is accordingly being contended that he is not a person of "*highest level of integrity and morals*".

10. From the materials on record, it transpires that the Governor's Secretariat of Bihar came out with an advertisement inviting applications from interested eligible individuals for the post of Vice Chancellor and Pro Vice Chancellor of the University, who fulfill the requisite qualification and experience as prescribed in Sub-Section 1(i) of Section 10 of the Act. The interested individuals were required to submit their detailed resume in the prescribed format along with the justification for his/her candidature (within 250 words), a vision statement for the University (within 200 words) and names and contact details of three distinguished individuals well acquainted with his/her work. Nomination of suitable candidate, with his/her

consent, in prescribed format, by an eminent educationist was also prescribed as one of the modes for considering candidature of a person for appointment as Vice Chancellor of the University.

11. Pursuant to the advertisement aforementioned, respondent No. 4 applied, in prescribed form, disclosing his educational qualifications as follows:-

Degree/ Examination	Year of Passing	Subject(s)	University/ College	Grade/ Percentage Of Marks obtained
Higher Secondary	1968	Phy, Che, Math,Eng	B.S.E.B.	2 nd
B.Sc.	1971	Math, Phy,Che	M.U.	2 nd
M.Sc.	1974	Maths	B.H.U.	1 st
Ph.D.	1979	Maths	B.H.U. Topic: A study of Certain Generalised Polynomials	

12. As regards his academic experience (teaching), respondent No. 4 furnished the following information in his application:-

Sl. No.	Institution	Level	Period
i.	B R M College, Munger, Bhagalpur University (Selection Committee)	Lecturer	10.03.1983 to 19.04.1983
ii.	S N Sinha College, Jehanabad (M.U.) (Selection Committee)	Lecturer	20.04.1983 to 31.04.1984
iii.	H D Jain College, Ara	Lecturer	01.08.1984 to 09.03.1991

iv.	H D Jain College, Ara	Reader	10.03.1991 to 24.12.1997
v.	V K S University, PG Department	Reader	25.12.1997 to 20.04.1999
vi.	V K S University, PG Department	Professor	21.04.1999 to till date

13. In addition thereto, respondent No. 4 claimed experience of guiding research of several persons leading to award of Ph.D. degree in their favour and various research publications in national and international journals. He has also claimed that he had attended various conferences on the subject of Mathematics and its applications.

14. Following this Court's order, record, in original, relating to appointment of Vice Chancellor of the University on the basis of panel submitted by Search Committee constituted under Section 10(ii) of the Act, has been produced, for our perusal, by the learned counsel representing the Chancellor. From the record, it transpires that on the basis of a meeting held under the chairmanship of the Chancellor with the State Government on 30.01.2014, it was decided to appoint respondent No. 4 as Vice Chancellor of the University.

15. Mr. Baxi S R P Sinha, learned Senior Counsel, appearing on behalf of the petitioner, has submitted that respondent No. 4 does not fulfill the minimum basic eligibility criteria of being distinguished academician in view of his academic qualifications and experience of teaching. It is the



submission of Mr. Sinha, learned Senior Counsel, that respondent No.4 secured, admittedly, 2nd division in Higher Secondary Examination in the year 1968 and cleared Pass Course examination in B.Sc., in the year 1971, with 2nd division, which shows that he is a person of below average academic pursuit. He submits, referring to the marks obtained by respondent No. 4 in B.Sc. (Pass Course) examination, 1971, that he (respondent No. 4) secured merely 56% of marks in Mathematics and less than 50% marks in aggregate. He has also brought on record an application, dated 02.02.2012, written by respondent No. 4, addressed to the Vice Chancellor, Veer Kuer Singh University, Ara, to show that respondent No. 4 is not even capable of expressing himself correctly, in simple English, in an application seeking casual leave. The contents of the said application, being reflective of the competence of respondent No. 4, is reproduced hereinbelow:-

"To

The Vice Chancellor,

VKSU, Ara

Sir,

I am not in a position to attend the Deptt. on 3.02.2012 due to my wife is suffering from fever. I am going to checkup in Patna, on above mentioned date. Kindly grant me C.L. on above mentioned date. Dr. S N Jha will be incharge of this Deptt.in my absence.

Yours faithfully
Sd/ A.Hussain

2.2.2012
Deptt. Of Maths.
VKSU, Ara"

16. The mark sheet of B.Sc. Pass Course and the said leave application, dated 2.2.2012, have been brought on record by way of Annexures 6 and 7 to the supplementary affidavit filed on behalf of the petitioner.

17. Mr. Sinha, learned Senior Counsel, pleads that upon going through the application filed by respondent No. 4 seeking his appointment as Vice Chancellor of the University, the petitioner could learn that respondent No. 4 furnished incorrect statement and misleading information. For example, in his application, respondent No. 4 described himself to have passed B.Sc. examination with 2nd *division*, whereas there was no '*division*' awarded in Pass Course of B.Sc. examination, though '*division*' was awarded in Honours course. There is specific statement to this effect in paragraph 9(3) of the writ application, which fact has not been denied in the counter affidavit filed by respondent No. 4. It has been stated, however, in the counter affidavit, that respondent No. 4 had secured 49.45 marks in B.Sc. Pass Course, which is equivalent to 2nd *division*.

18. Mr. Sinha, learned Senior Counsel, points out that respondent No. 4 could secure 1st division only on the basis of *grace mark* given to him by Benaras Hindu University and, in support of this assertion, the petitioner has referred to the mark sheet of M. Sc. brought on record by respondent No. 4 by way of

Annexure I/4 to his counter affidavit.

19. Mr. Sinha, learned Senior Counsel, submits that respondent No.4, in his application, had claimed *experience* of teaching as Professor in P.G. Department of Veer Kuer Singh University from 21.4.1999 till the date of submission of his application, which is patently false inasmuch as the P.G. Department, in Veer Kuer Singh University, was created only in the year 2005 and, therefore, there was no question of respondent No. 4 having been working in P.G. Department of Veer Kuer Singh University since 1999.

20. Drawing our attention to the averments made in the writ application and reply filed on behalf of the petitioner to the counter affidavit, Mr. Sinha, learned Senior Counsel, submits that there was no question of respondent No. 4 acquiring experience of teaching, as Professor, with effect from 21.4.1999, in P.G. Department of the University, merely because respondent No. 4 was granted retrospective promotion from 21.4.1999 by virtue of notification, issued, on 30.7.2009, by Veer Kuer Singh University, Ara. According to Mr. Sinha, learned Senior Counsel, acquisition of experience of teaching, as Professor, would start only after such promotion is granted in fact and not on the basis of promotion granted retrospectively. It is accordingly his contention that it was wrong information given by respondent No. 4 that he had teaching experience as Professor with effect from 21.4.1999 in the P.G. Department of Veer Kuer Singh University,

Ara.

21. Respondent No. 4, in his counter affidavit, has, we notice, claimed that he passed M. Sc. examination in the year 1974 from Benaras Hindu University and obtained Ph.D. degree from the said University in the year 1979. He was initially appointed as a Lecturer of Mathematics in B R M College, Munger, under Bhagalpur University, in the year 1983. Later on, when Magadh University advertised the posts of Lecturer in different subjects including Mathematics, he (respondent No. 4) applied and, upon recommendation made by Selection Committee, he was appointed as a Lecturer of Mathematics and came to be posted in S N Sinha College, Jehanabad, vide Notification, dated 20.4.1983. He was, thereafter, transferred to H. D. Jain College, Ara, as a Lecturer on 31.4.1984. The Magadh University came to be bifurcated in the year 1992 and a new University, in the name of Veer Kuer Singh University, Ara, was carved out, whereafter, respondent No. 4 became a teacher under the Veer Kuer Singh University; but in course of time, he was promoted to the post of Reader with effect from 30.3.1991, under Merit Promotion Scheme, by Notification, dated 6.4.2000, and, then, by Notification, dated 3.7.2009, respondent No. 4 was given promotion to the post of University Professor with effect from 21.4.1999. It is accordingly claimed by respondent No. 4 that he acquired the experience of teaching, at P.G. level, with effect from the date of his promotion, i.e. 21.4.1999, though the

Notification was issued on 3.7.2009.



22. As regards the process of selection to the post of Vice Chancellor, it is the case of respondent No. 4 that Search Committees were constituted for different Universities for selecting candidates for appointment as Vice Chancellor. The candidates, who had applied, were required to appear for interaction before the Search Committee and the Search Committee, upon being satisfied with the qualification, performance and achievements of respondent No. 4, recommended his name, along with the names of other candidates, for appointment as Vice Chancellor of the University. It is his further case that upon receiving the recommendation of the Search Committee, the Chancellor appointed him, in consultation with the State Government, as Vice Chancellor of the University by the Notification, which is under challenge in the present writ application.

23. Separate counter affidavits have been filed on behalf of the State of Bihar and the Secretariat of the Chancellor. From the affidavit filed on behalf of the State of Bihar, what emerges is that that for the first time, in the year 2013, amendments came to be introduced in Sections 10 and 12 of the Act and corresponding Sections in the Nalanda Open University Act, 1995, and the Patna University Act, 1976, and following these amendments, a Statute, governing the procedure to be followed for appointment to the post of Vice Chancellor, in the



University of the State of Bihar, was framed vide Notification, dated 6.10.2013, issued by the Governor's Secretariat. In conformity with the said Statute, the Governor's Secretariat came out with the Advertisement, dated 8.10.2013, inviting applications from candidates for appointment to the post of Vice Chancellor in eleven Universities of Bihar including Veer Kuer Singh University, Ara. Eleven Search Committees were constituted for the purpose of preparing panel of candidates for appointments to the said posts. A meeting of the Chairman of the Search Committees was held, on 25.10.2013, with a view to decide the criteria for short listing of candidates. It has been stated in the counter affidavit that in the said meeting, following was resolved for the purpose of scrutinizing the applications for short listing of the candidates by the Search Committees :-

"I. All the applications may be scrutinized by the Governor's Secretariat for preparing list of eligible candidates based on criteria, minimum of ten years of experience as Professor in a University system or ten years of experience in an equivalent position in a reputed Research and/or academic administrative organization.

II. The e-mail Application, even without hard copy, if they fulfill other conditions may be considered.

III. The Governor Secretariat will prepare the list of eligible candidates and the same will be communicated to Search Committee.

IV. The candidates may be shortlisted by

the Search Committee for interaction purposes based on fulfillment of desirable qualification as mentioned in the statutes governing the procedure to be followed for the appointment of Vice Chancellors and Pro Vice Chancellors in the Universities of State of Bihar, viz;

(a) Five research publications in peer-reviewed/referred International research Journals after Ph.D. and/or publication of quality books in a recognized discipline, referenced for study in higher education at the national/international level;

(b) Execution of one major research project;

(c) Experience of working with international bodies or international exposure through participation in workshops, seminars or conferences held within or outside India; and

(d) Experience of organizing events such as workshops, seminars, conferences at international level within or outside India in the field of higher education.”

24. It is the further case of the State of Bihar that in terms of the said resolution, the Search Committee, upon verification of the applications/nomination and data base, short listed the candidates in the light of the conditions prescribed in the Advertisement and the Statute. The shortlisted candidates were called for interaction and presentation before the Search Committee. The applications of shortlisted candidates were, later on, sent to the Education Department, Government of Bihar, and the Vigilance Department, Bihar, and the reports, received from



the Education Department and the Vigilance Department, were placed before the Search Committee and, on the basis of fresh data base, Search Committee interacted with the shortlisted candidates and, thereafter, submitted the panel of selected candidates in sealed cover. It is accordingly the case of the State of Bihar that selection and/or appointment, in question, has been made in accordance with the provisions contained in Section 10 of the Act, Statute framed in this regard and in consultation with the State Government.

25. In the counter affidavit filed on behalf of respondent Nos. 2 and 3 (Chancellor, Universities of Bihar, and the Principal Secretary to the Governor-cum-Chancellor respectively), similar facts have been stated as mentioned in the counter affidavit filed on behalf of the State of Bihar, which have already been noted above. It has, however, been reiterated that the Search Committee, constituted for the purpose of selecting suitable candidate for the post of Vice Chancellor of the University, consisted of eminent educationists, who submitted panel of selected candidates. The Chancellor of the University, thereafter, held an effective and meaningful discussion, in a meeting, with the Chief Minister of Bihar, and the Education Minister of Bihar, on 30.1.2014, on the names submitted by different Search Committees and, after due discussion, selected Vice Chancellor and Pro Vice Chancellor of the University concerned and it is, in this manner, that respondent No. 4 came

to be appointed as Vice Chancellor of Veer Kuer Singh University, Ara. It has also been clarified therein that the Chancellor of the University had no reason to disbelieve the sincere efforts of Search Committee in preparing the panel of selected candidates, wherein the name of respondent No. 4 had also found a place.

26. It may to be noted that a preliminary objection has been raised, on behalf of respondent Nos. 2 and 3, as regards maintainability of the present proceeding, in the nature of Public Interest Litigation. It has been submitted, in their counter affidavit, that except for a writ of *quo warranto*, Public Interest Litigation is not maintainable in service matters. It has also been contended that even if it is assumed that the application has been filed for a writ of *quo warranto*, such a writ application lies, in the light of various decisions of the Supreme Court, only when the appointment is alleged to be contrary to statutory provisions. Reliance has been placed, in this regard, on the decision of the Supreme Court in the case of **High Court of Gujarat vs. Gujarat Kishan Mazdoor Panchayat and Others**, reported in **(2003) 4 SCC 712**. The relevant observations, appearing in **Gujarat Kishan Mazdoor Panchayat** (supra), at paragraph 22, read as follows:

"22. *The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine at the outset as to whether a case has been made out for issuance of a writ of certiorari or a writ of quo warranto. The jurisdiction of the High*

Court to issue a writ of quo warranto is a limited one. While issuing such a writ, the Court merely makes a public declaration but will not consider the respective impact of the candidates or other factors which may be relevant for issuance of a writ of certiorari."

27. Before we begin to analyze and take note of rival pleadings brought on record and submissions made on behalf of the parties, we make it clear that respondent Nos. 2 and 3 are correct in their stand that this Court, in a proceeding under Public Interest Litigation, can issue only a writ in the nature of writ of *quo warranto* if a person is found to be holding a public office in breach of statutory requirements. This Court can, therefore, while exercising power of judicial review under Article 226 of the Constitution of India in a proceeding under Public Interest Litigation, certainly issue appropriate writ including a writ in the nature of *quo warranto*, when a person, holding a public office, is, in the light of the Statute/Act/Rule, found to be not qualified to hold the post.

28. Mr. Vinod Kanth, learned Senior Counsel, appearing on behalf of respondent No. 4, has also raised the plea of maintainability of the present writ application as a Public Interest Litigation, when the present writ application is merely a dispute of service matter.

29. Referring to the decisions of the Supreme Court, in ***Haribansh Lal vs. Surajdeo Mahto***, reported in



(2010) 9 SCC 655, and ***Mahesh Chandra Gupta vs. Union of India***, reported in **(2009) 8 SCC 273**, Mr. Kanth, learned Senior Counsel, has submitted that there is no breach of the procedure prescribed by the Act or Statute with regard to the appointment of Vice Chancellor. It is the submission of Mr. Kanth, learned Senior Counsel, appearing on behalf of respondent No. 4, that in the absence of any plea that appointment of respondent No. 4 is hit by any statutory provisions, this writ application ought not to be entertained. Mr. Kanth, learned Senior Counsel, has reiterated that respondent No. 4 had requisite qualification and experience of teaching as per the advertisement and, therefore, his appointment needs no interference by this Court in the present proceedings. Mr. Kanth, learned Senior Counsel, passionately submits that this Court, exercising power of judicial review under Article 226 of the Constitution of India, may not sit in appeal over the decision of the statutory Search Committee consisting of eminent academicians of the country, who found respondent No. 4 as a person fulfilling the eligibility conditions as prescribed by Section 10 of the Act, Statute framed by the Chancellor and the terms of the Advertisement.

30. On the basis of the rival pleadings on record and submissions made by learned Counsel for the parties concerned, following issues have emerged for adjudication:-

- (i) Whether respondent No. 4 can be said, on the basis of the facts on record, which are not in

dispute, to be a "*distinguished academician*" within the meaning of Section 10 of the Act, which is, admittedly, an essential qualification for appointment to the post of Vice Chancellor?

(ii) Whether respondent No. 4 can be said to be having 10 years of experience as a Professor in a University system as on the date of submission of his application on the ground that he was granted promotion to the rank of Professor retrospectively with effect from 21.4.1999?

(iii) Whether respondent No. 4 furnished false, wrong or incorrect information in his application to the effect that he had experience of teaching in the Post Graduate Department of Veer Kuer Singh University, Ara, with effect from 21.4.1999, when, as a matter of fact, teaching, in Post Graduate course of Mathematics, was sanctioned, in the University, in the year 2005, by the competent authority and, therefore, he cannot be said to be a person with highest level of integrity and morals?

31. There is no dispute that respondent No.4 had passed Higher Secondary Examination in 2nd division. He did not pursue Honours Course in Mathematics at graduation level; rather, he opted for Pass Course in Physics, Chemistry and



Mathematics. He was declared passed in the B.Sc. examination and secured less than 50% marks in aggregate. In the subject of Mathematics, he secured 56%, he secured 45% marks in Physics and he obtained 47% marks in Chemistry as is evident from Annexure-6 of the supplementary affidavit filed on behalf of the petitioner.

32. Evidently thus, respondent No. 4 did not have any distinguished academic achievement till he completed his B.Sc. pass course. The specific plea of the petitioner that respondent No. 4 was not granted any *division*, at B.Sc. level, has not been denied by respondent No. 4. Obviously, it cannot be denied in the light of Annexure- H/4 to the counter affidavit filed by respondent No. 4 himself, which shows that he passed B.Sc pass course examination with less than 50 % marks in aggregate. Annexure- H/4 is mark sheet of B.Sc. examination issued in favour of respondent No. 4. From the said mark sheet, it is evident that no *class/division* was given to a student pursuing Pass Course, at B.A./B.Sc. level, under the Magadh University, Bodh Gaya, though such *class/division* is mentioned for Honours student.

33. The materials on record, undisputedly, show that respondent No. 4 was declared passed in the B. Sc. pass course examination and no *division* or *class* was awarded to him. In such circumstances, the petitioner is right in his stand that respondent No. 4 furnished a wrong, if not false, information in

his application that he had done B.Sc. in *2nd division/grade*. The specific assertion of the petitioner that respondent No. 4 was given *grace marks* by the Benaras Hindu University, at M.Sc. level, for awarding him *1st division*, has also not been denied or disputed.

34. Clearly thus, respondent No. 4 was granted *1st division* by awarding him *grace marks*. Confronted with such a situation, it is impossible to hold that respondent No. 4 can ever be said to have had distinguished academic career as a student.

35. Respondent No. 4, in his application for appointment as Vice Chancellor, mentioned that he had worked as a Lecturer in H D Jain College, Ara, from 1.8.1984 to 9.3.1991 and, then, as a Reader from 10.3.1991 to 24.12.1997. The said college is a constituent unit of Veer Kuer Singh University, Ara.

36. As per the entries in the application of respondent No.4, he (respondent No. 4) worked, in P. G. Department of Veer Kuer Singh University, as a Reader from 25.12.1997 to 20.4.1999 meaning thereby that he was shifted from H D Jain College, Ara, to Veer Kuer Singh University, P G Department, with effect from 25.12.1997, as a Reader.

37. Coupled with the above, what can also not be ignored is that it is not in dispute that sanction for teaching mathematics, in Post Graduate Department, was granted only in November, 2005, as would be evident from Annexure-5 to the writ application. It has been submitted, on behalf of respondent



No. 4, that Post Graduate teaching in H D Jain College, Ara, had started much before in the year 1990 itself and he had been teaching there at Post Graduate level. Admittedly thus, respondent No. 4 was not teaching Mathematics in P G Department of Veer Kuer Singh University, Ara, as represented by him, in his application. Had it been the case of respondent No. 4 that he had the qualification of teaching as Professor in P G Department of H D Jain College, Ara, he could have mentioned this fact in his application, which he did not do.

38. Clearly, thus, the information, furnished by respondent No. 4, in his application, as regards academic experience, was misleading for the Search Committee/Appointing Authority. Once respondent No. 4 was shifted to Veer Kuer Singh University from H D Jain College, Ara, he cannot hold experience of teaching in P G Department of Veer Kuer Singh University as there was no PG teaching in the subject of Mathematics sanctioned till 29.11.2005.

39. Since the minimum experience of ten years as a Professor, becomes the qualifying marks or the minimum eligibility condition to adjudge the fulfillment and requirement of being a distinguished academician, it follows that such experience of 10 (ten) years has to be, therefore, actual working experience and not deemed working experience, which one may get on account of the personal promotion earned under the Time Bound Promotion Scheme or Merit Promotion Scheme or Career

Advancement Scheme, as prevalent in the Universities of Bihar under the different Statutes framed by the Chancellor.

40. What follows from the above discussion is that whenever the screening has to be made for appointment to the post of Vice Chancellor, the first and foremost requirement to be looked into the candidature of the person concerned would be as to whether he has the actual working experience on the post of Professor for a period of ten years.

41. The term minimum experience of ten years in the context of Section 10 of the Bihar State Universities Act, 1976, is, therefore, one of the eligibility criterion. Experience means knowledge or skill acquired out of practical acquaintance with acts or events. In Black's Law Dictionary, the word 'experience' is described to mean,

"A state, extent or duration of being engaged in a particular study or work, the real life as contrasted with the ideal of machinery. A word implying skill facility or practical wisdom gained by personal knowledge feeling an action and also the course or process by which one attains knowledge or wisdom."

42. In the case at hand, respondent No. 4 was appointed to the post of Lecturer, on substantive basis, in Magadh University, on 20.04.1983. His promotion to the post of Reader was made, on 06.04.2000, with effect from 30.03.1991, by giving him the benefit of personal promotion on completion of eight years of service. His subsequent promotion, again, from the



post of Reader to the post of Professor was notified, on 03.07.2009, with effect from 21.04.1999; yet again, giving him the benefit of personal promotion under the Statutes envisaging such promotion on completion of 16 years of service including eight years as a Reader. As a matter of fact, in view of the notification of promotion, dated 06.04.2000, the eight years' period of experience of respondent No. 4 as a Reader, was completed by him only on 06.04.2008 and, therefore, even if he was given notional promotion to the post of Reader, with effect from 30.03.1991, by making it retrospective, it did not mean, nor can it mean, that respondent No. 4 was earning experience on the post of Professor with effect from 21.04.1999, i.e., the date from which he was promoted vide Notification, dated 03.07.1999.

43. Such a decision of personal promotion of respondent No. 4 to the post of Professor, in terms of the Statutes, on completion of 16 years experience as a Lecturer and Reader, with retrospective effect, may qualify him to claim salary, etc.; but his experience of working, on the post of Professor, could commence only with effect from 03.07.2009, when his promotion was notified.

44. As a matter of fact, it would be wholly illogical to allow respondent No. 4 to compute his experience on the post of Professor with effect from 21.04.1999 inasmuch as he was working on 21.04.1999, only as a Lecturer and, in fact, his promotion to the post of Reader itself was notified on

06.04.2000. Thus, the petitioner's experience, on the post of Lecturer, is from 20.04.1983 to 05.04.2000 and his experience, on the post of Reader, is from 06.04.2000 to 02.07.2009 leaving his actual period of experience as a Professor only from 03.07.2009.

45. Law is also well settled that the period of experience has to be computed from the date of actual promotion and not from any retrospective date of notional promotion. Reference, in this connection, may be usefully made to the decision of the Supreme Court, in **Union of India and Others v. M. Bhaskar and Others**, reported in **(1996) 4 SCC 416**, wherein it was held as follows:

"14. In this appeal, a separate argument was advanced on behalf of respondent No. 1 Prakash Chandra Ojha, who had approached the Patna Bench of the CAT with the grievance that he was unjustly and illegally denied promotion to Grade-I Commercial Inspector in 1990, despite his having been promoted as Commercial Inspector Grade-II by an order dated 21.9.1989, which was made effective from 11.10.1988, because of which he had become eligible for promotion to Grade-I on 11.10.1990, as the eligibility condition was completion of 2 years of experience in Grade-II. The Patna Bench held that the exclusion of this respondent from the list of eligible candidates for the selection meant

for 1990 was wrong.

15. The aforesaid decision has been challenged in this appeal by the Union of India by contending that 2 years' period of experience has to be reckoned, not from 11.10.1988, but from 21.9 1989. **There is no dispute that the eligibility condition is 2 years experience in Grade-II.** Now, this respondent having really started working in Grade-II **pursuant to the order of 21.9.1989, he could not have gained experience prior to the date he had joined pursuant to this order. The mere fact that his promotion in Grade-II was notionally made effective from 11.10.1988 cannot be taken to mean that he started gaining experience from that day, because to gain experience one has to work. Notional promotions are given to take care of some injustice, inter alia, because some junior has come to be promoted earlier. But we entertain no doubt that the person promoted to higher grade cannot gain experience from the date of the notional promotion; it has to be from the date of the actual promotion.**

16. We, therefore, hold that the view taken by the Patna Bench qua this respondent is not sustainable."

(Emphasis is added)

46. The Supreme Court, again, while dealing with a

similar situation in the case of **Indian Airlines Limited and Others v. S. Gopalakrishnan**, reported in **(2001) 2 SCC 362**, has, in no uncertain words, held that when in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification.

47. Situated thus, it becomes abundantly clear that when the promotion of respondent No. 4 to the post of Professor was notified only on 03.07.2009, his experience that would qualify him for appointment to the post of Vice Chancellor would be only of little more than four years, as on the date of advertisement, in the month of September, 2013, and not ten years as is the mandatory requirement of Section 10 of the Bihar State Universities Act, 1976.

48. On the basis of the materials on record and admitted facts, it cannot be said that respondent No. 4 fulfilled the minimum criteria of 10 years of experience as a Professor in a University system nor could he be said to be a distinguished academician qualifying him to hold the post of Vice Chancellor under the Act. Highest level of competence, integrity and moral are the basic requirements for a person to be appointed as Vice Chancellor. Secondly, he has to be distinguished academician with a minimum of 10 years of experience as Professor.

49. We are constrained to observe by referring to Annexure-7 to the supplementary affidavit, contents of which



have been quoted in paragraph-11 hereinabove, that the petitioner is correct in his submission that respondent No. 4, in his application for leave, dated 2.2.2012, was unable to write correctly, in English, even two sentences, while making an application for leave having four sentences. The said application speaks of complete incompetence of respondent No. 4 to hold the post of Vice Chancellor. This Court is not ready to accept the plea that a Professor of Mathematics is not supposed to be necessarily correct in English. Language of the application for leave suffers from such fundamental errors, which are not expected of a person, who could be allowed to hold the high office of Vice Chancellor of a University. A post, which requires a person of "*highest level of competence*", would certainly mean a person with ability to communicate in the language he uses. We find it wholly impossible to ignore that while writing an application for leave by respondent No.4, which contained four sentences, two of the sentences were incorrect. It has not been disputed that the said application was filed by respondent No.4.

50. As regards fulfillment of the requirement of eligibility condition by respondent No. 4 to the post of Vice Chancellor, it has to be borne in mind that the Supreme Court, in **Dr. Ram Tawakya Singh** (supra), has gone to hold that the position of Vice Chancellor is extremely important in every University either under the Bihar State Universities Act, 1976, or Patna University Act, 1976. The Supreme Court, in this regard,



has also held that the Vice Chancellor is the heart and sole of the functional operatus of the University. As a matter of fact, in paragraph Nos. 12, 13 and 14 of its decision, in **Dr. Ram Tawakya Singh** (supra), the Supreme court, having elaborately dealt with the power and function of the Vice Chancellor, has come to hold that the provisions, made in the Bihar State Universities Act, 1976, and the Patna University Act, 1976, in respect of appointment to the post of Vice Chancellor, do prescribe the qualification of academic excellence as a condition precedent for appointment to the post of Vice Chancellor. It was this provision of academic excellence, which was sought to be expanded by taking the UGC Regulation into account that amendment was made in Section 10 of the Bihar State Universities Act, 1976, and Section 11 of the Patna University Act, 1976, in 2013.

51. As would be evident from paragraph 26 of the decision, in **Dr. Ram Tawakya Singh** (supra), the provisions, as existing today, for appointment to the post of Vice Chancellor in the different Universities of Bihar, is, in fact, a direct fall out of the observations made in, and directions given by the Supreme Court, in **Dr. Ram Tawakya Singh** (supra). The impugned appointment of respondent No. 4 to the post of Vice Chancellor was, in fact, made only by way of compliance of the directions given by the Supreme Court in **Dr. Ram Tawakya Singh** (supra) inasmuch as the Supreme Court had held, in paragraph

31, as follows:

31. In the result, the appeals and the writ petition are allowed in the following terms:

(i) Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of the private Respondents as Vice-Chancellors and Pro Vice-Chancellors of different Universities are declared illegal and quashed.

(ii) The direction given by the High Court to the Chancellor to propose names for appointment of Vice-Chancellors and Pro Vice-Chancellors is modified and **it is directed that the Chancellor shall prepare a panel of suitable persons for appointment to the offices of Vice-Chancellors and Pro Vice-Chancellors keeping in view the provisions of Sections 10(1), 10(2) and 12 of the BSU Act and Sections 11(1), 11(2) and 14 of the PU Act as amended by Bihar Act No. 14/2013 and 13/2013 respectively and by following a transparent and fair method of selection.**

(iii) The Chancellor shall make appointments after effective and meaningful consultation with the State Government, as indicated in the orders passed by the learned Single Judge and the Division Bench of the High Court in the case of Dr. Subhash Prasad Sinha and Dr. Arvind Kumar.

(iv) The aforesaid exercise shall be

completed within a maximum period of three months and appointments of the selectees shall be made within next four weeks.

(v) The persons who are currently holding charge of the offices of Vice-Chancellors and Pro Vice-Chancellors shall continue to discharge the duties of their respective offices till the joining of new appointees."

(Emphasis is supplied)

52. Thus, in the light of the above directions given by the Supreme Court, in **Dr. Ram Tawakya Singh** (supra), the appointment to the post of the Vice Chancellor were to be made strictly on the basis of amended provisions of Section 10 of the Bihar State Universities Act, 1976, and Section 11 of the Patna University Act, 1976, which, as noted above, clearly envisage that the Vice Chancellor must be a person of the highest level of competence, integrity, morals and institutional commitment and that he also must be a distinguished academician with a minimum of ten years of experience, as Professor, in the University system or ten years of experience in an equivalent position in a reputed research and/or academic administrative organization.

53. The touch-stone, therefore, under amended provisions in Section 10 (1) of the Bihar State Universities Act, 1976, is that the Vice Chancellor must be a distinguished academician and in order to judge such competence, the condition

of eligibility has been made explicit that he must be having a minimum of ten years of experience as a Professor in a University or ten years of experience in an equivalent position i.e., in the position of a Professor of the University in a reputed research and/or academic administrative organization.

54. The facts of the present case shake conscience of this Court and compel us to interfere with the appointment of respondent No. 4 as Vice Chancellor of Veer Kuer Singh University, Ara, for, any hesitation, far less disinclination, on the part of this Court to interfere in the appointment of respondent No.4, would vigorously shake the confidence of the general public in the ability of the courts to step in, when a person comes to occupy the high office of *Vice-Chancellor*, which he could not have, in law, occupied. Such a loss of confidence of the public would prove disastrous for the effective administration of justice.

55. It is true that this Court, in exercise of power under Article 226 of the Constitution of India, does not sit in appeal over the decision of an expert body in the matter of selection and appointment to various posts. However, if the Court is satisfied that the person concerned lacks the basic requisite qualification as statutorily required, it will be well within the jurisdiction of the Court to step in, for, refusing to do so will not only cause harm to the academic institutions under the University, but would also cause unredeemable damage to the larger public interest.



56. In our considered view, we, thus, confront, in the present case, an exceptional situation, where a person, with below average academic achievements, has been able to get himself selected and finally appointed to the post of Vice Chancellor of a University by furnishing wrong, if not false, information in his application. We are not able to accept the contention, raised on behalf of respondent No. 4, that the present one being a service matter, only an aggrieved party has the *locus standi* to initiate legal action in court of law. The present one is a case adversely affecting interest of general public and, in any event, there cannot be a bar to any person, seeking a writ of *quo warranto*, on the ground that a person, holding a public office, does not have the requisite qualification to hold such office.

57. For what we have discussed and pointed out above, we hold that respondent No. 4 cannot be said to be a distinguished academician and a person of highest level of competence so as to make him eligible for appointment as Vice Chancellor of the University under Section 10 of the Act. We do not find much substance in the stand taken by respondent Nos. 2 and 3, in their counter affidavits, that the petitioner, having failed to spell out the nature of the writ to be issued in the present proceedings for declaring appointment of respondent No. 4 as illegal, this application is not maintainable.

58. In fact, with regard to the plea of *locus standi* of the petitioner, two aspects must be taken into consideration.

Firstly, this very petitioner was the prime mover, at whose behest, the earlier appointments to the post of Vice Chancellor, in different Universities, were held to be bad by a learned single Judge of this Court and the appeal against the said order of the learned single Judge having failed before a Division Bench of this Court, an appeal was carried to the Supreme Court and this very issue of *locus standi* was raised before, and answered by, the Supreme Court in **Dr. Ram Tawakya Singh v. The State of Bihar and Others**, reported in **2013 (3) PLJR 421 (SC)**, while affirming the views of the learned single Judge and the Division Bench of this Court, in the following words,

28. Before concluding, we shall deal with the objection raised by Shri Jethmalani to the locus standi of Dr. Ram Tawakya Singh and another objection raised by him and Shri Anil Divan to the maintainability of the appeal filed by the State of Bihar. In our view, challenge to the locus standi of Dr. Ram Tawakya Singh was rightly rejected by the High Court. It is not in dispute that he is a Professor and Head of the Department of Chemistry in Veer Kunwar Singh University, Ara. Therefore, the mere fact that he did not project himself as a candidate for the office of Vice-Chancellor or Pro Vice-Chancellor is not sufficient to deny him the right to question the appointments made by the Chancellor. His anxiety to ensure that eminent educationists are appointed as Vice-

Chancellors and Pro Vice-Chancellors in the State can very well be appreciated. Therefore, we do not find any justification to non-suit him by accepting the Respondents' challenge to his standing.

29. **The issue deserves a look from another angle. Even if it may be possible to say that Dr. Ram Tawakya Singh does not have any direct personal interest in the appointment of Vice-Chancellors and Pro Vice-Chancellors in the State Universities, the High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits as was done in Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi, reported in (1987) 1 SCC 227.** Some of the observations made in that judgment are worth noticing, which we hereby do:

The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. **The Petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the**

validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.

The allegations of the Petitioner have been noted about the role of the Chief Minister. It is well to remember that Rajagopala Ayyangar, J. speaking for this Court in C.S. Rowjee v. APSRTC, reported in (1964) 6 SCR 330, observed at p. 347 of the Report that where allegations of this nature were made, the court must be cautious. It is true that allegation of mala fides and of improper motives on the part of those in power are frequently made and their frequency has increased in recent times. This Court made these observations as early as 1964. It is more true today than ever before. But it has to be borne in mind that things are happening in public life which were never even anticipated before and there are several glaring instances of misuse of power by men in authority and position. This is a phenomenon of which the courts are bound to take judicial notice.

(Emphasis is added)



59. Thus, this very question having been directly decided by the Supreme Court in relation to the same nature of dispute regarding appointment to the post of Vice Chancellor, this Court cannot have, nor will it have, any hesitation in rejecting the preliminary objection raised by the learned counsel for the respondents with regard to the maintainability of the writ petition by way of Public Interest Litigation, especially, when this Court has found that a writ of *quo warranto* can be issued at the instance of any person, who may challenge the validity of appointment to a public office irrespective of the fact as to whether any of his fundamental and/or other legal rights has been infringed or not.

60. The only caveat, as regards the issuance of a writ in the nature of *quo warranto*, is that the Court must be satisfied that the person, so applying, has applied *bona fide* and there is a necessity, in public interest, to declare judicially that there is an usurper of public officer. This principle has been recognized not only by the English Court, in the case of **The King v. Speyer**, reported in **(1916) 1 KB 595**, but also in India, by the Supreme Court in the case of **Mir Ghulam Hussain and others v. The union of India and Others**, reported in **(1973) 4 SCC 135**, **S. R. Chaudhuri v. State of Punjab and Others**, reported in **(2001) 7 SCC 126**; and **B. R. Kapur v. State of T. N. and Another**, reported in **(2001) 7 SCC 231**, wherein it has been unequivocally held that any person, though not personally interested or an aspirant to the office or even having no interest

in his own appointment, can, as an ordinary citizen, seek the remedy of a writ in the nature of *quo warranto*.

61. It is well settled that that the Court can pass appropriate orders/ directions in exercise of powers under Article 226 of the Constitution of India and issue appropriate prerogative writs in the nature of writ of mandamus, certiorari, *quo warranto* or other writ, as the case may be, and can also mould relief, if so required. On this technical plea, this writ application cannot be held to be not maintainable; more so, when we find that all the essential facts have been brought on record.

62. In the light of the facts, which emerge in the present case, and the law relevant thereto, there can be no escape from the position of law that when the necessary facts are brought to the notice of the Court, the Court, in exercise of its power under Article 226 of the Constitution of India, is duty bound to step in and do the needful and, if required, even mould the relief, which the facts of a case may warrant. Let us bear in mind that if there is a power conferred on a court, the power carries with it the solemn duty to exercise the power, for, exercise of power, when the power is not exercisable, is bad in law; but no less bad is refusal to exercise power, where the exercise of power is warranted.

63. We accordingly declare the appointment of respondent No. 4, as Vice Chancellor of Veer Kuer Singh University, Ara, illegal and his appointment is, therefore, set

aside and quashed.

64. The respondent authorities are directed to proceed afresh, in accordance with law, for the purpose of filling up the post of Vice Chancellor as expeditiously as possible.

65. This writ application stands allowed.

66. Let the original records, produced by learned counsel for the Chancellor of the Universities, relating to appointment to the post of Vice Chancellor, in question, be returned back to him.

(I. A. Ansari, ACJ.)

Chakradhari Sharan Singh, J.: I agree.

(Chakradhari Sharan Singh, J.)

AFR

MrI/anand