

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1144 of 2015
IN
Civil Writ Jurisdiction Case No. 1233 of 2015**

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1. Sanjay Kumar Mishra S/o - Late Gopal Mishra R/o Village- Navneet Nagar, Kamaldah Path, Gulzarbgh, At Present Routine Clerk Jagat Narayan Lal College (M.U.), Khagaul Patna.

2. Jawahar Lal S/o - Late Newa Lal R/o Village- Saidpura, P.S.- Khagaul , District- Patna, At present of Lab Bearer (Lab Boy) J.N.L. College Khagaul, Patna.

3. Arun Kumar S/o - Mahavir Prasad R/o Mohalla- Ranipur Khirki, Patna City, P.S. - Mehdiganj, At Present Peon , J.N.L. College- Khagaul , Patna.

.... Petitioners/ Appellant/s

Versus

1. The State Of Bihar Through Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna

2. The Commissioner and Secretary, Human Resource Development Department (Higher and Secondary Education) Govt. of Bihar, Patna.

3. Chancellor, Universities of Bihar Raj Bhawawan, Patna.

4. Chancellor Magadh University , Raj Bhawan , Patna.

5. Vice Chancellor Magadh University , Bodh Gaya.

6. Registrar, Magadh University, Bodh Gaya.

7. Principal, J.N.L. College, Khagaul, Patna.

8. Dr. Rajesh Sukla, Principal , J.N.L. College, Khagaul, Patna.

....Respondents/ Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Mishra, Advocate

For the Respondent/s : Mr. Ram Balak Mahto, AG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 31-07-2015

The appellants herein are the petitioners in CWJC No. 1233 of 2015. While the appellants no. 1 and 2 have been working as Clerks, appellant no.3 has been working as Peon in the J N L College, Khagaul, Patna, which is a constituent college of Magadh University. The Vice-Chancellor of the University, the 5th respondent, passed an order dated 24.12.2014 transferring the 1st appellant to a constituent college at Sherghati in Gaya District, the 2nd appellant to a constituent college at Aurangabad, and the 3rd appellant to an institution at Tikari,

District Gaya.

Challenging the orders of transfer, the appellants filed the writ petition. It was pleaded that the 1st appellant is the President of the Employees' Union. It was further pleaded that the 1st appellant has been working in the institution for past seven years while the 2nd and 3rd appellants have been working in the same institution for three decades and their transfer is unwarranted and on illegal basis. The power of the Vice-Chancellor to effect transfer was also challenged by pleading that constituent college is a unit by itself.

Counter affidavit was filed by the University. It was pleaded that the appellants became the source of indiscipline in the institution and the University was left with no alternative but to transfer them. It was pleaded that once the appellants are employees of the constituent college, the Vice-Chancellor has every right to transfer them.

The learned Single Judge dismissed the writ petition through order dated 24.4.2015. Hence this Appeal.

Heard learned counsel for the appellants and learned counsel for the respondents.

The transfer is an incidence of service. It is only when a transfer is effected without any power or within a short time after the previous posting that the Court can interfere. It is not in dispute that the appellants have been working for the past several years in the same institution. Added to that, they are said to have become the source of indiscipline. Though no finding can be recorded in this behalf, the University cannot be denied of the right to transfer its employees.

Reliance is placed by learned counsel for the appellants by referring the judgment of a Division Bench of this Court in the case of **B N Mandal University vs. Manan Singh** [2011(3) PLJR 580], wherein it is held that unless the formalities of the integration of

the employees of the various constituent colleges take place, the employees of one constituent college cannot be transferred to another college. For lack of proper facts in this behalf, we do not intend to address this question.

We are of the view that the appellants cannot plead that they have the right to continue only at a particular place. At the same time, if they are facing any hardship on account of being transferred to different places, they can make representation in this behalf after a period of six months.

Hence, we dispose of this Appeal directing that –

- (a) It shall be open to the appellants to make representation to the University ventilating their grievance after completion of six months from the date of joining the new place of posting.
- (b) If such representation is made, the University shall examine the same and consider the feasibility of shifting the petitioners to the institution which is relatively nearer.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Anjana Mishra, J)

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