

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14752 of 2017

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(Dr.) Shyamanand Jha, Son of Late Shiv Shankar Jha, Resident of Mohalla-Shubhankarpur, P.S.- Town, District- Darbhanga at present posted as Principal (Under Suspension), Upshastri Mahavidyalaya, Pindaruch District- Darbhanga.

.... Petitioner/s

Versus

1. Kameshwar Singh, Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga, District-Darbhangha through its Registrar.
2. Vice Chancellor, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
3. Registrar, Kameshwar Singh Darbhanga Sanskrit University, Kameshwar Nagar, Darbhanga.
4. Governing Body, Upshastri Sanskrit College, Pindaruch, District Darbhanga through its Secretary, Dr. Hari Narayan Singh.
5. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V.Giri, Sr. Advocate Mr. Durga Nand Jha, Advocate
For the Respondent/s	:	Mr. Arvind Kumar, AC to GP-23
For the University	:	Mr. Awadhesh Prasad Sinha, Advocate
For Respondent No.4	:	Mr. Abivnav Shrivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date: 15-05-2018

Heard Mr. Y.V. Giril, learned senior counsel for the petitioner, learned counsel appearing on behalf of the University and learned counsel appearing on behalf of the respondent Governing Body.

2. The present writ petition has been filed by the petitioner for quashing of order as contained in Memo No. 1388 dated 21.08.2017 issued by the Registrar of the University with the permission of the Vice-Chancellor, whereby the respondent University has granted approval to work as senior teacher as incharge



Principal.

3. The petitioner has also prayed for quashing letter no. USMP/31R-236/17 dated 01.07.2017 whereby the petitioner was put under suspension in contemplation of Departmental Enquiry and Headquarter has been fixed in another Affiliated College.

4. Mr. Giri, learned senior counsel on behalf of the petitioner has drawn the attention of the Court to the subsequent development which was placed on record by way of Interlocutory application, bearing I.A. No. 8565 of 2017, whereby the respondent has issued order dated 10.11.2017 dismissing the petitioner from service with retrospective effect.

5. Mr. Giri, learned senior counsel appearing on behalf of the petitioner submits that dismissal from retrospective date is unknown to the service jurisprudence and as such the order of dismissal cannot sustain. He next submits that in the present case, the respondents have acted without jurisdiction in the matter of fixing the Headquarter of the petitioner in the college other than in which the petitioner was working as Principal. Mr. Giri next submitted that the petitioner was put under suspension, but he was not paid even a single farthing, as subsistence allowance. Mr. Giri with reference to the judgment of the Apex Court submits that the entire Departmental Proceeding vitiated on account of non-payment of subsistence



allowance.

6. Mr. Abhinav Shrivastava, learned counsel appearing on behalf of the Governing Body of the College submits that the petitioner has not continued at the place where his Headquarter was fixed and as such he was not paid subsistence allowance. With reference to provisions of University Statute he submitted that the Vice-Chancellor has jurisdiction in appropriate case to direct enquiry against the Principal of affiliated college and in the instant case when the charge is serious as to defalcation of amount to the tune of Rs.37 lakhs the action of the respondent should not be interfered with, as it will set to wrong precedent.

7. Considering the rival submissions made by the parties, the Court is of the considered view that the order of dismissal cannot operate from retrospective date and as such the order contained in Annexure-10 dated 10.11.2017 cannot sustain and, it is, accordingly quashed.

8. Adverting to the continuance of the Departmental Proceedings, the Governing Body has power to initiate Departmental Proceeding, but only in accordance with law. The Governing Body has to act in accordance with the Act and Statute, as the University runs by rule of law and not by rule of thumb. The Vice Chancellor may be superior authority in the University, but he is not above the



Act and Statute. His action has to be decided within the four corners of the Act and Statute and if he exceeds his jurisdiction, his order is *per se* illegal and without jurisdiction.

9. So far as fixing of Headquarter at the College, other than the College where the petitioner was the Principal, the Court does not find any justification for fixing the Headquarter outside the college, the action of the respondent in fixing the Headquarter in another College is totally without jurisdiction and the Court cannot approve such order of fixing the Headquarter at different College and as such the Court cannot approve the justification for non-payment of subsistence allowance to the petitioner.

10. Mr. Abhinav Shrivastava, learned counsel appearing on behalf of the Governing Body submits that it is difficult to allow this petitioner access to the college in question, as it may be render the conduct of Departmental Proceeding impossible and that is the reason he was posted in another affiliated college. The difficulty in conducting Departmental Proceedings does not authorize the respondent to act contrary to Act and Statute in contrary to rule of law, rule does not permit posting of the petitioner in other affiliated College, as every affiliated College is unit and, as such, the headquarter of the petitioner cannot be fixed at a different affiliated college.



11. The Court is of the considered view that in view of the judgment of the Apex Court in the case of **State of Maharashtra vs. Chandrabhan Tale**, reported in, **AIR 1983 SC 803** and the judgment of the Apex Court in the case of **Capt. M. Paul Anthony vs Bharat Gold Mines Ltd. & Anr.**, reported in 1999 SC 1416, the entire Departmental Proceedings stand vitiated for non-payment of subsistence allowance.

12. In the aforesaid circumstance, the Court does not approve the fixing headquarter of the petitioner to another affiliated college. The cumulative effect of the conduct of the Departmental Proceeding and denying subsistence allowance lead to only one irresistible conclusion that the entire action of the respondent is contrary and is indicative of the colourable exercise of power and, as such, the Court cannot approve such action.

13. The submission of Mr. Abhinav Shrivastava that under the Universities Service Statute there are certain provisions, which has to be made applicable in the case of affiliated college. With due respect, the Court is not inclined to accept the aforesaid contention. The University Service Statute is applicable to University servant and admittedly the teachers and the Principals of the affiliated colleges are not University servant and, therefore, the State Universities Service Statute is not applicable in the case of the



petitioner. The lacuna, if any, in the University Service Statute cannot be a ground for judicial legislation, it is the realm of the legislature to address the lacuna and not for the Court to legislate.

14. In the totality of the facts situation indicated herein above, the writ petition is allowed. The entire Departmental Proceeding is hereby quashed. The respondents are directed to ensure payment of the subsistence allowance in one go within a period of 30 days from the date of receipt/production of a copy of this order.

15. The claim as to the arrears of salary is not the subject matter of the writ application. However, the Court expects that the respondents will clear all the legitimate dues of the petitioner. The quashing of the entire proceeding will not disentitle the competent authority in taking decision afresh to initiate departmental proceeding in accordance with law, but the departmental proceeding shall be only permissible if the respondents clear the entire legitimate dues to the petitioner within the period as indicated hereinabove.

16. With the aforesaid, the writ application stands allowed to the extent indicated above.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.05.2018
Transmission Date	

