

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19230 of 2014

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Birendra Narayan Choudhary, Son of Sri Narayan Choudhary, Resident of near
Kuldeep Vastralay, Golghar Chouraha, P.S. Budha Colony, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
 2. Magadh University, Bodh Gaya through its Vice-Chancellor, Bodh Gaya, P.S.-
Bodh Gaya, District- Gaya.
 3. The Vice Chancellor, Magadh University, Bodh-Gaya, P.S.- Bodh Gaya,
District- Gaya.
 4. The Registrar, Magadh University, Bodh-Gaya, P.S.- Bodh Gaya, District-
Gaya.
 5. The Principal, A.N.S. College, Barh, P.O. + P.S.- Barh, District- Patna
 6. The Principal Secretary, Human Resources Department, Higher Education, New
Secretariat, Patna
 7. The Deputy Secretary, Human Resources Department, Higher Education, New
Secretariat, Patna
 8. Patliputra University, Near Rajendra Nagar Terminal, P.S.- Patrakar Nagar,
through its Vice-Chancellor.
 9. The Vice Chancellor, Patliputra University, Patna.
 10. The Registrar, Patliputra University, Patna. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. N. K. Malhotra, Sr. Advocate
Mr. Binod Kumar Sinha, Advocate

For the Respondent/s : Mr. S. K. Mandal, SC-3
Mr. Bipin Kumar, AC to SC-3

For Magadh University : Mr. Shivendra Kishore, Sr. Advocate

For Resp. Nos. 8 to 10 : Mr. Anil Jaiswal, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date: 08-08-2018

Heard learned counsel for the petitioner, Magadh
University, Patliputra University, which is now bifurcated from the
Magadh University and the State.

2. The petitioner is aggrieved by the office order, as
contained in Memo dated 24.06.2014, (Annexure-11) whereby in
purported exercise of power under Article 9(1)(e) of the Service
Statute, the service of the petitioner has been terminated on the



ground of absence from duty for more than five years. The order contained in Annexure-11 is quoted herein below for ready reference:

कार्यालय आदेश

“प्रधानाचार्य, अनुग्रह नारायण सिंह कॉलेज, बाढ़ पटना के पत्रांक सी०/३८/१२ दिनांक २३.०१.१२ के द्वारा प्राप्त अनुशांसा तथा अभिषद की बैठक दिनांक ०८.१२.१३ के मद सं० ३० में लिये गये निर्णय तथा म० वि० वि० अधिनियम / परिनियम की धारा ९ (१) सी० के आलोक में श्री विरेन्द्र नारायण चौधरी, सहायक अनुग्रह नारायण सिंह कॉलेज, बाढ़ पटना को पाँच वर्षों से अधिक समय अनुपस्थित रहने के कारण महाविद्यालय से सेवा मुक्त किया जाता है।”

3. From perusal of Annexure-11, it does not appear that there is no any application of mind by the Vice-chancellor, who passed the order of termination of the petitioner. Article 9(1)(e) of the Service Statute permits the University to take such action, but before taking such action, the requirement is opportunity of hearing cannot be dispensed with.

4. Mr. Shivendra Kishore, learned senior counsel appearing on behalf of Magadh University submits that after Annexure-8, whereby a show-cause notice was issued on 03.04.2010 by the Principal of the College, show-cause reply was submitted by the petitioner to the Principal of the College and thereafter the University has passed the order, but while passing the order there is no reference or discussion of the show-cause reply. He also submitted that from the materials available on record including the



show-cause reply, it would be evident that the post on which the petitioner claims to have been appointed was not the sanctioned post and as such there is no infirmity in the order contained in Annexure-11. He further submits that there are reasons assigned in the file and those reasons are not required to be incorporated in the order.

5. Learned counsel appearing on behalf of the Patliputra University submits that the show-cause notice was issued by the Principal of the College and the petitioner has submitted reply to the Principal of the College and after consideration of the show-cause by the Principal of the College, the University has communicated the decision.

6. The Court is of the considered view that while passing the order contained in Annexure-11, there is no reference of Annexure-9 (show-cause reply) and there is no consideration that the post was not sanctioned and, therefore, the University took decision to terminate the service of the petitioner, as Section 35 of the Act bars appointment on a post not sanctioned by the State Government. Those reasons are not indicated in Annexure-11 and therefore the submission made on behalf of University does not merit any consideration. The Court also does not appreciate that the reason in the file will serve the purpose of reason in the order. There is no requirement that there should be a detailed reasoning while passing



the order, but reason has not been assigned in the order and reason in the file cannot be taken as reason for the purpose of passing reason justifying the interim order. It is well settled that noting in the file or discussion in the file is not the decision. The law in this regard is well settled in the judgment of the Apex Court in the case of **Bachhiter Singh vs. State of Punjab**, reported in **AIR 1963 SC 395**.

7. The Court also does not accept the submissions of the respondents that the order can be looked into in the light of the submission that the petitioner was not appointed against the sanctioned post and he has remained absent for nearly 10 years. The Court does not even approve the submission that it is a case of abandonment of service, as the respondents have issued show-cause. The object behind issuance of show-cause is to consider his explanation and if there is no consideration of explanation in the reply, the order has to be treated as unsustainable in law for the reason that reasons are the essence of the decision making as held by the Apex Court in the case of **S.N. Mukherjee vs. Union of India**, reported in **AIR 1990 SC 1984**.

8. Considering the totality of the facts situation, the Court is of the considered view that the order contained in Annexure-11 is not sustainable. However, Mr. Shivendra Kishore, learned



senior counsel appearing on behalf of the Magadh University justifies in making submission that in case the order is quashed on the ground of procedure impropriety, the matters requires reconsideration and the consequential benefit would abide by the final outcome of the decision by the competent authority after following the principles of natural justice, as held by the Apex Court in the case of **Managing Director ECIL Hyderabad & Ors. vs. B. Karunakar**, reported in **(1993) 4 SCC 727**.

9. Accordingly, the writ application is allowed to the extent that Annexure-11 is quashed. The matter is remitted back to the University, now successor Patliputra University, to take fresh decision after opportunity of hearing to the petitioner. The consequential benefit and monetary benefit will abide by the final decision to be taken by the Patliputra University, which must be taken by the Patliputra University within a period of four months from the date of receipt/production of a copy of this order.

10. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.08.2018
Transmission Date	

