

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2818 of 2015

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Shailendra Kumar Sinha, Son of Sri Bindeshwari Prasad, Resident of Mohalla - Bahadurpur Housing Colony, 4M/27, Police Station - Agam Kuan, Patna District – Patna.

.... Petitioner/s

Versus

1. Magadh University through its Registrar, Bodh Gaya, District - Gaya.
2. The Vice Chancellor, Magadh University Bodh Gaya, District - Gaya.
3. The Registrar, Magadh University Bodh Gaya, District- Gaya.
4. The University Engineer, Magadh University Bodh Gaya, District- Gaya.
5. The Finance Officer, Magadh University Bodh Gaya.
6. The Managing Director, Jharkhand Police Housing Corporation Ltd., Line Tank Road, Old Police Line, Ranchi – 1.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Kishore Prasad and Mr. Shafiuddin Ahmad, Advocates
For the Magadh University	:	Mr. Shivendra Kishore, Sr. Advocate Mr. Ritesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 18-08-2018

Heard learned counsel for the petitioner and Magadh University (hereinafter referred to as the ‘University’).

2. The petitioner has moved the Court for the following reliefs:

“That this writ application is filed on behalf of the petitioner for issuance of a writ either in the nature of Certiorari or an appropriate writ, pursuant to giving a direction to the Respondents concerned to REINSTATE the service to him after QUASHING the Annexure-16 to the writ petition, the order dated 5.1.2015 by which, his permanent/Regular Service to the post of Junior Engineer in the Magadh University has illegally and malafidely been TERMINATED by taking his/their BIASED STEP/VIEW against the petitioner on the vexatious and coercive part of the



Respondents concerned as showing “Annexure-A” the ORDER vide Ref. No. 3 GIB/GIB/15 date 15.01.2005 by filing his Supplementary Show Cause dated 6.1.2015 saying that since the reply of Sri Shailendra Kumar Sinha, Junior Engineer dated 8.12.2014 was not found satisfactory and absence without information/unauthorized leave for more than five years comes within the purview of Article 9(i) (e) of the Statute regarding the termination of service and accordingly, without passing the order of TERMINATION by the SYNDICATE, the Service of Sri Shailendra Kumar Sinha is erroneously and coercively on the mala fide part of the Registrar with the consent of Vice Chancellor as showing Annexure-‘A’ in his supplementary Show cause dated 6.1.2015 in M.J.C. No. 558 of 2014 is quite misconceived, untenable, vulnerable, without thought as well as totally based on taking view of UNTOWARDLINESS, and unsustainable at all.”

3. The petitioner was appointed in the Work Charge Establishment of the University by the Registrar on 30.05.1988 and on the post of Junior Engineer on a purely temporary basis. Thereafter, he was relieved for joining Navodaya Vidyalaya Samiti, Regional Office, Patna on the basis of deputation for a period of two years by the order of the Registrar of the University dated 08.10.1999. While still continuing on deputation, pursuant to advertisement by the Jharkhand Police Housing Corporation Limited, Ranchi (hereinafter referred to as the ‘Corporation’), the petitioner applied for the post of Junior Engineer (Civil) on deputation basis in December, 2002 and was also appointed on the post. By order dated 23.01.2003 of the Registrar of the University, the petitioner was



allowed to join in the University and on the same day was also relieved for joining as Junior Engineer (Civil) in the Corporation after giving him two years of leave without pay. By order dated 29.06.2010, the service of the petitioner was returned to his parent Department on administrative ground. The petitioner submitted his joining on 06.07.2010, before the Registrar of the University but no order being passed on that, ultimately he moved the Court in C.W.J.C. No. 5541 of 2011, which was disposed off by order dated 31.07.2013, directing the University to communicate the final decision of the University with regard to his grievance of not being allowed to function and also of not being paid the salary. When the order was not complied, the petitioner moved the Court again in M.J.C. No. 558 of 2014, which was disposed off on 16.01.2015, in view of the order passed by the University dated 05.01.2015, by which the service of the petitioner was terminated. The said termination order is under challenge in the present writ application.

4. Learned counsel for the petitioner submitted that the order impugned speaks of more than 5 years of unauthorized absence which is erroneous in view of the fact that for the said period, the Corporation was sending his contribution under the Group Insurance Scheme. Learned counsel further submitted that the University never wrote to the Corporation for returning the service of the petitioner if



the maximum period of grant of lien had exceeded and, thus, the petitioner having continued with his deputation, upon his return, was required to be allowed to join and remain in service and also paid his salary. Learned counsel further submitted that the case of the petitioner has not been properly considered resulting in an erroneous decision by the University to terminate his service.

5. Learned counsel for the University submitted that the petitioner has derived undue benefit right from the initial stage when he was appointed. It was submitted that the petitioner was straightaway appointed as a Junior Engineer, that too, directly and only under the orders of the then Registrar of the University on 30.05.1988, without there being any advertisement or procedure adopted prior to such appointment. Learned counsel drew the attention of the Court to the order itself which states that such appointment was in the Work Charge Establishment and purely temporary. Learned counsel submitted that such appointment was never approved either by the Vice Chancellor of the University, much less by the competent body of the University. Learned counsel submitted that, thus, the initial order allowing the petitioner to go on deputation to the Navodaya Vidyalaya Samiti dated 08.10.1999 was also only under the order of the Registrar of the University and even the reference to the same being approved by the Vice Chancellor is



not borne from the records which learned counsel has produced before the Court. It was submitted that even in the advertisement by the Corporation, the stipulation was that for the post of Junior Engineer (Civil), the candidate should be in Government/undertaking service in regular scale of the respective post for a minimum period of five years. Learned counsel submitted that it appears that while on deputation to the Navodaya Vidyalaya Samiti itself, the petitioner had applied for such job under the Corporation in December, 2002, without him being working in the University and once again, the then Registrar had directly forwarded such application of the petitioner to the Corporation on 24.12.2002. Learned counsel submitted that even the initial order of sending the petitioner on deputation to Navodaya Vidyalaya Samiti dated 08.10.1999 was itself beyond jurisdiction for the reason that there cannot be sending of any person on deputation who himself is not a confirmed employee working on a regular post and in the present case, it is an admitted fact that the petitioner was appointed in the Work Charge Establishment purely on a temporary basis without being ever confirmed on any regular post. Learned counsel further drew the attention of the Court to the order dated 08.10.1999, by the Registrar which also clearly indicates that his lien will be retained in the Department for two years. Here again, learned counsel submitted



that there cannot be any question of there being a retention of lien relating to Work Charge employee. In this respect, he further referred to even the note of the office in the main file dated 21.04.1999, which clearly indicated that in the University there was no sanctioned post of Junior Engineer and, thus, there was no provision for grant of any lien on the said post.

6. At this juncture, learned counsel submitted that even if, for the sake of argument, the lien was retained by the University initially for two years and then extended by one year, the period would come to an end on 17.10.2002, but the petitioner remained absent and only on 23.01.2003, he joined in the forenoon and in the same day in the afternoon, he was relieved for joining the Corporation. Learned counsel submitted that even the order dated 23.01.2003, speaks of only two years leave without salary and thereafter the petitioner neither sought for any extension nor any extension was granted by the University and only upon the Corporation sending his service back on administrative grounds, by order dated 29.06.2010, the petitioner submitted his joining in the University on 06.07.2010. Learned counsel submitted that, thus, looking from any angle, the petitioner's service, initially in the Work Charge Establishment, without any procedure being adopted and later even the initial deputation to the Navodaya Vidyalaya Samiti



continuing beyond the time allowed and thereafter again, the permission for deputation extending for only two years from 23.01.2003 on leave without pay, having ended on 22.01.2005, and the petitioner submitting his joining on 06.07.2010 i.e., much beyond five years, clearly the decision of the Syndicate dated 19.11.2014, for asking a show cause for remaining absent for more than five years without information and the same followed by the University serving show cause and upon the petitioner submitting the same, finding it to be unsatisfactory, the University has rightly exercised the power under Clause 9 (1) (e) of the Statute No. 1 relating to General Conditions of Service of Employees of the Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila & K.S.D. Sanskrit Universities approved by the Chancellor on 29.09.1980 and communicated under letter dated 18.11.1980 (hereinafter referred to as the 'Statute').

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ application. From the admitted position, the petitioner having been appointed directly on the post of Junior Engineer in the Work Charge Establishment of the University by the Registrar itself was totally illegal. In view of the Full Bench decision of this Court in the Case of **Ram Sevak Yadav vs. State of Bihar** reported as **2013 (1) PLJR 964**, such appointment contrary to



the mandate of Article 14 of the Constitution of India without open competitive selection is illegal and void *ab-initio* and cannot be regularized under any circumstances. The relevant being at paragraph no. 43 reads as under:

“43. We therefore sum up our conclusions and answer the reference as follows:-

(A) Uma Devi (supra) prohibits regularization of daily wage, casual, ad-hoc and temporary appointments, the period of service being irrelevant;

(B) An illegal appointment void ab-initio made contrary to the mandate of Article 14 without open competitive selection cannot be regularized under any circumstances.

(C) Irregular appointments can be regularized if the appointment was made by an authority competent to do so, it was made on a vacant sanctioned post, in accordance with Article 14 of the Constitution with equal opportunity for participation to others eligible by competitive selection and the candidate possessed the eligibility qualifications for a regular appointment to the post.

(D) The appointment must not have been an individual favour doled out to the appointee alone and the person must have continued in service for over ten years without intervention of any court orders.”

8. This is one aspect of the matter. The other equally important aspect is the fact that a Work Charge Employee does not hold any lien, which is only for a permanent sanctioned post in a regular establishment. In the present case, neither there being anything or record to show that the petitioner was ever appointed in the regular establishment on a permanent post and rather there being



a specific note in the original records clearly stipulating that in the regular establishment, there is no sanctioned permanent post of Junior Engineer in the University, the Court has not hesitation to hold that there cannot be any occasion or question with regard to any person holding any lien on such Work Charge Establishment and further, even such appointment of the petitioner was purely on a temporary basis which itself excludes the petitioner from holding any lien as it is only on a permanent appointment on a regular post, which the petitioner never held. Moreover, nothing has been brought on record by the petitioner to show that his service was ever confirmed or made permanent on a regular post. Further, though it may not be relevant once the Court has held that there was no question of any lien, still it would be relevant to indicate that even the deputation of the petitioner to the Corporation was specifically for two years and there being no extension, either prayed for by the petitioner or granted by the University and the petitioner after 23.01.2003 submitting his joining in the University only on 06.07.2010, clearly disentitled him for being retained in the service of the University. The Court would also clarify that a Work Charge Employee being relieved without pay would mean that he is removed from such post and does not hold the post and nobody can be sent on deputation from such post. When the relieving order itself speaks



that the deputation is for two years without pay, it mean that even the Work Charge post held by the petitioner stands vacated as there is no payment on such post which clearly becomes vacant. Further, at the cost of repetition, even the period of two years was stretched to a limit beyond what is permissible under law as per the Statute, especially Clause 9(1(e) which reads as under:

“9 (1) Subject to the provisions of the Act and terms and conditions of transfer of the government servants concerned the service of a University servant may be terminated by the Syndicate on one or more of the following grounds:-

xxxxx

(e) continued absence from duty for more than five years.

xxxxx”

9. At this juncture, the Court would refer to the stand taken by learned counsel for the University that even the plea of requirement of holding a regular full fledged procedure before terminating the service of the petitioner as per the Bihar Service Code and other provisions was not required in the present case, as the petitioner does not hold a substantive appointment under the State to enable him to be protected under Article 311(2) of the Constitution of India. The Court finds the contention to be valid and justified. Here also, the Court would only add that the appointment itself not being substantial and further in view of the law laid down



by the Full Bench of this Court in the case of **Ram Sevak Yadav** (supra), such appointment coming under the category of an illegal appointment, there cannot be any requirement for the University to resort to a full fledged departmental inquiry route for terminating the service of the petitioner. Even going further, when the University has asked for a show cause from the petitioner and it being an admitted position that he was appointed illegally on Work Charge and had continued working under the Corporation much beyond the time stipulated, in terms of the Statute and the Law, there would not be any occasion for going for a full fledged inquiry once this basic fact is admitted, as nothing remains to be established or enquired into. Even before this Court, such admitted position has not been controverted.

10. Thus, taking an overall view in the matter and for reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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