

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6827 of 2016

1. Priyanka Kumari Wife of Santosh Kumar Resident of village - Belbanwa (Motihari), Police Station Motihari Town, District - East Champaran
2. Vivek Kumar Gupta Son of Late Ishwari Prasad Gupta Resident of village + Post + Police Station Akodi Gola, Rohtas, Rajkeshwar, High School, Khudanu, Sasaram
3. Md. Islam Hussain Son of Md. Nizam Hussain Resident of Bardhi Tola, P.O. + Police Station Akodhi Tola, Rohtas High School, Budhbal, Karaghat
4. Bhushan Singh Son of Jai Kumar Singh Resident of Khairahi, P.O. Pachpokhari, Police Station Nokha, District - Rohtas
5. Shashi Ranjan Kumar Son of Raghubir Prasad Prajapati Resident of village + P.O. Akodhi, Police Station Akhodhi Tola, District - Rohtas
6. Sanjay Kumar Rai Son of Late Brijnandan Rai Resident of village + P.O. Akodhi, Police Station Akhodhi Tola, District - Rohtas
7. Sanoj Kumar Son of Gopichand Das Resident of Village - Navinagar (Das Mohalla) P.O. + Police Station Navinagar, District - Aurangabad
8. Santosh Kumar Gupta Son of Nand Gopal Prasad Resident of village - Baradhi Gola, P.O. + Police Station Akhodi Gola, District - Rohtas
9. Dharmendra Kumar Son of Late Ganesh Ram Resident of village + Post - Bairwa, Police Station - Shivsagar, District - Rohtas, Sasaram
10. Sunita Kumari Daughter of Ganesh Ram Resident of village + Post Ughani, Police Station - Chenari, District - Rohtas
11. Dherjesh Son of Sri Dharendra Prasad Sinha Resident of Kachi - Pakki Road Sidhi Niwas, Atardah, P.S. Sadar, P.O. Ramha, District - Muzaffarpur



12. Rakesh Kumar Son of Mahendra Prasad Singh Resident of Sar Ganesh Dutt Nagar Road No. 02, Post Bhagwanpur, P.S. Sadar, District - Muzaffarpur
13. Ganesh Kumar Singh Son of Satrudhan Prasad Singh Resident of Jalalpur Post - Bela P.S. Dariyapur District Saran (Chapra)
14. Munna Kumar Singh Son of Yogendra Prasad Singh Resident of Jalalpur Post - Bela P.S. Dariyapur District Saran (Chapra)
15. Rajnikant Singh Son of Late Sita Ram Singh P.O. Parsa, P.S. Parsa, District - Saran (Chapra)
16. Punam Kumari Singh Wife of Sikander Prasad Singh Resident of village - Basti Jalal P.S. Dighwara, District - Saran (Chapra)
17. Kamlesh Kumar Singh Son of Shree Lakhan Deo Singh Resident of village - Dharhara, Post Darihat, District - Rohtas (Sasaram) Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Education Department, Government of Bihar, Patna
2. The Principal Secretary Education Department, Government of Bihar, Patna
3. The Director, Education Department, Government of Bihar, Patna
4. The District Education officer, Bettiah, West Champaran
5. The District Education officer, Sasaram, Rohtas
6. The District Education officer, Chapra, Saran
7. The Deputy Commissioner (DDC) Cum Chief Executive Officer, District Board, Sasaram, Rohtas
8. The Deputy Commissioner (DDC) Cum Chief Executive Officer, District Board, Bethia, West Champaran
9. The Deputy Commissioner (DDC) Cum Chief Executive Officer, District Board, Chapra, Saran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K.Shahi, Sr. Advocate
Mr. Vikas Kumar, Advocate
Mr. Manoj Kumar Singh, Advocate



For the State : Mr. Vikash Kumar- SC11
Mr. Ram Krishna, Advocate

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
CAV JUDGMENT**

Date : 22-02-2018

Petitioners have filed the present writ petition for quashing the orders of termination passed by the Deputy Development Commissioner-cum- Chief Executive Officer, District Boards, West Champaran at Bettiah, DDC-cum- Chief Executive Officer, District Board Chapra and DDC cum Chief Executive Officer, Rohtas at Sasaram dated 12.08.2015, 11.12.2015 and 22.08.2015 respectively whereby the services of the petitioners have been terminated.

2. The foundational facts set out in the writ petition are as follows:

(i) The petitioners claim to have obtained Bachelor of Library degree in the Sessions 2003-04 from the University of Technology and Science, Raipur, Chhattisgarh. (hereinafter referred to as 'Niji Kshetra Vishwavidyalaya')

(ii) In response to the advertisement issued in the year 2009, petitioners had applied for appointment on the post of Librarian.

(iii) The University from which the petitioners have obtained B.Lib. Degree was constituted under the Act of the State of Chhattisgarh.



(iv) On 11.02.2005 the Supreme Court quashed the provisions of Chhattisgarh Niji Kshetra Vishwavidyalaya (Sthapana or Viniyaman) Adhiniyam 2002 and as per the direction of the Supreme Court the University ceased to exist. However, liberty was granted to such institution to take affiliation from the State University.

(v) The petitioners claim that Department of Education, Chhattisgarh has certified that the degree obtained in the year 2004 was a valid degree.

(vi) The petitioners under the aforesaid circumstances claim that degree of B.Lib. obtained by petitioners is valid and genuine.

(vii) Petitioners claim that the Education Department of the State of Bihar has also, on verification, found that the certificate granted to the petitioners as legal and valid and after five years of their appointment, the petitioners have been terminated without compliance of principles of natural justice.

3. In the counter affidavit the respondents have taken stand that the degree of the petitioners is not valid. The appointment of the petitioners was with specific condition that it shall be subject to the verification of the certificate and if during verification certificate is found to be not genuine, their services



shall be liable to be terminated. The State in the counter affidavit has stated that after due scrutiny, the Niji Kshestra Vishwavidyalaya was found to be fake University in terms of proviso "C" of Rule 2008 for appointment of Librarian and as such the State has decided to terminate the services of the petitioners and thereafter the Chief Executive Officer, District Board, West Champaran enquired about the status of the University and after due verification and on ascertaining the fact that the University was a fake University, terminated the services of the petitioners. Their contention in the counter affidavit is that the appointment of petitioners was on the basis of certificate which is *ab initio* void and as such the termination of petitioners is covered by the various judgments of the Patna High Court.

4. On behalf of the State supplementary as well as second supplementary counter affidavits have been filed pursuant to different orders passed by this Court and in the 2nd supplementary counter affidavit, specific stand has been taken that in view of the judgment of the Supreme Court in the case of **Prof. Yashpal & Ors. Vs. The State of Chhatisgarh & Ors.: (2005) 5 SCC 429** the degree of the University recognized by the UGC/NCTE is only to be considered and since the petitioners have obtained degree from a University which was held to be not in



accordance with law and declared as illegal and invalid and as such the degree obtained by the petitioners cannot be considered as recognized for the purpose of appointment. In the counter affidavit filed by respondent No. 2 statement has been made in paras 6 and 7 as follows:

“6. That as from the perusal of the record of the writ application, it is apparent that the petitioners had applied for the post of Librarian issued by the different Niyojan Unit in the year 2009 and their candidature were considered by the Niyojan Unit 2010 onward, where as the State Government vide its letter No. 1509 dated 12.10.2009 had communicated to D.E.O., West Champaran with an instruction not to consider the degree of fake institutions which are not in existence and accordingly, a list of fake institution had been provided to them. It is further relevant to state here that a list of fake universities has also been advertised in the daily newspaper on 27.11.2008. A photo copy of letter No. 1509 dated 13.10.2009 is being annexed herewith and marked as Annexure-B to this affidavit.

7. That it is further relevant to state here that at the level of the Certificate Verification Cell, Secondary Education, a letter contained in memo No. 52 dated 19.05.2010 has once again been circulated to all concerned D.E.O. and D.S.E., with direction not to consider the degree which had been obtained from fake universities/institutions. A photocopy/typed



copy of letter No. 52 dated 19.05.2010 is being annexed herewith and marked as Annexure-C to this affidavit.”

5. On the strength of the documents enclosed as Annexures-B and C stand has been taken by the respondents that in view of the judgment of the Supreme Court in the case of Prof. Yashpal (supra) the degree obtained by the petitioners are void *ab initio* and as such employment obtained on the basis of degree from such fake/recognized institution cannot be treated as valid appointment.

6. In I.A. No. 6433 of 2017, the interveners have stated in para-7 that pursuant to the order passed by the High Court in PIL (CWJC No. 15459 of 2014), the matter with regard to the teachers and Librarian was handed over to the State Vigilance and during the enquiry by the Vigilance the certificates of the petitioners obtained from the University of Technology and Science, Raipur were found to be invalid and fake and as such they have been removed. In para-10 of the interlocutory application the interveners have stated as follows:-

“10. That under Right to Information Act the deponent asked for information from UGC, New Delhi as to whether the University of Technology and Science, Raipur was recognized in the Academic



Session 2003-04 or not and further he also asked for information as to whether the University of Technology and Science, Raipur was recognized by the UGC or not and as per the information given by the UGC the University of Technology and Science, Raipur, Chhatisgarh was not recognized/ enlisted in the list of UGC in Academic Sessions 2003-04 and further information was given that the University of Technology and Science, Raipur, Chhatisgarh was never recognized by the UGC. Photo copy of the information given by the UGC dated 21.1.2016 and 30.5.2017 are annexed herewith and marked as Annexure-1/2 to this petition.”

7. On the basis of the aforesaid communication stand has been taken by the interveners that the degree obtained by the petitioners from the University of Technology and Science, Raipur, Chhatisgarh was invalid and the petitioners cannot derive any benefit on the basis of such degree.

8. Mr. P.K.Shahi, learned senior counsel appearing on behalf of the petitioners has argued that the petitioners were appointed by the respondents on the basis of the degree of Library Science obtained from the University of Technology and Science, Raipur, Chhatisgarh which was established under the Act of the State of Chhatisgarh. The said University was legal, valid and recognized by the State of Chhatisgarh and only in the year 2005 the Apex Court vide judgment dated 11th February, 2005 declared



the constitution of the University under the State Act as incompetent and quashed the provisions of Sections 5 and 6 of the State Act.

9. Mr. Shahi submitted that as a consequence of declaring provisions of Sections 5 and 6 of the State Act as ultra vires and quashing the notification notifying the University and declaring that such University shall cease to exist by the Apex Court in Prof. Yashpal case will operate prospective and will not in any manner adversely affect the degree obtained by the petitioners prior to the judgment of the Apex Court dated 11.2.2005. He placed reliance on para-64 of the said judgment to contend that the Apex Court has issued direction keeping in view the student studying in the institution and as such this Court should consider the case of the petitioners in the light of the protection extended by the Apex Court to the student pursuing courses in such institution. Para-64 of the judgment which reads as follows:-

“64. As a consequence of the discussion made and the findings recorded that the provisions of Sections 5 and 6 of the Act are ultra vires and the Gazette Notifications notifying the Universities are liable to be quashed, all such Universities shall cease to exist. Shri Amarendra Sharan, learned Additional



Solicitor General has submitted that the UGC had conducted an inquiry and it was found that most of the Universities were non-existent, but the report was not placed before the Court as the complete exercise had not been done. Learned counsel for the Universities have seriously disputed this fact and have submitted that the Universities are functioning. We have not gone into this question as it is purely factual. In order to protect the interests of the students who may be actually studying in the institutions established by such private Universities, it is directed that the State Government may take appropriate measures to have such institutions affiliated to the already existing State Universities in Chhattisgarh. We are issuing this direction keeping in mind the interest of the students and also Sections 33 and 34 of the Act, which contemplate dissolution of the sponsoring body and liquidation of a University whereunder responsibility has to be assumed by the State Government. It is, however, made clear that the benefit of affiliation of an institution shall be extended only if it fulfills the requisite norms and standards laid down for such purpose and not to every kind of institution. Regarding technical, medical or dental colleges, etc. affiliation may be accorded if they have been established after fulfilling the



prescribed criteria laid down by the All India Council of Technical Education, Medical Council of India, Dental Council of India or any other statutory authority and with their approval or sanction as prescribed by law.”

10. Mr. Shahi submitted that effect of the judgment in Prof. Yashpal’s case (supra) would be prospective and will not in any manner adversely affect the degree obtained by the petitioners in the academic sessions 2003-04 i.e. prior to 5th of February, 2005.

11. Mr. Shahi also contended that the issue with regard to validity of the degree of the petitioners was challenged in CWJC No. 19959 of 2010 which was dismissed and as such the respondents are stopped from reopening the matter of validity of the degree of the petitioners and taking action of termination.

12. Mr. Vikash Kumar, learned counsel appearing on behalf of the State submits that the provisions of Sections 5 and 6 was held to be ultra vires by the Apex Court and the effect of quashing of the notification notifying the University is that the University never existed and as such the degree obtained by the petitioners from the University is nullity. He submitted that the University, which was constituted under the provisions of Sections 5 and 6, was declared by the Apex Court to be ultra vires the



consequential notification notifying the University was also quashed and as such the degree obtained by the petitioners from the University in question was only a waste paper and as such the petitioners cannot derive any benefit out of such degree. He submitted that the judgment of the Apex Court has to be read as operating from the inception of the notification and as such the submission of Mr. Shahi that it will not adversely affect the degree of petitioner is misconceived.

13. Mr. Vikash Kumar submitted that the Apex Court has only protected the interest of those students who were actually studying in the institution and in their case the Apex Court directed the State Government to take such step to have such institution affiliated to the already existing State Universities. In view of Sections 33 and 34 of the State Act which provide for dissolution of the sponsoring body and liquidation of the University which cause an obligation on the State Government to take care of the students admitted in such institution. Beyond the protection provided by the Apex Court in para-64 no other category of students are covered by the judgment of the Apex Court in Prof. Yashpal's case (supra). He submitted that paragraphs 36 to 40 and paras 64 and 65 of the judgment if read together will lead to only one conclusion that only with regard to



the students pursuing courses in the University created under the State Act, their interest was protected by the Apex Court with specific conditions.

14. He next contended referring to the judgment of the Apex Court in the case of **B.A.Linga Reddy vs Karnataka State Transport Authority & Ors.: (2015) 4 SCC 515** that the Apex Court has the jurisdiction to declare that judgment will operate prospective. He referred to paragraphs 38 and 39 of the judgment which reads as follows:

“38. We refrain to dilate upon the various aforesaid aspects as these were required to be considered by the State Government when such objections had been taken before it by KSRTC. It was necessary to consider, inter alia, the objections raised by the KSRTC as to the necessity of modification, legality of the permits which were granted and the plea of discrimination so raised by other operators including the observation made above by this Court in KSRTC v. Ashrafulla Khan (supra).

39. Resultantly, the appeals being bereft of merits are hereby dismissed. Let State Government hear the objections, consider and decide the same in accordance with law by a reasoned order within 3 months. In the intervening period, the arrangement as directed



by the High Court in the impugned order to continue.”

15. On the basis of the aforesaid he contended that the judgment operates from retrospective effect and not from the date of the judgment and as such the degree obtained prior to 5th February, 2005 will be nullity with retrospective effect and the effect of quashing of the notification notifying the University would render the degree obtained by the petitioners as null and void.

16. Having heard counsel for the parties and on perusal of the materials available on the record, the court finds that the University in question was established under the State Act of Chhatisgarh and the Apex Court after due scrutiny of the legislative power in the matter of setting up of the University clearly held out the provisions of Sections 5 and 6 of the Act to be ultra vires as a result thereof, the Apex Court has also quashed the notification notifying the University and as such the University constituted under Sections 5 and 6 of Chhatisgarh Act shall be deemed to be non-existent University and as such the degree obtained from such University is only a waste paper.

17. The contention of learned senior counsel appearing on behalf of the petitioners that during the verification the Government of Chhatisgarh and the Government of India has



recognized the course conducted by the University of Technology and Science, Raipur does not merit any consideration for the reason that the letter of the Government of India, contained in Annexure-9 dated 29th January, 2004 cannot come to the rescue of the petitioners for the reasons that the judgment of the Apex Court, whereby the notification notifying the University was quashed was of subsequent date and the consequential effect would be the degree of B.Lib. was of a non-existent University and the same cannot be infused validity on the basis of letter dated 29th January, 2004 issued before judgment of the Apex Court in Prof. Yashpal's case.

18. So far as the reliance placed on Annexure-7, the decision of this Court dated 15.5.2014 is concerned, the said decision does not, in any manner, preclude the respondents from taking action of termination of the petitioners. In fact, this Court has already indicated in the said decision that the authorities are required to take into account the fact that the persons appointed with qualification received from an institution which has not been recognized and were allowed to continue in service and as such the decision contained in annexure-7 does not help the petitioners. The letter of the Deputy Director, Secondary Education dated 19th May, 2009 enclosed as Annexure 9/1 is clinching on the point that



this institution was categorized as non-existent. The name of the institution finds place at Sl. No. 5 of the list appended to Annexure-1/1 dated 19.5.2009. In addition thereto, the document enclosed as Annexure 9/2 is also indicative of the fact that the institution in question was not recognized by the UGC.

19. The submission of Mr. Shahi, learned senior counsel for the petitioner is that the University was established under the State Act and it was recognized by the State of Chhatisgarh as such the degree obtained by the petitioners has to be accepted as a valid degree for the purpose of their continuance. The degree recognized by the State of Chhatisgarh is only binding on the State of Chhatisgarh, so far as validity of such degree in the State of Bihar is concerned, it is not binding as it is not recognized by the UGC and in view of the judgment of the Apex Court in the case of Prof. Yashpal, the degree obtained by the petitioners cannot be accepted as recognized and valid degree and as a result thereof, the Court does not find any infirmity in the action of the respondents in terminating the services of the petitioners.

20. The last limb of argument that the petitioners have been terminated without complying with the principles of natural justice after contemplating departmental enquiry, the said submission does not merit any consideration as there is no denial



of the fact that they have obtained degree from the State University created under the provisions of Sections 5 and 6 of the State Act Chhatisgarh and the said provision was held to be ultra vires by the Apex Court. Once it is accepted, the issue of compliance of natural justice is unsustainable as it would be exercise in futility. The Apex Court has already decided the principle of useless formality theory in the matter of compliance of natural justice. Reference in this connection may be made to the judgment of the Apex Court on the case of Vs. V.K.Awasthy: (2005) 6 SCC 321, para 17 of which is quoted here for ready reference.

“17. What is known as 'useless formality theory' has received consideration of this Court in M.C. Mehta v. Union of India, [1999] 6 SCC 237. It was observed as under:

22. "Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed (See *Malloch v. Aberdeen Corpn.*, [1971] 2 All ER 1278, HL (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*, [1971] 2 All ER 89; *Cinnamond v. British Airports Authority*, [1980] 2 All ER 368, CA and other cases where such



a view has been held. The latest addition to this view is *R. v. Ealing Magistrates. Court, ex p. Fannaran*, (1996) 8 Admn. LR 351, 358) See *de Smith, Suppl. P.89* (1998) where *Straughton, L.J.* held that there must be 'demonstrable beyond doubt. that the result would have been different. Lord Woolf in *Lloyd v. McMohan*, [1987] 1 All ER 1118, CA has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy v. Grant*, (1959) NZLR 1014 however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood-not certainty- of prejudice.' On the other hand, *Garner Administrative Law* (8th Edn. 1996. pp.271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin*, (1964) AC 40: [1963] 2 All ER 66, HL), *Megarry, J.* in *John v. Rees*, [1969] 2 All ER 274 stating that there are always 'open and shut cases. and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms' More recently, Lord Bingham has deprecated the 'useless formality theory' in *R. v. Chief Constable of the Thames Valley Police Forces, ex p. Cotton* (1990 IRLR 344) by giving six reasons (see also his article 'Should Public Law Remedies be Discretionary?' 1991 PL. p.64). A detailed and emphatic criticism of the 'useless formality theory. has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL.pp.27-63) contending that *Malloch* (supra) and *Glynn* (supra) were wrongly



decided. Foulkes (Administrative Law, 8th Edn. 1996, p.323), Craig (Administrative Law, 3rd Edn. P.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn. 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn. 1994, pp.526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala v. S.K. Sharma*, [1996] 3 SCC 364 and *Rajendra Singh v. State of M.P.*, [1996] 5 SCC 460 that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality theory' and leave the matter for decision in an appropriate case, inasmuch as the case before us,



`admitted and indisputable' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy,J.
(emphasis in original)”

21. In the result the Court does not find any merit in the writ petition which is, accordingly, dismissed.

(Anil Kumar Upadhyay, J)

spandey/-

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