

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9063 of 2016

Dr. Anil Kumar Singh, Son of Late Ramashray Singh, resident of Village + Post -Sherpur, Via- Vidyapati Nagar, P.S. Vidyapati Nagar, District-Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Agricultural Production Commissioner, New Secretariat, Patna, Bihar.
2. Rajendra Agricultural University, through the Registrar, Pusa, Samastipur, Bihar.
3. Vice Chancellor, Rajendra Agricultural University, Pusa, Samastipur, Bihar.
4. Director Administration, Rajendra Agricultural University, Pusa, Samastipur, Bihar.
5. Officer-in-Charge Recruitment, Rajendra Agricultural University, Pusa, Samastipur, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Sr. Advocate
For the University	:	Mr. Arbind Ujjwal, Advocate
For ICAR	:	Mr. S.N.Pathak, SC

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 14-05-2018 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the University.

The petitioner was denied selection as Programme Co-ordinator on the basis of allegation that the petitioner was, at the relevant time, put under suspension. The order of suspension was subsequently revoked. The respondents have prepared the select list in which the petitioner was at Sl. No. 2. the select list was approved by the Apex Body i.e. Board of Management of the University on 09.05.2015 and thereafter the respondents have ignored the case of the petitioner



notwithstanding the fact that there was two vacancy and he was at Sl. No. 2 in the merit list.

Mr. Ashok Kumar Choudhary learned senior counsel appearing on behalf of the petitioner submits that one Sanjay Kumar who was at Sl. No. 1 declined to join the post and as such there was two vacancy. In view of the above the respondents were obliged to offer appointment to this petitioners but on account of alleged pendency of proceeding the petitioner's appointment was kept in abeyance and one Rabindra Kumar Tiwary in the wait list was offered appointment. The petitioner has not challenged the appointment of said Rabindra Kumar Tiwary from the wait list but he is claiming his appointment on the one clear existing vacancy. He submits that in the instant case no charge was framed and as such respondents cannot claim for sealed cover procedure for the purpose of deciding the fate of the petitioner. The Apex Court in the case of *Union of India, Etc. Vs. K.V.Jankiraman, Etc.:* (1991) 4 SCC 109 = AIR 1991 SC 2010 has laid down that the pendency of criminal case and civil case and departmental proceeding shall be reckoned from the date the cognizance is taken in criminal case and the charge is framed in departmental proceeding. In the departmental proceeding, in the instant case,



no charge was framed and only on the basis of so called inquiry behind the back of the petitioner, the respondents have come to the conclusion that the petitioner is guilty and inflicted the punishment of censure.

Learned counsel for the respondent with reference to the counter affidavit filed in C.W.J.C. No. 14135 of 2017, has submitted that the petitioner was found guilty of irregularity of drawing access on the basis of wrong TA bill by the enquiry committee which is apparent misconduct and as such the petitioner was inflicted minor punishment of censure.

Under the aforesaid circumstance when it is admitted fact that no charge is framed, the court does not find a case of application of sealed cover procedure in terms of the judgment of the Apex Court in the case of *Union of India, Etc. Vs. K.V.Jankiraman, Etc.:* (1991) 4 SCC 109 = AIR 1991 SC 2010.

The Court of the considered view that the order of punishment visiting the petitioner with civil and civil consequence has to be passed after complying with the principle of natural justice. Admittedly the enquiry was not held with prior notice to the petitioner to enable him to participate in enquiry and as such on the basis of such enquiry report behind the back of the petitioner, the petitioner cannot be fastened with



any evil or civil consequences. Since the respondent -university has not chosen to even framed charges and to initiate any departmental proceeding. Punishment on the basis of such report is not sustainable even if it is minor punishment of censure. The Court does not find any substance in the submission of learned counsel for the University that the report was taken into consideration for denying the case of the petitioner for appointment against the post of Programme Co-ordinator.

In view of the law laid down by the Apex Court in the case of ***K.V.Jankiraman*** (supra), the Court direct the respondents to consider the case of the petitioner for appointment against vacant post of Programme Co-ordinator as at the relevant time when the case of the petitioner was considered by the respondents and merit list was prepared which was approved by the Board of Management with open eyes, no case was pending, and as such the respondents cannot be allowed to say that the petitioner was under cloud and as such not entitled for consideration.

Accordingly, the writ petition is allowed. The respondents are directed to consider the case of the petitioner, if otherwise there is no impediment. In the event the respondents



have decided to fill up the post by way of fresh selection process and if the fresh advertisement has not culminated in the selection, the respondents may grant opportunity to the petitioner to participate in the selection process if the petitioner applies within a period of one month along with a copy of this order as fresh candidate for selection as a candidate for the post of Programme Co-Ordinator.

With the aforesaid, the writ application stands allowed and disposed of to the extent indicated above.

(Anil Kumar Upadhyay, J)

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