IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10397 of 2014

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Kiran Kumar, son of Sri Yadumani Barik, resident of village- Madhusudan Nagar, Gurudham, Police Station- Bounsi, District- Banka, at present Peon, Shyamacharan Sanskrit Vidyapith, Bounsi (Banka).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Department, Patna.
3. The Director, Higher Education, Bihar, Patna.
4. The Kameshwar Singh Darbhanga Sanskrit University, through its Registrar.
5. The Vice-Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
6. The Registrar, Kameshwar Singh Darbhanga Sanskrit University, Darbhanga.
7. The Governing Body, Shyama Charan Sanskrit Vidyapith, Bounsi (Banka) through its Secretary.
8. The Secretary, Shyama Charan Sanskrit Vidyapith, Bounsi (Banka).
9. The President, Shyama Charan Sanskrit Vidyapith, Bounsi (Banka)
10. The Principal, Shyama Charan Sanskrit Vidyapith, Bounsi (Banka).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tara Nath Jha, Advocate
For the Respondent/s : Mr. Sushil Kr. Singh, AC to AAG-10
For the University : Mr. Gyanand Ray, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date: 01-11-2018

Heard learned counsel for the petitioner, State and the University.

2. Petitioner is aggrieved by the decision of the University contained in Annexure-11 dated 21.04.2014. The office order (Annexure-11) dated 21.04.2014 indicates that the appointment of the petitioner, which was approved pursuant to the decision of the Syndicate of the University dated 15.12.2012 was cancelled by the order of the Vice-chancellor and communicated vide office order

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issued by the Registrar contained in Memo No. 2658/14 dated 21.04.2014.

3. Mr. Taranath Jha, learned counsel appearing for the petitioner submits that the appointment of the petitioner was approved by the Syndicate of the University and after approval by the Syndicate, the University has no power to review the order granting approval of the services of the petitioner. He next contended that in the matter of appointment against sanctioned post, the State has absolutely no role to play. Section 35 of the Bihar State Universities Act applies only in case the post has not been sanctioned by the State Government.

4. From perusal of the counter affidavit filed on behalf of the State, the only stand is with reference to Section 35 of the Universities Act, there is no dispute that the appointment of the petitioner was made after following the due procedure, objection is only that the appointment was not made after approval of the State Government. The objection of the State in the matter of appointment against sanctioned post is totally misconceived. The State under Section 35 of the Act can only interfere in the matter of appointment in exercise of power under Section 35 of the Act, if the posts are not sanctioned or created with the prior approval of the State Government. It has no role to play in the matter of appointment in the University, if

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the post is sanctioned one.

5. From the materials available on the record, it would manifest that after due selection process, the petitioner was appointed as Peon in the College. The petitioner was appointed after advertisement in Daily Newspaper, namely, Hindustan on 15.09.2009 and after the appointment of the petitioner following the selection process, the appointment of the petitioner was duly approved by the Syndicate of the University. Once the Syndicate has approved the service of the petitioner against the sanctioned and vacant post, the State has absolutely no jurisdiction to find fault with the appointment of the petitioner.

6. Considering the rival submission of the parties and on consideration of the materials available on record, the Court is of the view that the objection raised by the State Government has absolutely no substance and the action of the University under the dictate of the State Government is also illegal and arbitrary. It has been settled way back that order at the dictate of superior is nullity. Reference in this connection may be made to the judgment of the Apex Court in the case of **Purtabpore Co. Ltd vs. Cane Commissioner of Bihar & Ors**, reported in **AIR 1970 SC 1896** where the Apex Court has held out that the decision at the dictate of the superior official is nullity.

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7. The Court is of the considered view that the order contained in Annexure-11 cancelling/recalling the order of approval is totally without jurisdiction as under the University Act, the University has absolutely no jurisdiction to review the decision taken i.e. the approval of the service of the petitioner. Reference in this connection may be made to the judgment of the Apex Court in the case of **Dr. Smt. Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya Sitapur (UP) and others**, reported in **AIR 1987 AIR 2186**.

8. Considering the case of the petitioner in the case of **Purtabpore Co. Ltd vs. Cane Commissioner of Bihar & Ors (**supra), and the decision of the Apex Court in the case of **Dr. Smt. Kuntesh Gupta** (supra) the Court is of the considered view that the order contained in Annexure-11 cannot sustain. It is accordingly, quashed. The respondents are directed to grant all consequential benefits to the petitioner on account of appointment and approval of the same by the Syndicate vide decision dated 15.12.2012 expeditiously within a period of four months from the date of receipt/production of a copy of this order.

It goes without saying that the State is under obligation to provide fund for payment of salary to the employees of the University appointed against the sanctioned post.

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9. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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CAV DATE	NA
Uploading Date	06.11.2018
Transmission Date	

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