

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1297 of 2018

In
Civil Writ Jurisdiction Case No.15376 of 2018

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1. The Chancellor, Universities of Bihar through the Principal Secretary, Raj Bhawan, Patna.
 2. The Principal Secretary, Governor's Secretariat, Raj Bhawan, Patna.
 3. The Officer On Special Duty (University), Raj Bhawan, Patna.

Respondents 2 to 4/Appellants

Versus

1. Dr. Dinesh Prasad Sinha, son of Late Ramdhani Singh, Principal, Gaya College, Gaya, Magadh University, Bodh Gaya, at Present Resident of Mohalla-Chhotki Nawada, Police Station-Delha, District-Gaya (Bihar).

Writ petitioner/Respondent

2. The Vice Chancellor, Magadh University, Bodh Gaya.
3. The Registrar, Magadh University, Bodh Gaya.
4. The State of Bihar through the Principal Secretary, Higher Education Department, Government of Bihar.

Performa Respondents

Appearance :

For the Appellants	:	Mr. Rajendra Kumar Giri, Advocate
For the Writ petitioner/respondent	:	Mr. Rabi Bhushan Prasad No. 1, Advocate
For the University	:	Mr. Shivendra Kishor, Senior Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey -Aag15

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2018

Heard Shri R.K. Giri, learned counsel for the Chancellor and Shri Shivendra Kishor, learned Senior Counsel for the Magadh University and Shri Ashutosh Ranjan Pandey, learned A.A.G.-15 for the State as well as Shri Rabi Bhushan Prasad-I, for the respondent-petitioner.

2. His Excellency-the Chancellor and the officials



are in appeal before us questioning the correctness of the judgment of the learned Single Judge whereby the writ petition filed by the respondent-petitioner has been allowed and the order dated 28th of July, 2018 subjecting the respondent-petitioner to transfer pending an enquiry has been quashed.

3. The learned Single Judge has held, that the Chancellor since exercises appellate powers, therefore, he could not have proceeded to pass an order, that too even on the complaint of a Member of Parliament. The learned Single Judge has further held that this would amount to taking away the right of appeal of the respondent-petitioner and consequently denying the statutory remedy to him would also be a violation of law. The learned Single Judge has further relied on **Purtabpore Co. Ltd. Vs. Cane Commissioner of Bihar & Ors. (AIR 1970 SC 1896)** as well as a Division Bench judgment of this Court in case of **Abdul Muttalib Vs. The State of Bihar & Ors (1985 PLJR 931)** to come to the conclusion that an order passed at the behest of the superior would be a nullity.

4. Learned counsel for the appellants submits that both the legal grounds taken for allowing the writ petition are unsustainable inasmuch as the learned Single Judge has overlooked the statutory provisions of Section 9 (4) (a) and



Section 9 (7) (i) (ii) and (iii) of the Bihar State Universities Act, 1976, (hereinafter referred to as the 'Act') that clearly spell out the scope and powers of the Chancellor which can be exercised by him either by way of entertaining a review or an original application. The respondent-petitioner instead of availing of the said statutory remedy straightway filed the writ petition and the learned Single Judge erred in treating the exercise of powers by the Chancellor to be usurping a jurisdiction which otherwise is not possessed by him. It is submitted that the ratio of the decisions relied on by the learned Single Judge are not attracted at all on the facts of the present case.

5. From the record, we find that the impugned order which was under challenge came to be passed after a complaint letter dated 19th of June, 2018 from one Mr. Sushil Kumar Singh, Member of Parliament, was received by the appellants. The same recites that since one Dr. Sudhir Kumar Mishra was placed at serial No. 1 in the list of the appointments of the colleges under the Magadh University and the name of the respondent-petitioner was at serial No. 9, therefore, such appointment being made overlooking the said seniority position, should be taken into account to transfer the respondent-petitioner back to his original post. Certain other vague



allegations were made, but it appears from the memo of appeal that there were certain other complaints made as well.

6. It appears that largely based on the said complaint and the letter of the Member of Parliament, the appellant no. 1 directed an enquiry to be held by the Vice-Chancellor of the Magadh University against the respondent-petitioner and simultaneously relieved him of his duties of Principal from the present place of posting to his previous place. It is this order and the consequential notification that came to be challenged by the respondent-petitioner contending that the order was passed at the behest of the Member of Parliament and that the appellant had not exercised the power in accordance with law which was arbitrary and violative of Article 14 of the Constitution of India.

7. During the pendency of the appeal, it appears that a contempt application was filed and as a consequence thereof, a legal opinion seems to have been rendered, on the basis whereof the respondent petitioner was allowed to continue on his place of posting as Principal of Gaya College, Gaya. Consequently, the judgment of the learned Single Judge came to be complied with.

8. It is informed by the learned counsel for the



Magadh University that in compliance of the direction of the Chancellor, an Enquiry Committee was set up and the said Enquiry Committee has already tendered its report to His Excellency, the Chancellor. Learned counsel submits that as per the instructions, the report does not appear to be adverse to the respondent-petitioner but the fact remains that the directions of the appellant have been complied with and nothing remains to be done at the end of the University.

9. Learned counsel for the appellants submits that nothing has proceeded so far and, therefore, in the background aforesaid, it is evident that after the quashing of the impugned order, the respondent-petitioner has been allowed to continue where he was the Principal as on the date of the passing of the impugned order and the enquiry has also been conducted by the University. In such circumstances, the entire exercise that emanated on the basis of the said complaint has culminated to a point where the respondent-petitioner cannot be held at fault.

10. Thus, the appeal in so far as the said relief is concerned has become redundant and no fruitful purpose would be now served so as to entertain the appeal on that ground.

11. However, learned counsel for the appellants urged that the observations of the learned Single Judge on the



scope of powers of the appellant no. 1 run contrary to the statutory provisions of the Act wherein the Chancellor is not denuded of any such authority as observed by the learned Single Judge.

12. To that extent, we find ourselves in agreement with the argument of the learned counsel for the appellants that so far as the present case is concerned and on the facts referred to above, the Chancellor was not exercising any appellate power but had the powers to issue such directions as were necessary keeping in view the provisions of Section 9 (7) (ii) of the Act.

13. Accordingly, without approving the reasoning given by the learned Single Judge to the above extent, since it would be a futile exercise to interfere with the impugned judgment, we consign this appeal to records subject to above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Saif/-

AFR/NAFR	AFR
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Uploading Date	
Transmission Date	

