

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13426 of 2010

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BIJAY PRAKASH GUPTA S/O Late Anandi Prasad R/O Vill Laloo Pokhar,
Argara Road, Munger At Present Lecturer In Physics Department Sita Ram
Sahu College, Nawada, Dist-Nawada

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Magadh University Through Its Vice Chancellor
3. The Registrar, Magadh University Bodh Gaya, Distt-Gaya
4. The Governing Body , Sita Ram Sahu College Nawadah
5. The Secretary, Governing Body Sita Ram Sahu College Nawadah
6. The District Magistrate Nawadah
7. The S.D.O.Nawadah-Cum-Co-Ordinator, Sita Ram Sahu College Nawadah

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Anukriti Jaipuriyar, Advocate Mr. P.K. Jaipuriyar, Advocate Mr. Anshuman Jaipuriyar, Advocate
For the Magadh University	:	Mr. Mr. Shivendra Kishore, Sr. Advocate Mr. Arabind Nath Pandey, Advocate
For Governing Body	:	Mr. Md. Kamaluddin, Advocate Mr. Shashi Kumar, Advocate
For the State	:	Mr. G.P. 14

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

10 04-07-2019 Heard learned counsel for the petitioner, learned
counsel for the Magadh University, learned counsel for the
Governing Body and learned counsel appearing on behalf of the
State.

This writ petition has chequered history. After several
rounds of litigation, the matter was taken to the Supreme Court.
The Supreme Court in Civil Appeal No. 4038 of 2019 has
passed the following order:



“Leave granted.

Having heard counsel for both sides, we are of the view that merely dismissing the writ petition on the ground that it is not maintainable since a private college is involved is not correct. As has been correctly pointed out by the appellant, the institution is aided by the State of Bihar.

Given the fact that the appellant will retire within four months from today, while setting aside the impugned order, we request the High Court to take up the writ petition and decide it on merits at the earliest, preferably within a period of four months from today.

The appeal is disposed accordingly.

Pending applications, if any, also stand disposed of.”

In view of the time frame for disposal of the present writ application, the case was listed on the Board. To expedite the hearing of this case, the Court has to adopt the course of notice to the Governing Body through the District Magistrate and S.D.O. The respondent Governing Body thereafter appeared and prayed for time to file counter affidavit. Today counter affidavit has been filed on behalf of the respondent no. 4. The Court had gone through the entire counter affidavit filed on behalf of the Respondent 4. The Court deem it fit and proper to quote the entire counter affidavit of Respondent No. 4 for the purpose of deciding the present writ application:

“I, Ram Chandra Prasad, aged about 66 years, Male, S/o Late Sita Ram Saow, Resident of



Saraswati Niwas, Gaya Road, Nawada, P.S. Bundelkhand, District Nawada, The Secretary, Governing Body, Sita Ram Sahu College, Nawada, do hereby solemnly affirm and state as follows:-

1. That I am the Respondent No. 4 in this case and as such I am well acquainted with the facts and the circumstances of the case.

2. That at the outset it is stated and brought to the notice of this Hon'ble Court that the petitioner was appointed as a Lecturer on 16.08.1978 by Managing Committee of the College and subsequently, he was made Professor-In-Charge of the College.

3. That during the BPSC Examination, there were certain complaints against the writ petitioner by the students of allowing unfair means in the examination as a result the Governing Body has taken a serious view of the same as a result the petitioner tendered his resignation on 23.07.2000 from the post of In-Charge Principle from the College.

4. That on 24.07.2000, one Subhash Chandra Sah, HoD of Sociology, Sita Ram Sahu College, Nawadah was appointed as the In-Charge Principal in the place of the petitioner till further order.

A true photocopy of the said Letter dated 24.07.2000 is annexed hereto and marked as Annexure 1 to this petition.

5. That the matter of resignation of the Petitioner and appointment of Prof. Subhash Chandra Sah was taken up by the Governing Body in its meeting dated 09.08.2000 and the Governing Body unanimously decided to accept the resignation of the petitioner and appointment of Subhash Chandra Sah,



L HoD, Sociology on the post of In-Charge Principal for the period of 2 years was approved by the Governing Body of the College.

A true photocopy of resolution of Governing Body dated 09.08.2000 is annexed hereto and marked as Annexure 2 to this petition.

6. That thereafter, the Governing Body decided to continue Subhash Chandra Sah on the post of In-Charge Principal till further order as a result, a letter to this effect was issued by the Secretary of the Governing Body on 20.07.2002.

A true photocopy of said Letter dated 20.07.2002 is annexed hereto and marked as Annexure 3 to this petition.

7. That at one point of time in the light of High Court order dated 17.09.2002 and 21.09.2006 the petitioner was given charge of the college by the in charge Principal Dr. Subhash Chandra Sah on 24.02.2006 in presence of Special Magistrate, Nawada as is evident from letter dated 24.02.2006.

A true photocopy of said letter dated 24.02.2006 is annexed hereto and marked as Annexure 4 to this petition.

8. That though the petitioner has taken charge of the in charge Principal but he did not attend the college causing irreparable loss to the college administration for which several letters were written by the deponent as Secretary on 01.03.2006, 10.03.2006, 28.03.2006, 12.04.2006, 19.04.2006, and on 04.07.2006 he has intimated the matter to the Chancellor, Chief Minister, Vice Chancellor, Inspector of Colleges, District Magistrate, Nawada and S.D.O. Nawada with respect to indiscipline and remaining absent from the college and on 04.07.2006 and 17.07.2006, the Deponent again wrote a letter to



the petitioner for attending the college.

A true photocopy of said letters dated 01.03.2006, 10.03.2006, 28.03.2006, 12.04.2006, 19.04.2006, 04.07.2006 and 17.07.2006 is annexed hereto and marked as Annexure 5 series to this petition.

9. That for quite long time the petitioner did not attend the College then on 25.07.2006, the petitioner was placed under suspension by the Department under the provisions of University Act which was communicated to all concerned.

A true photocopy of said letter dated 25.07.2006 is annexed hereto and marked as Annexure 6 to this petition.

10. That the team of the University inspected the college suddenly on 26.07.2006 but the petitioner was in charge principal was found absent as is evident from the newspaper report dated 30.07.2006.

A true photocopy of said Newspaper report dated 30.07.2006 is annexed hereto and marked as Annexure 7 to this Petition.

11. That the letter of suspension of the petitioner was communicated to him but the same was returned as his house was found locked as a result of paper publication was made by the Deponent directing him to join the college within a week failing which the process of termination shall be initiated.

A true photocopy of said Newspaper report dated 23.08.2006 is annexed hereto and marked as Annexure 8 to this petition.

12. That meanwhile the writ petitioner approached the High Court in C.W.J.C. No. 13426 of 2010 which was dismissed by the Hon'ble High



Court on 25.01.2012 and against the said order LPA No. 368 of 2012 was filed but was dismissed on 21.04.2014. However, against the said order the petitioner moved to the Supreme Court and Hon'ble Supreme Court in its order dated 22.04.2019 has remanded the matter back to the High Court for deciding the same on merit.

13. That but prior to that in the light of Supreme Court order, the Vice Chancellor has called all the concerned persons for taking final decision but the petitioner did not appear and the committee constituted by the University has rejected the claim of the petitioner in its order dated 09.08.2018.

A true photocopy of said order dated 09.08.2018 is annexed hereto and marked as Annexure 9 to this petition.

14. That the petitioner has remained absent for 20 years and is running under suspension since 25.07.2006 and not attending the college however, the action of termination was not taken by the Governing Body of the college as the matter was sub judice.

15. That in the light of facts and circumstances stated herein before, no relief as prayed for in this writ application can be granted to the writ petitioner.

16. That in the light of facts and circumstances herein before the writ petition has no merit and the same is fit to be dismissed with costs.

17. That the deponent craves the leave of this Hon'ble Court to file a detailed counter affidavit if required.

18. That other grounds and materials shall be produced before this Hon'ble Court at the time of hearing of this application.



19. That the content of this affidavit is red by me which are true to the best of my knowledge and belief and the Annexures are the true/photo copies of its respective originals.”

In view of the stand taken by the Respondent 4 in counter affidavit, it is manifest that there is no dispute as to the fact that petitioner was put under suspension on 25.07.2006. It is not in dispute that no departmental proceeding was conducted against the petitioner. It is also not in dispute that the suspension of the petitioner continued for 20 years. It is also admitted by the Respondent No. 4 that the services of the petitioner has not been terminated.

Under the aforesaid circumstances, the Court is of the view that the order of suspension of the petitioner cannot continue for indefinite time, as admitted by the Respondents themselves that they have allowed the suspension of the petitioner to continue for 20 years, it has been held out by the Apex Court in numerous decision including in the case of Management of Hotel Imperial Vs. Hotel Workers Union reported in 1959 AIR 1342, 1960 SCR (1) 476, that suspension is not cessation of master and servant relationship. The petitioner, who was put under suspension was/is entitled to subsistence allowance, if the suspension is in contemplation of



departmental proceeding. From the material available on record, particularly counter affidavit of the Respondent No. 4, it is clear that there is no decision of the Governing Body to initiate any departmental proceeding.

Under the aforesaid circumstances, continuance of the suspension has prevented the petitioner from working as Teacher/Professor-In-Charge and stopping salary under aforesaid circumstances is illegal and arbitrary exercise of power which cannot be sustained. It is now well settled proposition of law that the suspension cannot be used as method to punish the employee.

In view of the facts and circumstances of the present case, the Court is of the considered view that there is no failure on the part of the petitioner in discharge of his duties. From the material on record, it is clear that he has been prevented from discharging the duties of Teacher/ Professor In Charge.

In ordinary situation, the Court, for such action, would have directed the respondents to pay full salary for the entire period of suspension, but having regard to the peculiar facts of this case, the Court would direct the respondents authorities/Governing Body of the College to pay 75% of the salary admissible to the petitioner from the date of order of



suspension till today within a period of 30 days from the receipt/production of a copy of this order.

The respondent Governing Body is also directed to allow the petitioner to join his post and grant current salary to the petitioner. The petitioner would be entitled to full payment of salary for the period prior to the order of suspension if the petitioner has worked in the College.

In view of the above, the order of suspension and all consequential orders contained in Annexure 1 series stand quashed. The respondent Governing Body is directed to reinstate the petitioner and grant all consequential benefits as indicated hereinabove. In the event of non-compliance of this order by the Governing body of the College, the Magadh University as well as State is obliged to take appropriate step for stoppage of aid to the college and also for withdrawal of affiliation to the College in accordance with law.

The writ petition is allowed to the extent as indicated above.

(Anil Kumar Upadhyay, J)

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