

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12725 of 2014

=====

Dr. Shiv Bahadur Singh S/o Late Raj Kumar Singh Resident of Village
Rajandih, P.S. Rajpur, District- Rohtas.

... .. Petitioner/s

Versus

1. The Union of India, through Ministry of Culture, Govt. of India, Shastri Bhawan, New Delhi- 110001.
2. The Secretary, Department of Culture, Government of India, Shastri Bhawan, New Delhi- 110001.
3. Nava Nalanda Mahavihar, through its Registrar, Nalanda.
4. The Director, Nava Nalanda Mahavihar, Nalanda.
5. The Registrar, Nava Nalanda Mahavihar, Nalanda.
6. The Board of Management, Nava Nalanda Mahavihar through its Member Secretary- cum- Director, Nava Nalanda Mahavihar, Nalanda.
7. The Government of Bihar through Secretary, Higher Education, Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar, Adv.
For the Nava Nalanda Mahavihar	:	Mr. Shri Nath Pathak, Adv. Mr. Ashish, Adv.
For the State	:	Mr. Amresh Kumar Sinha, AC to GA1

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 21-12-2018

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order of Registrar vide letter no. NNM/BOM/ (31.8)/26.03.2014/196 dated 04.07.2014 by which he has been informed that the Board of Management unanimously decided and recommended that the post held by the petitioner be treated as vacant and be advertised at the earliest as per U.G.C. norms prescribed for that purpose.



The Committee, after deliberation, found that the post of Lecturer/Assistant Professor in Ancient Indian & Asian Studies held by the petitioner was neither advertised nor the appointment was made on the recommendation of duly constituted Selection Committee and, therefore, no proper letter of appointment has been issued in favour of the petitioner.

The Board was of the view that since the petitioner has rendered his services for a long period, the Selection Committee, constituted for the purpose of recruitment, would consider his candidature sympathetically.

The petitioner was appointed in year 1985 as Lecturer in the subject of Ancient Indian and Asian Studies. Earlier the Nava Nalanda Mahavihar University was under the State of Bihar and, later on, the Government of India has taken over this University and, accordingly, this University became Central University for the purpose of promoting studies, basically, the history of Buddhism, Study of Pali and Study of Sanskrit.

The administration is controlled by the Board of Management. The Board of Management in its 28th meeting held on 12.10.1998, decided to regularize 28 posts filled up on 25.02.1994, that date should be treated to be date of appointment in Nava Nalanda Mahavihar Society on 25.02.1994 and the list of



persons whose services have been regularized indicates the name of the petitioner at 7th place as Lecturer in the Ancient Indian and Asian Studies. So, on that date, the society itself has regularized the services of the petitioner w.e.f. 25.02.1994 and that appointment cum regularization has specific stipulation in the bye-laws of the Nava Nalanda Mahavihar University. In Clause 11 which speaks as follows:-

“All appointments/Promotions made prior to 25th February, 1994 shall be deemed to be valid.”

Therefore, the bye-laws itself recognized the appointment of those who have entered into the service of Nava Nalanda Mahavihar University on or before 25.02.1994 and, thereafter, the U.G.C. granted the status of Central University and has framed bye-laws. The instruction which has been issued by the U.G.C. dated 24.04.2014 wherein it has been mentioned that the U.G.C. has accepted the revised Memorandum of Association of Nava Nalanda Mahavihar which is in accordance with the norms of U.G.C. (Institutions Deemed to be University) Regulation, 2010 and requested to get the revised MOU/Rules registered with the Registrar of Societies as per provisions of Societies Registration Act, 1860. In the said memorandum, Clause 67 prescribes as follows:-

“67. SAVING CLAUSE/TRANSITIONAL PROVISION:



67.1 Notwithstanding the provisions of the above Rules, all the appointments of teaching, non-teaching and administrative staff made prior to the coming into force of these Rules shall be deemed to be valid.”

The aforesaid clause itself makes it clear that all the appointments of teaching and non-teaching staff, made prior to coming into force of this Rule, shall be deemed to be valid. So, in view of this deeming clause, the appointment of the petitioner along with others will be treated to have been made validly.

The University has deliberated the case of the petitioner in its 31st meeting of the Board of Management and arrived to a finding that the appointment of the petitioners was illegal as has been done without following the proper procedure, so, its status has been treated to be illegal order of appointment and directed for fresh advertisement.

It appears that the aforesaid facts, discussed above, were not brought to the notice of the members for consideration that the petitioner's services along with others was regularized in its 28th meeting and that has been accepted by the Nava Nalanda Mahavihar University as is apparently clear from the bye-laws itself. It suffers from illegality on account of the fact that the petitioner having been working since 1985 and the petitioner had made representation for his promotion, instead of granting the



same, the Board of Management has declared the appointment of the petitioner to be illegal and directed for fresh advertisement.

When a person has been working for such a long period with unblemished career, the minimum level of requirement of natural justice requires that he should have been asked for explanation to justify his appointment and his continuation in service. This part has also admittedly not been followed in the case of the petitioner.

In that view of the matter, the letter of the Registrar dated 04.07.2014 is quashed and this Court is of the view that the petitioner will be treated to be a person appointed legally along with other persons as explained herein above and the petitioner will be entitled to the benefit as per law.

With the aforementioned observation and direction, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.01.2019
Transmission Date	

