

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15376 of 2018

Dr. Dinesh Prasad Sinha Son of Late Ramdhani Singh, Principal, Gaya College, Gaya, Magadh University, Bodh Gaya, at Present Resident of Mohalla-Chhotki Nawada, Police Station-Delha, Distirct-Gaya (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Higher Education Department, Government of Bihar, New Secretariat, Patna.
2. The Chancellor, Universities of Bihar, Raj Bhawan, Patna.
3. The Principal Secretary, Governor's Secretariat, Raj Bhawan, Patna.
4. The Officer On Special Duty (University), Raj Bhawan, Patna.
5. The Vice Chancellor, Magadh University, Bodh Gaya.
6. The Registrar Magadh University, Bodh Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Anugrah Narayn, Sr. Advocate Mr. Rabi Bhushan Prasad No. 1, Advocate Mr. Vijay Prakash Bhargava, Advocate Ms. Binita Singh, Advocate
For the State	:	Mr. Kameshwar Kumar- GP-17
For the University	:	Mr. Shivendra Kishore, Sr. Advocate
For the Chancellor	:	Mr. R.K.Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 24-08-2018

Heard learned counsel for the petitioner and learned counsels appearing on behalf of the State, Magadh University and the Hon'ble Chancellor.

2. The grievance of the petitioner in the instant case is against the order dated 27.07.2018, as contained in Annexure-6, issued from the office of the Hon'ble Chancellor on the complaint of an M.P. (Annexure-5), and the order 28.07.2018, as contained in Annexure- 7, issued by the Registrar, Magadh University as follow up action of the University, whereby the petitioner has been



reverted back from the post of Principal, Gaya College, Gaya to Principal, S.S.College, Jehanabad.

3. Mr. Shashi Anugrah Narain learned senior counsel appearing on behalf of the petitioner submits that Annexure-5 was issued by one of the members of the Parliament, wherein he has levelled certain allegation suggesting that posting of the petitioner as Principal in Gaya College, Gaya may adversely affect the administration and discipline in the College and it may have adverse effect on the administration and discipline of the University also.

4. On the complaint, Annexure-5, the Officer on Special Duty, Governor's Secretariat, Bihar issued letter to the Vice-Chancellor of the University indicating therein that the Hon'ble Chancellor, after due consideration of the allegation levelled against the aforesaid Principal, has been pleased to order the Vice-Chancellor, Magadh University, Bodh Gaya to set up an enquiry against Shri Dinesh Prasad Sinha, Principal (petitioner) and Shri Sudhir Kumar Mishra, Principal and during the pendency of enquiry they may be relieved from the duty of the Principal from the present place of posting and may be reverted back to their previous place of posting, viz. S.S.College, Jehanabad and S.D.College, Kaler respectively.



5. Mr. Narayan, learned senior counsel appearing on behalf of the petitioner submits that the Hon'ble Chancellor is the appellate authority under the scheme of the Act and the Chancellor has issued direction for posting of the petitioner at the place from where he was transferred and posted as Principal, Gaya College, Gaya. The action of the Hon'ble Chancellor to revert back the petitioner to the previous place of posting during the pendency of the enquiry is precisely a decision to condemn the petitioner before enquiry is completed on the complaint of an Member of Parliament, Annexure-5. Referring to Annexure-7, Mr. Narayan, learned senior counsel would submit that the University has issued follow up order in the light of the letter contained in Annexure-6 and as such, the petitioner has been subjected to transfer in the garb of reverting back to the original place of posting and he has been left without any remedy as in view of the scheme of the Universities Act, the Hon'ble Chancellor exercises appellate power and the decision against the petitioner has been taken by the University at the dictates of the superior. He has placed reliance on the judgment of the Apex Court in the case of **Purtabpore Co. Ltd vs Cane Commissioner of Bihar & Ors.: AIR 1970 SC 1896**, wherein the Apex Court has held out that the decision at the dictate of the superior is nullity in the eye of law. He has also



placed reliance on the judgment of this Court in the case of **Abdul Muttalib vs. the State of Bihar & others : 1985 PLJR 931** to contend that transfer at the instance of the M.P. is vitiated in law.

6. Mr. Shivendra Kishore, learned senior counsel appearing on behalf of the Magadh University submitted that the University has no option but to obey the direction issued by the Hon'ble Chancellor and the order contained in Annexure-7 is the order passed by the University in compliance of the direction contained in Annexure-6.

7. Mr. Rajendra Kumar Giri, learned counsel appearing on behalf of the Hon'ble Chancellor, when confronted with the entire facts and circumstances of the case, particularly Annexure-6, has not been able to justify the decision on the complaint of an M.P. without holding any enquiry, and the action taken by the office of the Hon'ble Chancellor before enquiry. However, he submits that the Hon'ble Chancellor has power to issue direction and his power to issue direction is independent of appellate power. He submitted that in the instant case the Hon'ble Chancellor has not exercised his power as the Appellate Authority.

8. Having gone through the materials on record and the rival submissions of the parties, the Court is of the view that



submission advanced by learned counsel for the Chancellor does not merit any consideration as the Chancellor is Appellate Authority and on his direction the order, Annexure-7 has been passed. Therefore, the valuable right of appeal available to the petitioner in the instant case has become redundant by exercise of power by the Hon'ble Chancellor as contained in Annexure-6.

9. The law in this regard is well settled that the order passed at the dictate of the Chancellor is unsustainable. Reference in this connection may be made to the judgment of the Apex Court in the case of **Purtabpore Co. Ltd vs Cane Commissioner of Bihar & Ors.: AIR 1970 SC 1896**, wherein the Apex Court has categorically held out that the decision at the dictate of the superior is nullity. Applying the same principle the Court is of the view that the order contained in Annexure-7 dated 28.7.2018, which has been issued by the University at the dictates of the office of the Hon'ble Chancellor vide order dated 27.7.2018, Annexure-6, is unsustainable in view of the law laid down by the Apex Court in the case of **Purtabpore Co. Ltd** (supra).

10. The Court also finds substance in the submission of Mr. Narayan, learned senior counsel that the transfer on the recommendation of the political person, namely, Member of Legislative Assembly/ Member of Parliament is held to be



unsustainable by a Division Bench of this Court in the case **Abdul Muttalib vs. the State of Bihar & others : 1985 PLJR 93.**

11. Considering the totality of the fact situation, the writ petition is allowed and the order dated 28.7.2018, as contained in Annexure-7 is quashed.

12. However, quashing of Annexure-7 will not disentitle the University to undertake enquiry in accordance with law and take appropriate decision on the conclusion of the enquiry.

13. With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2018
Transmission Date	

