

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.965 of 2004
In
Civil Writ Jurisdiction Case No. 1623 of 2004

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1. The B.R.A.Bihar University, Muzaffarpur, through its Registrar
2. The Vice-Chancellor, B.R.A. Bihar University, Muzaffarpur
3. The Proctor, B.R.A. Bihar University, Muzaffarpur
..... Respondents/Appellants
- Versus
1. Suresh Chandra Gupta, son of Late Awadh Prasad, resident of village
Banka Bhawanipur Jirat, P.S. Chhatwara, Dist. West
Champaran(Motihari)
2. Shahin Eqbal Warsi, son of Late Md. Yahiya Siddiqui, resident of
Mohalla Loharpattin, P.S. Town, District East Champaran (Motihari)
..... Petitioners/Respondents
- =====

with
Civil Writ Jurisdiction Case No.9388 of 2004

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- Upendra Nath Jha, son of Late Yoganand Jha, resident of near Electricity
Office, Dharamganj, P.S. Sadar, District and Town Kishanganj
..... Petitioner
- Versus
1. B.N.Mandal University, Laloonaagar, Madhepura through its Registrar
2. Vice-Chancellor, B.N.Mandal University, Laloonaagar, Madhepura
3. Registrar, B.N.Mandal University, Laloonaagar, Madhepura
4. Principal, Marwari College, Kishanganj
5. Praveer Krishna Sinha, son of not known, presently deputed at
Examination Department, B.N.Mandal University, Madhepura
..... Respondents
- =====

Appearance :

(In LPA No.965 of 2004)

For the Appellant/s : Mr. Pushkar Narain Shahi, Sr.Advocate with
Mr. Santosh Kumar Jha, Advocate

For the Respondent/s : Mr. L.B.Singh, Advocate

(In CWJC No.9388 of 2004)

For the Petitioner/s : Mr. Madhav Roy with Ms. Kanti Jha,
Advocates

For the Respondent/s : Mr.Mithilesh Kr. Rai, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and
**HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**
and

HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

13 28-01-2016 Heard learned counsel for the appellant-University and the writ petitioners-respondents in the appeal as also learned counsels for the writ petitioner and for the respondent-University.

The question referred to the Full Bench by order dated 1.8.2006 passed in LPA No. 965 of 2004 is as to whether the ministerial staff of one constituent college can be transferred to another constituent college and whether the Vice Chancellor has power to make such transfer.

Learned counsel for the appellant-University has brought to our notice the Statutes issued by Notification No. B.S.U.-41/2013-429/Ra.Sa. Dated 04.03.2013 with regard to determination of classification of posts/cadres for the purpose of appointment/promotion of non-teaching employees of the University Offices, attached offices, Post Graduate Departments, Institutions and constituent colleges of the Universities of the State of Bihar. Reference in this regard has been made to Clause 2(viii) and (ix) which define 'non-teaching employees of the University' and 'non-teaching employees of the colleges' respectively.

Reference has also been made to Clause 3(Kha) which, inter alia, provides that employee of any class or category can be transferred to any of its offices by general or special order of the competent authority. Learned counsel has also brought to our notice Clause 8(6)(x)(c) under which it is stated that the

employees of the University can be transferred to any unit/University Department/or any institution under the University on an equivalent post.

Clause 10 of the Statutes further provides that for the purpose of promotion the University Offices and its attached units of post graduate centres and institutions (providing education of postgraduate level) shall have one unit which will be called Unit-1 and all constituent colleges and institutions (providing education till graduate level) shall have another separate unit which will be called Unit-II.

On a reference to the aforesaid provisions it is submitted by learned counsel for the University that at least with effect from 4.3.2013 the power to transfer the non-teaching staff of the colleges is also vested in the competent authority and the posts have also been made transferable even from one unit to another. Thus the reference itself has become practically infructuous.

Learned counsels for the respondents in the appeal and the writ petitioner, on the other hand, have sought to submit that the matter should be considered on the basis of powers existing at the relevant time when the order of transfer was passed and thus the reference has not become infructuous. It is, however, admitted by learned counsels that since the powers have now been vested by the Statutes hence even if the writ petitioners succeed in the

matters they can always be immediately re-transferred.

So far as the writ petitioner of CWJC No. 9388 of 2004 is concerned, it is admitted that he has already retired. Learned counsel, however, has sought to inform that although the order of transfer had also been challenged in the writ petition, being the first relief sought, but essentially the relief sought by the petitioner was with regard to promotion and the case has also been listed under the category as a promotion matter and therefore so far as the right of the petitioner to promotion is concerned, the same ought not to be allowed to be defeated.

So far as the appeal is concerned, the impugned orders of transfer have been quashed by the learned Single Judge by order dated 2.8.2004 which led to filing of the appeal. Since on account of the amendment of the Statutes, we are of the view that the reference need not be answered as it has become merely academic, we do not propose to interfere with the impugned order therein. However, liberty is given to the appellant-University to pass fresh orders in the matters, if so desired, otherwise the order dated 2.8.2004 in the writ petition shall be complied with by them.

So far as CWJC No. 9388 of 2004 is concerned, since the petitioner has retired, the first relief sought by the petitioner for quashing the order of transfer has become infructuous. So far as the direction sought by the petitioner for promotion to the post of

Head Assistant in Marwari College, Kishanganj is concerned, we remand the matter to an appropriate Bench to consider the same in accordance with law without the order of transfer dated 18.6.2004 in any way coming in the way of the petitioner to get the appropriate relief if he is so entitled to under the law.

The appeal and the writ petition are, accordingly, disposed of with the aforesaid observations and directions.

(Ramesh Kumar Datta, J)

(Ashwani Kumar Singh, J)

spal/-

(Sudhir Singh, J)

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