

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13346 of 2014

Dr. Raja Ram Prasad son of late Sumrit Lal Prasad, at present working as a University Professor and Head of the department of Mathili, B.N. Mandal University, resident of village+ P.O.+P.S.+ District- Saharsha.

... .. Petitioner/s

Versus

1. The Chancellor University Of Bihar, Raj Bhawan, Patna.
2. The Special Officer (University), Raj Bhawan, Patna.
3. The Vice-Chancellor, Patna University, Patna.
4. The Vice-Chancellor, B.N. Mandal University, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh
For the Respondent/s	:	Mr. Rajendra Kumar Giri

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 24-07-2018

1. Heard learned counsel for the petitioner and learned counsel appearing on behalf of the respondents and counsel for the University.

2. In the instant case prayer for payment of salary as Pro-vice Chancellor is unsustainable. In view of the fact that the Apex Court has stayed the working of the petitioner as Pro-vice Chancellor. However, the petitioner claim for payment of salary of the substantive post merit consideration. The Division Bench of this Court has the occasion to examine the similar issue in LPA No.1436 of 2015 and the Division Bench on consideration of



entire facts directed the University to ensure payment of salary of the substantive post as petitioner working as Pro-Vice Chancellor was stayed by the Hon'ble Supreme Court and finally held that the appointment of the petitioner as Pro-Vice Chancellor as invalid. The dispute involved in the writ petition is for payment of salary for the period of petitioner was not allowed to join and denied the salary of the substantive post after stay of the petitioner working as Pro-Vice Chancellor by the Apex Court.

3. This Court has also decided the similar issue in CWJC No.11984 of 2014 dated 11.7.2018. in the light of judgment of Division Bench. The relevant part of the discussion in CWJC No. 11984 of 2014 quoted below for ready reference:-

“7. In the instant case also when the materials available on record indicate that the petitioner after order of stay by the Apex Court, has submitted joining but he was not allowed to join. Now taking the plea that the petitioner cannot be paid salary on the ground of “No work no pay”, does not merit consideration as the Court is of the view that principles of “no work no pay” applies where the individual voluntarily refuse to render



*services. In the instant case when the petitioner has submitted joining and he was not allowed to join, it does not lie in the mouth of the University to say that principle of “no work no pay” will apply because the University has not allowed the petitioner to join. It is well settled principle of law that the respondents cannot say that they have not allowed to join the petitioner and as such petitioner would not be paid salary on the ground of “No work No pay”. Reference in this connection may be made to the judgment of Chief Justice Chhagla in the case of **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City: AIR 1954 Bom. 232**, wherein the Chief Justice Chhagla has discussed the aforesaid principle of law and equity in the following words:-*

“But the most surprising contention is put forward by the Department that because their worn officer failed to discharge his statutory duty, the assessee



is deprived of his right which the law has given to him under Sub-Section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person-- we take it that the Income-tax Department is included in that definition – can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “ I have committed a default and the right is lost because of that default.”

8. *Considering the entire facts of this case, the Court is of the view that the petitioner cannot be denied salary for the period he was prevented from performing the duty by the respondents by not accepting the joining.*

9. *In view of the judgment of the LPA Court in LPA No. 1436/2015 the decision of the*



Hon'ble Chancellor cannot be a ground to deny payment of salary to the petitioner.

10. Accordingly, the writ petition is allowed in the light of the judgment of the Division Bench in LPA No. 1436 of 2015 dated 10.1.2018. The respondents are hereby directed to ensure payment of salary of the petitioner for the period the petitioner was not paid his salary to his appointment as Pro-Vice Chancellor and for the period the petitioner was not allowed to join after the order of stay of the appointment of the petitioner as Pro-Vice Chancellor. Entire exercise in this regard must be completed by the University within a maximum period of 60 days from the date of receipt/ production of a copy of this order.”

4. In view of the above, the University is hereby directed to workout entitlement of the petitioner for payment of salary as Professor of the University, the substantive post on which the petitioner was working and on account of stay order by the Apex Court on functioning of the petitioner as Pro-Vice Chancellor. Petitioner cannot be denied salary of the substantive post. The writ petitioner is entitled to work and draw salary as



Professor. Necessary decision in the light of decision of Division Bench in L.P.A No. 1436 of 2015 and this Court in C.W.J.C. No.11984 of 2014 dated 11.7.2018 may be taken by the respondent University within a maximum period of four months from the date of receipt/production of a copy of this order.

5. With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

banti/-T.Kr.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.07.2018
Transmission Date	

