

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.581 of 2018

In

Civil Writ Jurisdiction Case No.8350 of 2017

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Arghanand Sharma, Son of Late Sarbanand Sharma, the Professor Incharge of
Chandradeo Prasad Verma College at Simari, P.S. Bihata, District- Patna

... .. Appellant/s

Versus

1. The Magadh University, Bodh Gaya through its Registrar
2. The Vice Chancellor, Magadh University, Bodh Gaya.
3. The Registrar, Magadh University, Bodh-Gaya,
4. The Adhoc Committee of Chandradeo Prasad Verma College, Simari, Bihata
through Dr. Radhey Kant Prasad, the then University Representative-cum-
Secretary, C.P. Verma College, Simari, Bihata, Patna
5. Sri Ramesh Prasad, Son of Late Vyas Prasad Verma, Resident of Village-
Doghra, P.O. Bahpura, P.S. Bihata, District Patna.
6. The Senior Superintendent of Police, Patna.
7. Madhya Bihar Gramin Bank through the Branch Manager, Anandpur,
Bihata, District-Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yugal Kishore, Sr. Advocate Mr. Kumod Kumar Shrivastaw, Advocate
For Respondent No. 5	:	Mr. Navin Prasad Singh, Advocate Mr. Narayan Singh, Advocate
For the University	:	Dr. Kumar Amitabh Chandra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-07-2019

This appeal has been filed by the appellant who claims himself to be the Professor In-charge of Chandradeo Prasad Verma College, Simari, Bihta, District- Patna affiliated to the Magadh University claiming that the Respondent No. 5 Ramesh Prasad Verma cannot be thrust upon the Institution as a Principal on the strength of a recommendation of the year 2002, inasmuch as, the panel which was prepared recommending the name of the Respondent No. 5 as the Principal of the College by the Commission had a life of only one year as per Section 2(9) of the Bihar College Service Commission Act, 1976.

2. Section 2(9) of the Bihar College Service Commission Act, 1976 is quoted hereinunder:-

“(9) The Commission shall recommend for appointment to every post of teacher names of two persons arranged in order of preference and considered by the Commission to be the best qualified therefor. The recommendation shall be valid for one year from the date of the recommendation by the Commission.”



3. The said period of one year having lapsed long back, no relief could have been claimed by the respondent-petitioner through a writ petition filed in the year 2011. It is urged that mere selection does not confer any right of appointment and Shri Yugal Kishore, learned senior counsel appearing for the appellant has urged that if the panel is not alive then any attempt to appoint him after a lapse of one year would be contrary to the Statutes.

4. It is further submitted that the Respondent No. 5 had earlier filed C.W.J.C. No. 5613 of 2011 which was dismissed on the ground that such a declaration can be sought only through a Civil Suit. Accordingly, if the previous writ petition had been dismissed, the writ petition giving rise to this appeal could not have been entertained.

5. Shri Yugal Kishore also contends that the University has passed orders for approving the appointment of the Respondent No. 5 and issued directions which is without any authority in law, inasmuch as, it is the Governing Body of the College which manages the Institution that has the power to do so. Once the Governing Body had resolved that the Respondent No. 5 cannot be appointed in the Institution, it was not open to the University to have exercised its authority



independently in the above circumstances.

6. It is also submitted that the appellant had filed a contempt application against the University and the University itself had withdrawn the approval of the Respondent No. 5 yet, again the approval of the University in the year 2016 and order of the Magadh University dated 8th May, 2017 was without authority in law that was challenged in the writ petition giving rise to the present proceedings.

7. One of the principal arguments advanced by Shri Yugal Kishore is that the recommendation for appointing the Respondent No. 5 in the Institution in question was invalid, inasmuch as, when the said recommendations were made, the Institution did not have an affiliation in existence with the Magadh University. It is, therefore, submitted that the placement of the Respondent No. 5 in an unaffiliated Institution by the University was without authority in law and was impermissible.

8. The said arguments have been refuted by Shri Navin Prasad Singh, learned counsel for the 5th Respondent contending that the resistance of the Governing Body of the Institution in not allowing him to join was virtually a conspiracy with the appellant whose presence was sought to be



perpetuated unlawfully and to prevent the entry of the Respondent No. 5 who was a validly selected and appointed candidate. Any such unlawful method cannot defeat the right of the Respondent No. 5, inasmuch as, the observation of this Court in the earlier round of litigation that he should file a suit was contrary to the provisions of Section 80A of the Bihar State Universities Act, 1976 and the dismissal of the writ petition by the learned Single Judge stood diluted by the Division Bench vide its order dated 21.04.2016 in L.P.A. No. 123 of 2015 whereby liberty was granted to the Respondent No. 5 to pursue his remedy by filing a fresh writ petition. Even otherwise, representations were filed by the Respondent No. 5 before the University that was accepted and was in accordance with law, inasmuch as, the selection of the Respondent No. 5 was never set aside and his right to function in the Institution as Principal could not be defeated by any lapse of time. It is evident from the facts on record that it was the appellant and the Governing Body who were instrumental in preventing the joining of the Respondent No. 5 and, therefore, this forceful method adopted by the appellant and the Governing Body cannot defeat the right which had accrued in the Respondent No. 5 to be appointed under the panel.



9. Apart from this, learned counsel for the respondent submits that the present appellant was not even an applicant for the post in question and, therefore, he had no locus to contest the selection and appointment of the answering respondent. The College had been affiliated and its affiliation was continued subsequently which is an admitted fact with effect from its original affiliation. Thus, any lapse of communication in between in respect of affiliation would not render the Institution to be an unaffiliated college. The selection of the Respondent No. 5 does not suffer from any legal or factual infirmity and, therefore, the University had rightly issued orders approving the appointment of the Respondent No. 5 and issuing directions in that regard. It is, therefore, submitted that no case is made out for interference as the learned Single Judge has rightly refused to exercise discretion in favour of the appellant.

10. Learned counsel for the University has also supported the claim of the Respondent No. 5 and has urged that the appeal deserves to be dismissed. It is further submitted by the learned counsel for the said respondent that the appellant while forcibly trying to continue as the Professor In-charge of the College had made huge embezzlement which incident had



led to the launching of a criminal prosecution against the appellant.

11. Having considered the submissions raised we find that there is no dispute that the appellant was not even an applicant for the post of Principal and, therefore, he has no competing claim as against the recommendation of the Respondent No. 5. It is obvious that the appellant who was the Professor In-charge was continuing on account of the patronage of the Governing Body. They were together instrumental in resisting the functioning of the Respondent No. 5.

12. The main argument of Shri Yugal Kishore, learned counsel for the appellant is that this resistance was neither *mala fide* nor biased but the appointment had to be resisted as at the time when the recommendations of the Respondent No. 5 were made on 7th October, 2002 and the panel was published on 3rd November, 2002, the College had no affiliation from the Magadh University. His contention is that in the absence of any affiliation a permanent Principal could not have been recommended by the Commission to the College. On the other hand, it has been pointed out by the learned counsel for the University as well as the learned



counsel for the Respondent No. 5 that the affiliation was existing since 1985-86 and in between it had not been continuing due to an administrative correspondence whereafter the Institution came to be permanently recognized as is evident from the recommendation dated 10th April, 2006. A perusal of the said communication which is Annexure-10 to the writ petition in no uncertain terms demonstrates that the College was affiliated temporarily since 1985-86 and it fulfilled all the terms and conditions of affiliation. Apart from this, the post of Principal together with other teachers as well as the members of the staff was sanctioned way back in the year 1986-1987. The affiliation was continued in between and in this background, permanent affiliation was granted on 3rd of May, 2006 by the State Government. Thus, the affiliation stood regularized and accordingly the argument advanced on behalf of the appellant that there was no affiliation so as to warrant recommendation of a permanent Principal does not hold water.

13. There is also no dispute with regard to the procedure of selections or the eligibility of the Respondent No. 5 to hold the office of Principal.

14. The Respondent No. 5 had been pursuing his claim and it would not be out of place to mention that the



Respondent No. 5 had been appointed as a Lecturer in Philosophy on temporary basis in the same Institution in the year 1989. In 1994 an advertisement was issued for the said post for filling up on permanent basis the selection whereof was held by the Bihar College Service Commission and ultimately the Respondent No. 5 was finally recommended to be appointed as Lecturer in Philosophy in the same Institution in 1999. The Respondent No. 5 joined the Institution accordingly. It is, therefore, evident that the Respondent No. 5 was not an outsider and it is during this period that the post of Principal came to be advertised in this very institution in the year 2002 where the Respondent No. 5 came to be selected and recommended at Serial No. 1 by the Bihar College Service Commission on 7th October, 2002.

15. It would be worth mentioning that the College is named after Shri Chandradeo Prasad Verma who is stated to be the Secretary of the College when the Respondent No. 5 was selected. It is alleged by the Respondent No. 5 that a letter of appointment was issued to him by none else than Shri Chandradeo Prasad Verma on 25.02.2003 and he joined on 4th of March, 2003 after taking over charge from the then In-charge Principal Professor Birendra Prasad Singh. The said



transaction was also placed before the Vice Chancellor of the Magadh University who directed the matter to be placed before the Approval Committee and according to the respondent the same was approved on 11.11.2003. This approval memo has been placed on record as Annexure-R/10 to the counter affidavit of the Respondent No. 5 in the writ petition.

16. However, the said approval matter remained pending. The Respondent No. 5 filed C.W.J.C. No. 5613 of 2011 for a direction in relation to the functioning of the Respondent No. 5 as Principal of the Institution. This writ petition was dismissed on 18th of January, 2012 by the following order:-

“Having heard learned counsel for the petitioner and learned counsels for the respondents, the Court is of the opinion that the dispute is of such a nature that it need not be adjudicated under summary proceeding under Article 226 of the Constitution of India. Let the petitioner file an appropriate suit and get an appropriate decision from a Civil Court of competent jurisdiction.

The Writ Application is dismissed with the aforesaid observation.”

17. The Respondent No. 5 filed L.P.A. No. 123 of



2015 challenging the said order. The order dated 21.04.2016 passed thereon is extracted hereinunder:-

“Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned single Bench of this Court on 18.01.2012 in C.W.J.C. No. 5613 of 2011, wherein the appellant was given liberty to get an appropriate declaration from a Civil Court of competent jurisdiction.

3. The grievance of the petitioner is that he has been appointed as Principal of the Chandradev Prasad Verma College, Simari, Patna and such appointment stands approved by the Magadh University on 10.05.2014. It has further been pointed out that in terms of the impugned order, such approval has been withdrawn on 16.09.2014.

4. We find that the appellant has an independent cause of action to impugn the withdrawal of approval granted on 16.09.2014 after the same was earlier granted on 10.05.2014. All these, approval and withdrawal are subsequent to the order passed by the learned single Bench and; therefore, such subsequent cause of action cannot be taken into consideration for the purpose of deciding the present Letters Patent Appeal.



5. In view thereof, the Letters Patent Appeal is disposed of with liberty to the appellant to challenge the cancellation of approval issued vide letter dated 16.09.2014. The order passed by the learned single Bench on 18.01.2012 will not come in the way of the appellant to avail the remedy of writ application against the action of withdrawal of approval.”

18. Learned counsel for the University has pointed out the provisions of Section 80A of the Bihar State Universities Act, 1976 which is extracted hereinunder:-

“80A. Bar of law suit- No law suits and proceedings shall lie in Civil Courts with respect to the implementation of the provisions of this Act, Statutes, Ordinances or Regulations.”

19. In our opinion, the relegation of the matter to be resolved by a Civil Suit by the learned Single Judge, therefore, does not appear to be based on any consideration of the aforesaid provision and it is for this reason that the Division Bench in L.P.A. No. 123 of 2015 modified the said order by allowing the Respondent No. 5 to raise his challenge through a writ petition after noting the facts narrated hereinunder.

20. In between, the appellant had approached the



University and the University vide order dated 10th of May, 2014 acknowledged and approved the appointment of the Respondent No. 5 as the permanent Principal of the Institution. The said document is Annexure-14 to the writ petition. The appellant Arghanand Sharma alleging that this approval amounted to a contempt in the wake of the fact that the writ petition filed by the Respondent No. 5 had been dismissed on 18.01.2012 instituted M.J.C. No. 1234 of 2014. A learned Single Judge had on 3rd September, 2014 issued notices on the said contempt application. The same is extracted hereinunder:-

“The Vice-Chancellor and the Registrar will file their show-causes by 24th of September, 2014. The Registrar will also appear in person with original records relating to the decision taken behind issuance of the notification, dated 10.05.2014, issued under his signature and is annexed as Annexure-4 to the supplementary affidavit in the Contempt Application.

There could be occasion even for the Vice-Chancellor to appear, provided satisfactory explanation is not offered under what circumstances Annexure-4 came to be issued by the university after a decisive order passed on 18.01.2012 in C.W.J.C. No. 5613 of 2011 in relation to Dr. Ramesh Prasad Verma.



Matter may come up on 24th of September, 2014.”

21. It appears under the threat of the said contempt the University withdrew the earlier letter of approval dated 10th May, 2014. This document is Annexure-16 to the writ petition.

22. The learned Single Judge who had drawn up the contempt proceedings discharged the same by the following order on 15.10.2014:

“Heard learned counsel for the parties.

A series of show-causes have now been filed on behalf of the university, which include Vice-Chancellor and the Registrar of the university. The explanations offered by them behind issuance of the order do not satisfy this Court at all for the reason that there is a basic presumption that when a judicial order has been passed in open Court and also communicated, any decision taken, which has an effect of overriding or diluting the same, would be required to be cautiously taken into consideration, if not examined.

To that extent to O.P.s cannot be exonerated of their obligations and they have fallen foul of law. However, since a sincere apology has been tendered by the Registrar of the



university, who is present in person with a clear undertaking that no such foul play should be committed in future and utmost honesty will be maintained in any kind of decision, which will be taken by the university, especially in matters of judicial adjudications, the Court is willing to grant indulgence to them. Let there be clear understanding that if the Court discovers any such omission on part of the university in future in any other case, the bona fide of the apology tendered in this case, may not be available to them on the next occasion.

Contempt Application now stands disposed off in view of the subsequent developments as well as the notification, contained in Annexure-A to the show-cause.

The original file presented before this Court are hereby returned to the counsel representing the university for their need and use.”

23. We may point out that we have been unable to locate any disobedience of the order of the High Court that could have given rise to any contempt to enable the learned Single Judge to draw the proceedings. We have been unable to find any reason in law to approve of the said action by the learned Single Judge as from the judgment dated 18th January,



2012 extracted hereinabove we find no legal impediment for the University to have taken the step of acknowledging and approving the appointment of the Respondent No. 5. The writ petition filed by the Respondent No. 5 had been dismissed only on the ground that he can file a Civil Suit. The claim of the Respondent No. 5 had not been dismissed on merits nor any mandamus had been issued prohibiting the University from taking any decision. The drawing up of the contempt proceedings, therefore, in our opinion, was an unnecessary exercise under the threat whereof the University had to withdraw the letter dated 10th of May, 2014 on 16.09.2014.

24. It appears that the Respondent No. 5 who had filed L.P.A. No. 123 of 2015 against the judgment dated 18.01.2012 had also brought to the notice of the Court the aforesaid developments and it is for this reason that the Respondent No. 5 was permitted to challenge the same in a writ petition with the observation that the order passed by the learned Single Bench on 18.01.2012 will not come in the way of the Respondent No. 5.

25. The Respondent No. 5 thereafter does not appear to have filed any writ petition. He approached the Vice President of the Ad hoc Committee of the Governing Body of



the College who wrote a letter to the University along with the resolution of the Ad hoc Committee dated 28.03.2017 and 2nd of May, 2017 to allow the Respondent No. 5 to function as Principal and approved his appointment.

26. At this juncture, it would be relevant to mention that an inquiry had been conducted in the affairs of the Institution including the conduct of the appellant and an Inquiry Report was submitted before the Magadh University on 31st October, 2013 indicting the appellant of having committed serious irregularities. The University had to take action in respect of the functioning of the Committee of the Governing Body. The claim of the Respondent No. 5 was processed through the said Ad hoc Committee that recommended for acknowledging and approving the placement of the Respondent No. 5 as Principal of the Institution. It may be mentioned that vide order dated 28th January, 2017 of the University, the Governing Body of the Committee had been re-constituted with the nomination of certain persons which is evident from the notification dated 28.06.2017 filed as Annexure-24 in the writ petition. The recommendation in respect of the Respondent No. 5 was approved by the Syndicate of the University on 4th of July, 2017 and a copy of the said resolution



of the University approving the action taken by the University has been filed as Annexure- R/25 to the brief of the writ proceedings.

27. It is here that we have to now examine the main contention raised on behalf of the appellant about the survival of the panel which according to the appellant was only for one year.

28. The provision of Section 2(9) of the Bihar College Service Commission Act, 1976 has already been extracted hereinabove. According to the appellant, this provision has also found acceptance in the Bihar State University (Amendment) Act, 2013 where Section 57 of the 1976 Act includes the provision in Clause (viii) of sub section (1) of Section 57 reciting that the merit-list prepared by the Commission shall be valid for one year from the date of its issue.

29. From the facts that have been narrated hereinabove, it is evident that the panel which was recommended on 7th October, 2002 and published on 3rd November, 2002 culminated in the claim of the Respondent No. 5 in joining the Institution as noted hereinabove. On the other hand, the Governing Body is stated to have passed a



resolution on 25.02.2003 holding that the Respondent No. 5 cannot be permitted to join in the Institution. This resolution dated 25.02.2003 of the Governing Body is clearly in teeth of the statutory provisions where the Governing Body for no valid reason can prevent the joining of a permanently selected Principal. We may reiterate that the principal ground of challenge raised by the appellant, and aided by the Governing Body was, that since the College had lost its affiliation during the said period, therefore, it was not possible to allow the Respondent No. 5 to claim the post of Principal. We have already held hereinabove that the affiliation did exist and stood regularized and, therefore, this argument did not hold water. The selection and appointment of the Respondent No. 5 was admittedly against a sanctioned post. Consequently, it was the personal wish of the Governing Body and its office bearers to unlawfully prevent the Respondent No. 5 from functioning in the Institution. A wilful resistance without there being any default on the part of the candidate, therefore, cannot legally operate to defeat the very purpose of selection.

30. In this regard one of the views expressed by the Apex Court in a matter where the plea of the expiry of the panel had been raised held that a mandamus could not issue by



the High Court once the panel had expired as per the rules. The said decision is reported in **(1996) 9 SCC 309 [State of U.P. and others Vs. Harish Chandra and others]**. The Supreme Court in that case was interpreting a particular rule of the Subordinate Officers Clerical Staff (Direct Recruitment) Rules, 1985 then prevalent in the State of U.P. The High Court had issued a mandamus for appointment that was found to be beyond the period of the life of the panel.

31. In the instant case, we find that the recommendations made on 07.10.2002 and its publication on 3rd November, 2002 was sought to be given effect to in 2003 itself which is being disputed by the appellant that the Governing Body had passed a resolution otherwise. The fact remains that the respondent-petitioner was a Lecturer in Philosophy in the same Institution and his joining as Principal was being resisted. The question is could the Governing Body have resisted the appointment and if so, whether the same was legally permissible in law.

32. In our considered opinion, the panel had already been given effect to with its publication and, therefore, the theory of lapse would not come in, inasmuch as, it is not the case of the Governing Body or even of the appellant that



some other selected candidate had joined. To the contrary, the Governing Body had been resisting the joining of the Respondent No. 5 as Principal in an unlawful manner that later on was sought to be perpetuated with the connivance of the appellant who was made to function as In-charge Principal. This form of resistance cannot be condoned even applying the principles set out in the judgment in the case of **State of U.P. Vs. Harish Chandra** (supra).

33. To the contrary, we have come across two other judgments of the Apex Court where such an act on the part of the management of an Institution has been deprecated and it has been held that the management cannot sit in appeal over the selection of a regular Principal and a duly selected candidate could not be denied appointment on the pretext of the expiry of the term of the panel. The two judgments are in the case of **Bhagwan Parshu Ram College and another Vs. State of Haryana and others**, reported in (1999) 6 SCC 46 and **Purushottam Vs. Chairman, M.S.E.B. and another**, reported in (1999) 6 SCC 49. It has been held by the Apex Court that the right of a selected candidate to be appointed cannot be taken away on the pretext that the panel has expired in the meantime and the post has been usurped by someone



else. The Apex Court has ruled that this contingency is not on account of any defect on the part of the selected candidate but on account of an erroneous decision or stand taken by the Management. We, therefore, find ourselves persuaded by the ratio of the aforesaid two judgments to conclude that the claim of the Respondent No. 5 was being unjustifiably resisted by the Governing Body and later on by the appellant also who has no right to hold the post of Principal after the selection of the Respondent No. 5.

34. We accordingly do not find any substance in the arguments advanced by the learned counsel for the appellant.

35. On account of the Respondent No. 5 having been drawn in this litigative battle for no fault on his part, we further impose a cost of Rs. 25,000/- on the appellant to be paid over to the Respondent No. 5 within a month from today or else the same shall be recovered by the Management of the College from the salary of the appellant and paid over to the Respondent No. 5.

36. The appeal stands dismissed accordingly with Rs. 25,000/- as cost.

37. A copy of this judgment shall also be



forwarded to the concerned educational authorities for compliance and also to the University for appropriate action in this regard.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

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CAV DATE	
Uploading Date	15.07.2019
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