

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1035 of 2016

=====

1. Dr. Deo Chandra Choudhary Son of Late Tripta Narayan Choudhary, Resident of Village - Tatuvar, P.O. - Tatuvar, P.S. Manigachi, District - Darbhanga.

.... Appellant/s

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

=====

Appearance :

For the Appellant/s : Mr. Abhinav Srivastava, Advocate

For the Respondent/s : Mr. Ajay Bihari Sinha, Advocate

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 27-06-2016

Whether transfer of the appellant from the post of Principal, MLSM College, Darbhanga, to SBSS College, Begusarai, has been notified on the basis of a Committee duly constituted in terms of Section 10(14) of the Bihar State Universities Act, 1976 (hereinafter referred to as the Act), is the sole question involved in the present appeal preferred under Clause 10 of the Letters Patent of this Court.

2. The appellant is aggrieved by an order passed, on 27.04.2016, by a learned single Judge of this Court in CWJC No. 3398 of 2016, whereby his application filed, under Article 226 of the Constitution of India, challenging the

notification, dated 25.01.2016, by which the appellant is sought to be transferred to SBSS College, Begusarai, has been dismissed.

3. For the purpose of present adjudication, facts, which are not in dispute, are short. While functioning as Principal of the MLSM College, Darbhanga, a constituent Unit of L.N. Mithila University, Darbhanga, the appellant was transferred in the same capacity to SBSS College, Begusarai, by a notification, dated 30.11.2014 issued, in this regard, by the University in exercise of power under Section 10(11) of the Act under the orders of the Vice-Chancellor. The said order, dated 30.11.2014, was subsequently quashed by this Court by an order, dated 13.01.2015, passed in CWJC No. 22145 of 2014, whereafter, appellant herein had put to challenge the said notification by making an application under Article 226 of the Constitution of India. The University, thereafter, preferred an appeal under the Letters Patent of this Court, which gave rise to LPA No. 459 of 2015, against the said order, dated 13.01.2015, passed by a learned single Judge. LPA No. 459 of 2015 came to be dismissed by a judgment and order, dated 11.01.2016. The reason, recorded by learned single Judge for interference with the notification transferring the appellant from MLSM College, Darbhanga,



to SBSS College, Begusarai, of non-compliance of the provisions as contained in Section 10(14) of the Act, dated 13.01.2015, came to be upheld by the Division Bench. After having noticed that the matter relating to the appellant's transfer was not placed before the Committee required to be constituted under Section 10(14) of the Act, the earlier order of petitioner's transfer could not be sustained. The Division Bench, while dismissing the appeal, observed at paragraph 29 as follows:-

"29. No dispute has been raised that the Committee have been constituted for considering the transfer of a teacher-Principal from one College to another in terms of the guidelines issued by the Chancellor in accordance with Section 10(14) of the Act. It is also not in dispute that the cases of the respondents herein were not placed before the Committees constituted in terms of Section 10(14) of the Act before issuance of the notification impugned in the writ application. In this background, submission, advanced by Mr. Yugal Kishore, learned Senior counsel, that the Vice-Chancellor was justified in invoking power under Section 10(11) of the Act, without resorting to requirements of Section 10(14) of the Act, is not convincing us. Learned single Judge, in our opinion, has rightly held that the effecting transfer of a teacher, the Vice-Chancellor was required to proceed in accordance with the provisions contained in Section 10(14) of the Act. This is an admitted fact that the



Chancellor has issued guidelines as contemplated under Section 10(14) of the Act and, in furtherance thereof, Committees have been constituted by the University to consider the cases of transfers. In terms of provisions contained in Section 10(14) of the Act read with the guidelines issued in this regard, the matters were, in our opinion, required to be placed before the transfer Committees. This having not been done, learned single Judge has rightly interfered with the impugned notifications of transfer."

4. The Division Bench further observed that considering the reasons assigned for transferring the appellant and other teachers of the University, the matter should be placed before a Committee constituted in terms of Section 10(14) of the Act and the Committee should take a decision within one week thereafter. It was also made clear in the said order that if required, there shall be no impediment, on the part of the Vice-Chancellor of the University, to place the appellant under suspension if such suspension was necessitated for holding an enquiry against him since several plea of commission of misconduct by the appellant was taken on behalf of the University in the said proceeding.

5. The University, thereafter, came out with another notification, dated 25.01.2016, on the basis of



recommendation of a Joint Transfer Committee in its meeting held on 23.01.2016 and in the light of the resolution of the Syndicate in its meeting, dated 23.01.2016 transferring the appellant again from MLSM College, Darbhanga, to SBSS College, Begusarai. The appellant, again, put to challenge the said notification, dated 25.01.2016, by filing an application under Article 226 of the Constitution of India, which gave rise to CWJC No. 3398 of 2016, mainly on the ground that the case of the appellant for his transfer was not placed before the Committee as required under Section 10(14) of the Act read with the guidelines issued by the Chancellor of the Universities of Bihar, dated 18.12.2008, in this behalf.

6. The University took a plea in the writ proceedings that the appellant's case was placed before a Joint Transfer Committee and, on the basis of recommendation of the Joint Transfer Committee, a decision was taken to transfer the appellant from MLSM College, Darbhanga to SBSS College, Begusarai.

7. The learned single Judge of this Court dismissed the writ application, on 21.04.2016, by the order under appeal, on the premise that since the matter was placed in Joint meeting of the Transfer Committees, there was no infirmity in the impugned notification of transfer.

8. As has been indicated at the very outset, on the



basis of the pleadings on record and submissions advanced on behalf of the parties, the only question, which needs to be determined, is as to whether the case of the appellant, before issuance of the notification transferring him from MLSM College, Darbhanga, to SBSS College, Begusarai, was placed before a Committee constituted in accordance with the provisions of Section 10(14) of the Act and guidelines contained in letter No. 5496, dated 18.12.2008, issued by the Chancellor's Secretariat, Bihar, for transfer of Principals under the University.

9. Mr. Abhinav Srivastava, learned counsel appearing on behalf of the appellant, has submitted that the appellant's transfer has been made on the basis of the recommendation of a Committee, which was not constituted in accordance with the guidelines issued by the Chancellor's Secretariat, dated 18.12.2008, under the provisions of Section 10(14) of the Act.

10. Section 10(14) of the Act contemplates that the Vice-Chancellor shall have the power to transfer a teacher from one College to another or from one Department to another in accordance with the guidelines duly approved by the Chancellor of the Universities. The Committee for considering transfer of a Principal from one College to another, according to the said guidelines, dated 18.12.2008,

should comprise of:-

- (i) Vice-Chancellor- Chairman
- (ii) Pro-Vice-Chancellor- Member
- (iii) Senior most Dean of a faculty of the University
- (iv) Chancellor's Nominee- should be with administrative experience
- (v) State Government's Nominee of a rank not less than of the Joint Secretary
- (vi) Registrar of the University.

11. It is further provided that if none of the Members of the said Committee belong to Scheduled Caste/Scheduled Tribe, then, one member of a rank not less than Professor/Reader should be nominated by the Vice-Chancellor. The said guidelines specifically provide that the Committee so-constituted shall be in addition to the Committees constituted for the purpose of considering transfer of teachers to P.G. Departments and for considering transfer of teachers from one College to another under the University.

12. There is an averment in paragraph 31 of the writ application that the appellant's case was recommended by a Joint Transfer Committee of the University and no

Transfer Committee in terms of the guidelines contained under the letter, dated 18.12.2008, aforesaid has been constituted. It has, accordingly, been argued that recommendation of such Joint Transfer Committee did not have any sanctity in the eye of law.

13. There is an admission in paragraph 7 of the supplementary counter affidavit filed on behalf of the Vice-Chancellor and Registrar of the University that it was not within their knowledge that under the guidelines issued on 18.12.2008, a separate Transfer Committee was required to be constituted for considering transfer of Principals of constituent Colleges and, therefore, the transfers of Principals were being made in exercise of power under Section 10 (11) of the Act by the Vice-Chancellor. It has been stated in paragraph 13 of the said supplementary counter affidavit that because of lack of information about requirement of constitution of a separate Transfer Committee for considering cases of transfers of Principals to one College to another, the notification, under challenge was issued, on the basis of recommendation made by the Joint Committee as referred to above.

14. Under the guidelines contained in the letter, dated 18.12.2008, there has to be a State Government's nominee as a Member of the Transfer Committee. The



University has taken a plea, in paragraph 12 of the supplementary counter affidavit, that the State Government's nominees are Members in different University Bodies, viz, Senate, Syndicate, Academic Council, Finance Committee, etc, and they are always invited to attend such meetings of the concerned bodies, but they seldom attend the meetings. This cannot be a justification for not constituting a Committee in terms of the guidelines issued under the letter, dated 18.12.2008, which has been apparently issued by the Chancellor in exercise of his jurisdiction under Section 10(14) of the Act.

15. From the facts on record, it appears that no Committee was at all constituted for considering the cases of transfer of Principals from one College to another as contemplated in the guidelines, as contained in letter, dated 18.12.2008. The guidelines having been issued in exercise of statutory powers by the Chancellor, have to be strictly adhered to in the matter of taking decision in respect of *intra* University transfer of a Principal from one College to another.

16. What has emerged from the record, particularly, letter, dated 18.12.2008 (*supra*), there are two Committees; one for considering transfer of teachers to P. G. Departments and the other for transfer of



teachers from one College to another under the University to be constituted in accordance with letter, dated 21.02.1997 and 06.08.2009 respectively, issued by the Chancellor of the Universities. There has to be a third Transfer Committee in terms of the aforesaid letter, dated 18.12.2008 (supra), for considering cases of transfer of Principals from one College to another. It is an admitted fact, on the basis of the pleadings on record, that the case of the appellant was not placed before a Transfer Committee, which was to be constituted in accordance with the guidelines contained in letter, dated 18.12.2008. It appears that the authorities were unaware of the fact that a third Committee was required to be constituted in terms of the aforesaid letter, dated 18.12.2008.

17. We are, accordingly, of the considered view that the impugned notification, dated 25.01.2016, bearing Memo No. 1011-23/16, issued by the L. N. Mithila University, Darbhanga, cannot be sustained and needs to be interfered with. The notification, dated 25.01.2016, is, therefore, set aside.

18. In the facts and circumstances of the present case, we direct the Vice Chancellor, respondent No.2, to ensure that the appellant's case is placed before the duly constituted Transfer Committee in accordance with the

guidelines as contained in the letter, dated 18.12.2008, of the Chancellor's Secretariat within a month from today and a decision is taken on the appellant's proposed transfer, in accordance with law.

19. The order, dated 25.01.2016, passed by the learned single Judge in CWJC No. 3398 of 2016, is set aside in the terms as indicated above.

20. This appeal stands allowed with the observations as aforesaid. There shall be no order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-

U	T
---	---