IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11984 of 2014

==========

Dr. Ramayan Prasad son of Late Ram Sawarath Singh resident of Lohanipur, Kadamkuan, P.S. Kadamkuan, District - Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna
2. The Chancellor of University of Bihar, Raj Bhawan, Patna
3. Magadh University, Bodh Gaya through its Registrar
4. Vice Chancellor, Magadh University, Bodh Gaya
5. Registrar, Magadh University, Bodh Gaya

... ... Respondent/s

==========

Appearance :
For the Petitioner/s : Mr. Abhinav Srivastava, Advocate
Mr. Ujjawal Bhushan, Advocate
For the University : Mr. Shivendra Kishore, Sr. Advocate

==========

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 11-07-2018

Heard Mr. Abhinav Srivastava, learned counsel for the petitioner and Mr. Shivendra Kishore, learned counsel appearing on behalf of the University.

2. The only dispute involved in the present writ petition is whether the petitioner is entitled to payment of salary of the substantive post for the period in between 19th February, 2013 to 19th August, 2013.

3. Mr. Abhinav Srivastava, learned counsel for the petitioner submits that the petitioner was appointed as Pro-Vice Chancellor of the Magadh University. The appointment of the petitioner as Pro-Vice Chancellor was subject-matter of adjudication by the Apex Court in Special Leave to Appeal (Civil)

WEB COPY

No. CC-7010/2013 and vide order dated 18.3.2013 the Apex Court stayed the functioning of this petitioner as Pro-Vice Chancellor. Mr. Srivastava submits that after the aforesaid order the petitioner had submitted his joining on 22nd of March, 2013. According to the petitioner, the joining was not accepted on the ground that the matter is pending before the Apex Court where his appointment as Pro-Vice Chancellor is under challenge. It appears that after adjudication by the Apex Court, the appointment of the petitioner as Pro-Vice Chancellor was held to be invalid and the petitioner was reverted back to his original post and he continued to discharge his responsibility. The dispute involved in the writ petition is for payment of salary for the period the petitioner was not allowed to join and denied the salary for the aforesaid period.

4. Mr. Shivendra Kishore, learned counsel for the respondent-University submits that the issue as to the payment of salary for the period aforesaid was adjudicated by the Hon'ble Chancellor, who has been pleased to reject the claim of the petitioner on the ground that the petitioner has not actually worked during the aforesaid period.

5. Mr. Abhinav Srivastava, on the other hand, placed reliance on the decision of this Court in LPA No. 1436 of 2015 wherein the principle issue was considered by the Division Bench.

WEB COPY

6. Mr. Shivendra Kishore has tried to distinguish the case on the ground that in that case joining was not accepted and as such the Division Bench directed for payment of salary for the period the appellant was not allowed to join.

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 principles 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.**

WEB COPY

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 own 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 assert -ed 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

WEB COPY

payment of salary of the petitioner for the period the petitioner was not paid his salary prior 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.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.07.2018
Transmission Date	

WEB COPY