

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.1936 of 2017**

**Along with**

**Interlocutory Application No. 2002 of 2017**

**And**

**Interlocutory Application No. 2123 of 2017**

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Lalan Kumar son of Late Sri Bishwanath Singh, Resident of Jagdamba Nagar  
(Chauri), Police Station- Ahiyapur, District- Muzaffapur.

.... .... Petitioner/s

Versus

1. The Vice Chancellor, Baba Saheb Bhim Rao Ambedkar Bihar University,  
Muzaffarpur.
2. The Registrar, Baba Saheb Bhim Rao Ambedkar Bihar University,  
Muzaffarpur.
3. Hon'ble Chancellor of the Universities, Bihar.

.... .... Respondent/s

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**Appearance :**

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|-----------------------------------|---|--------------------------------------------------------------------------|
| For the Petitioner                | : | Mr. Basant Chaudhary, Sr. Advocate with<br>Mr. Sarva Deo Singh, Advocate |
| For the B. R. A. Bihar University | : | Mr. P. N. Shahi, Sr. Advocate with<br>Mr. Santosh Kumar Jha, Advocate    |
| For the Chancellor                | : | Mr. Rajendra Giri, Advocate                                              |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT**

**Date: 06-04-2017**

Heard Mr. Basant Chaudhary, learned senior counsel,  
assisted by Mr. Sarva Deo Singh, learned counsel for the petitioner,  
Mr. P.N. Shahi, learned senior counsel, assisted by Mr. Santosh  
Kumar Jha, learned counsel for B. R. A. Bihar University,  
Muzaffarpur and Mr. Rajendra Giri, learned counsel appearing for the  
Chancellor of Universities, Bihar.

2. The petitioner has moved the Court for quashing of  
officer order contained in Memo No. 450/R dated 25.01.2017 by  
which he has been placed under suspension.



3. Learned counsel for the petitioner submitted that he was posted as Administrative Officer in the Directorate of Distance Education, B.R.A. Bihar University, Muzaffarpur and by the impugned order has been placed under suspension in violation of the statutory provisions. Learned counsel submitted that as per Section 39 of the Bihar State Universities Act (hereinafter referred to as the 'Act'), the Vice Chancellor has the overall general power over the affairs of the Universities including the staff and employees, but in the case of suspension, there is a separate Statute on General Conditions of Service of Employees of the Patna, Bihar Ranchi, Bhagalpur, Magadh, L. N. Mithila and K.S.D. Sanskrit Universities as approved by the Chancellor on 20.09.1982 vide letter no. BSU- 36/80-5270 GS (1) dated 18.11.1980 (hereinafter referred to as the 'Statute'), which governs the field. Learned counsel submitted that Clause 10 of the Statute provides for placing a university servant under suspension and the same is restricted to a situation where there is *prima facie* evidence available against him and there are good reasons to believe, on the basis of materials available at the time of initiation of the proceedings, that he is guilty of gross misconduct or dereliction of duty or bribery and corruption which, if proved, would lead to his dismissal or removal. Learned counsel further submitted that as per the provisions, in cases where such *prima facie* evidence is lacking at



the start, the question of suspension of the University servant may be kept pending till the findings of the enquiring officer are available and in such cases he should be required to proceed on such leave as may be due to him, and, if there is no leave to his credit, on extra-ordinary leave and, on the conclusion of the enquiry, if it is found that the University servant is guilty of gross misconduct or dereliction of duty or of bribery or corruption which would entail his dismissal or removal from service, he should be placed under suspension and in all other cases where there are reasons to believe that the University servant, if allowed to continue in active service, might attempt to tamper with the evidence, he should be required to proceed on such leave as may be due to him, or, if there is no leave to his credit, on extra-ordinary leave and if he refuses to proceed on leave, he may be suspended. Learned counsel submitted that in the present case, such formality was not adhered to and straight away only on the basis of some vague charge, the petitioner has been suspended. Learned counsel submitted that basically the charge relates to having been party to the conducting of M. Phil. course from Sessions 2014-15 and 2015-16 without there being legal sanction to the same. Learned counsel submitted that the petitioner was the junior most in the chain and the matter was considered at the highest level of the Vice Chancellor and the Syndicate and a draft regulation for running of



such course was approved and sent to the Chancellor. Learned counsel submitted that even the starting of the course was not at the behest of the petitioner and he had only followed the directions of his superior. Learned counsel further submitted that the courses were held and the students were allocated to various Departments where they pursued their study and in the meeting of the Academic Counsel, such M. Phil. course was noticed. Learned counsel submitted that the petitioner had no personal or separate role in running of the M. Phil. course and whatever has been done was in the capacity of an Administrative Officer only to manage the said course and that too at the direction of his superiors. Learned counsel submitted that the order impugned is a cryptic order and only reference to various communications made by the Governor's Secretariat and citing that as a reason the petitioner has been placed under suspension. Learned counsel submitted that the said letters deal with only allegation of the M. Phil. course being run without due approval of the Chancellor and the ground mentioned in the impugned order of suspension of there being *prima facie* ground of misconduct, dereliction of official duties, illegal gratification, omission and commission, is not made out either by the letters referred in the order of suspension or even in the impugned order of suspension. Learned counsel submitted that the order, thus, cannot be sustained in view of the law settled by the Hon'ble Supreme Court in



the case of **Mahinder Singh Gill v. Chief Election Commissioner** reported as **AIR 1978 SC 851**, where it has been held that an order cannot be supplanted by fresh grounds later on or in a Court proceeding by way of an affidavit. Learned counsel submitted that on the date the order was passed, there was no enquiry to *prima facie* hold the petitioner guilty of any misconduct, illegal gratification or dereliction of official duties or even omission and commission. Learned counsel further submitted that even if there would have been some evidence, at best, the petitioner could have been directed to go on leave, but suspension could not have been resorted to in terms of Clause 10 of the Statute. Learned counsel further submitted that the Chancellor in fact has also communicated to the University by letter dated 17.02.2017 directing that his earlier direction, to take action against the petitioner and Director, be implemented. Learned counsel submitted that since the Statute has provided for a special mode relating to suspension, the same has to be strictly followed. For such proposition, he relied upon a decision of the Hon'ble Supreme Court in the case of **Dipak Babaria v. State of Gujarat** reported as **(2014) 3 SCC 502**, the relevant being at paragraphs no. 72 and 73.

4. Learned counsel for the University submitted that the contentions of learned counsel for the petitioner are misconceived. It was further submitted that the petitioner has not been singled out and



in fact the Director of the Directorate of Distance Education has also been suspended. Learned counsel submitted that in the advertisement printed in the daily newspaper on 03.11.2014, applications were asked from students for enrolling in M. Phil. course for the session 2014-15 under the joint signature of the Director and the petitioner. Learned counsel submitted that though the same mentions that it was under the directions of the Vice Chancellor but the same Vice Chancellor himself suspending the petitioner clearly indicates that there was no such permission, either written or oral. Learned counsel submitted that the fundamental issue involved in the present case is that the running of M. Phil. course by the Directorate of Distance Education was totally illegal and, thus, impermissible. He submitted that though the draft regulations were prepared, but without there being any approval it could not have been acted upon, muchless, the course started. Learned counsel submitted that in the University there is no record to show that there was any order of any competent authority or even the Vice Chancellor of the University approving or directing for calling persons to apply for the M. Phil. course. Learned counsel submitted that even otherwise the M. Phil. course has been held to be a regular course and thus, it could not have been conducted through the Directorate of Distance Education and this falsifies the stand of the petitioner that it was being done after due permission of the higher



authority. Learned counsel submitted that the courses having been run without there being an approved regulation by the Chancellor and also without any due permission of any competent authority, being illegal, both in terms of money spent on such course as well as the career of the students being put into jeopardy, the action taken by the University cannot be faulted. It was further submitted that in terms of Clause 10 of the Statue, the University found *prima facie* evidence against the petitioner and thus notice was given to him to which he has replied, which is reflected from the order impugned itself and such calling for application from prospective students in the daily newspaper which has also been signed by the petitioner also, clearly indicates gross misconduct and dereliction of duty, for which the petitioner could be dismissed. Learned counsel submitted that later on evidence has come that there was also grave financial mismanagement, inasmuch as, the petitioner had got Rs. 50 Lakhs from the Directorate of Distance Education transferred in his account after almost one month of his suspension. Learned counsel submitted that such conduct strongly indicates corruption.

5. Learned counsel for the petitioner, by way of reply, submitted that though the charge relating to there being financial irregularity was not a ground on which he has been suspended and cannot be argued for the purposes of defending the order impugned,



but still the same was easily explainable and does not go against him. It was submitted that in a regular meeting of the Building Construction Committee of the Directorate of Distance Education, a decision was taken to transfer money to an account to be managed by the petitioner for the purposes of construction of a new building in view of there being frequent requirement of transactions. Learned counsel submitted that thus the amount having been transferred pursuant to such decision, he cannot be held guilty of any financial irregularity. Learned counsel further submitted that even the communication by the Registrar dated 11.11.2014 to the Secretary, Distance Education Bureau, University Grants Commission, New Delhi, indicates that M. Phil. course for the academic year 2014-15 in the regular mode was being conducted. Learned counsel submitted that the Building Construction Committee of the Directorate of Distance Education of the University had also approved transfer of Rs. 50 Lakhs as advance to the petitioner in view of the progress of the building which was in its final stages. Learned counsel submitted that the time allowed for calling for applications by the advertisement initially published, was later extended after due approval by the then Registrar and Vice Chancellor. Learned counsel submitted that even the present Registrar is the same person who was, at the relevant time, the Director of the University and in that capacity had taken part in



the meeting of the Academic Committee where in the minutes, the running of M. Phil. course was also taken note of.

6. Learned counsel for the University, at the very outset, submitted that the present Registrar had joined on 17.02.2017 and the Vice Chancellor on 27.02.2017. Learned counsel submitted that in terms of Section 39 of the Act there are various bodies which have to first approve the Draft Regulation and finally the same has to be approved by the Chancellor before it comes into existence and only after the Regulation having come into effect the next step of taking action in accordance with the Regulation, that is, of starting the course and admitting the students, can be permitted. It was further submitted that the present Vice Chancellor has in fact constituted a fresh Committee on 03.03.2017 to look into the charge against both the Director as well as the petitioner. Learned counsel submitted that the a Committee of Mr. B. B. Lal was constituted which has submitted a report raising suspicion about the appointment of the petitioner on the ground of him not fulfilling the eligibility criteria. Learned counsel submitted that the said Committee consists of six senior persons and had to submit its report within a fortnight. He submitted that because of ending of the financial year, the Committee has not yet submitted its report.

7. Interlocutory Application No. 2002 of 2017 has been



filed by one Ashok Kumar Chaudhary seeking permission to intervene as a respondent in the present case. Though, the Court is of the opinion that in a matter concerning the suspension of a person, no third party has any *locus standi* and thus the applicant cannot be permitted to intervene, but in view of the fact that a detailed Interlocutory Application has been filed, learned counsel has been heard. Basically, the stand of learned counsel for the proposed intervener is that against the petitioner there are various criminal cases and that he has also been accused of tampering with the resultsheets and also of there being an unholy nexus between him and the firm of which he is the proprietor and which used to supply the answersheets to the University for various examinations. Learned counsel submitted that the firm was blacklisted and still the petitioner later on has been employed, for which he has already filed a complaint before the Vice Chancellor and based on his complaint, in an enquiry conducted, report has been submitted in which the very appointment of the petitioner has been held to be doubtful in view of him not possessing the basic qualification for the post of Administrative Officer. Learned counsel submitted that on 30.03.2017, during the course of hearing, he had brought to the notice of the Court that the petitioner was present in Court and had left his headquarter unauthorisedly. Learned counsel submitted that the query of the Court in this regard was replied to by



the petitioner categorically stating that he had taken leave/permission from the Director. Learned counsel submitted that in view of the communication made by the Director dated 30.03.2017 to the Vice Chancellor, it was clear that the petitioner had been absent on that day from the headquarter assigned to him and where he was required to be present, i.e, at Muzaffarpur.

8. Learned counsel for the petitioner objected to allowing the intervener applicant to be made a party and submitted that besides him having no *locus standi* it is only with a view to harass the petitioner and further that he too has some vested interest with other persons who were not able to succeed in their ulterior design of trying to get contract from the University for various works. Learned counsel submitted that there may be many things which may go against the petitioner but for the purposes of considering his prayer for quashing of his order of suspension, such things are not relevant. However, he submitted that the allegations made by the petitioner were referred to a three member Committee which has not found any illegality committed by the petitioner. Learned counsel further submitted that he had taken due leave from the Director while appearing before the Court on 20.03.2017 and 24.03.2017 and on 30.03.2017 he had sent such request through courier at 11:30 a.m. which was refused to be accepted by the Director. Learned counsel has annexed photocopies of



his application as well as the receipt of the courier company.

9. Having considered the rival contentions, the Court does not find any merit in the present writ application. The petitioner has raised technical objections before the Court by way of referring to the various provisions in the Act and Statute to indicate the scope of power of suspension available to the Vice Chancellor. The same cannot be read in isolation and has to be judged on the facts and circumstances of a particular case. In this case, the petitioner, being an Administrative Officer, may not have had a role, had he not been associated with the running of the course, but his association is clear from the fact that he is a co-signatory on the advertisement which was printed in the daily newspaper calling applications for M. Phil. course. The Head of the Department or the authorized person of the University is the only competent person who can call for such application and the petitioner in the capacity of Administrative Officer is not one such person. Further, the fact that no records are available with regard to the Vice Chancellor even having given such approval, the starting of the course by calling for nomination/application was impermissible. The petitioner has not been singled out and the Director has also been suspended. It is worthwhile to note that it was the same person who was the Vice Chancellor on 03.11.2014, when an advertisement was published, who has issued the impugned order



on 25.01.2017 suspending the petitioner. Thus, the contention of learned counsel for the University that even the then Vice Chancellor had never approved such advertisement, and which is also not reflected from the records maintained in the University, lend credence to the fact that there was no such approval given by the then Vice Chancellor. Even if it is assumed that there may have been some communication by the Vice Chancellor, the actual act of calling for applications and allocating the students and running the M. Phil. course has to be owned by the Director and the petitioner and they cannot be given the benefit of doubt that they were unaware of the requirements of law. Once the law in clear terms does not provide for any course to be started without there being approved Regulation to do so, the fact that no such Regulation has till date been approved, was enough for the petitioner not to be party to such conducting of M. Phil. course. It is surprising that a regular full time course was conducted by the Directorate of Distance Education which does not contemplate any regular or formal course/training. The said M. Phil. Course, thus, being in the regular mode, as is clear from the advertisement itself, was also, perhaps, not a permissible mode in law, to be conducted by the Directorate of Distance Education. Though, the contention of learned counsel for the petitioner is correct that facts which have not been stated in the order of suspension may not be



taken note of, but the issue of suspension itself has to be viewed holistically moreso, for the purposes of deciding a petition filed under the extraordinary prerogative writ jurisdiction under Article 226 of the Constitution of India, where all things have to be viewed, including the conduct of the petitioner. The petitioner having credited Rs. 50 Lakhs to his personal account clearly is something which cannot be lost sight of. Even the resolution of the Building Committee which the petitioner has brought on record indicates that a decision was taken for opening a new account to be operated by the petitioner for managing the building account but getting the money transferred in his personal name and account was impermissible. The resolution of the Building Committee to permit depositing of Rs. 50 Lakhs in the name of the petitioner was taken by the Director and the petitioner himself and thus, the same does not given him any legal umbrella or protection. The Court has also taken judicial note of the fact that on 30.03.2017 at 4:15 p.m. when the Court was about to rise, on a query made to the petitioner as to whether he was present in Court after taking leave, his categorical answer to the Court was that he had taken leave from the Director. Today, in the 3<sup>rd</sup> supplementary affidavit filed on behalf of the petitioner it has been brought on record that at 11:30 a.m. on 30.03.2017, he had sent an application through courier from Patna to Muzaffarpur. Such fact should have been honestly



stated before the Court that he had forwarded his application but he could not have stated to the Court that he was allowed permission by the Director. Further, from the materials on record, copy of the receipt of the courier shows that the same was handed over to the courier company at 11:30 a.m. on 30.03.2017 at Patna whereas on the next page it shows endorsement that it was refused to be accepted. Surprisingly, the time of such purported refusal is also 11:30 a.m. and the date is 30.03.2017. The Court is surprised as to how a packet which was delivered to the courier company at 11:30 a.m. on 30.03.2017 at Patna was also delivered on 30.03.2017 at 11:30 a.m. at Muzaffarpur, where, as per the endorsement it was refused to be accepted.

10. Having regard to the aforesaid facts and circumstances of the case, especially the conduct of the petitioner, the Court is not inclined to interfere in the matter in its extraordinary, prerogative and discretionary writ jurisdiction. Accordingly, the writ petition stands dismissed.

11. Interlocutory Applications No. 2002 of 2017 and 2123 of 2017 stand disposed off.

**(Ahsanuddin Amanullah, J)**

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