

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.692 of 2020

Dr. Sidheshwar Prasad Sinha Son of Late Birendra Prasad Singh Resident of
Indu Nilaya Apartment, Road No.11-C, Rajendra Nagar, Patna-6.

... .. Petitioner

Versus

1. The Honble Chancellor, Universities of Bihar
2. The Vice-Chancellor, Nalanda Open University, Patna.
3. The Registrar, Nalanda Open University, Patna.
4. Prof. Sanjay Kumar, Registrar (Examination), Nalanda Open University,
Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. P.K.Sahi, Senior Advocate Mr. Satyam Shivam Sundaram, Advocate
For the Respondent Chancellor:		Mr. Rajendra Kumar Giri, Advocate
For the Respondent University :		Mr. P.K.Verma, Senior Advocate Dr. Anand Kumar, Advocate
For Respondent No. 4	:	Mr. Navin Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 02-11-2021

Heard Mr. P.K.Sahi, learned Senior Counsel assisted by
Mr. Satyam Shivam Sundaram, learned Advocate appearing on
behalf of the petitioner, Mr. Rajendra Kumar Giri, learned counsel
representing the Office of Chancellor and Dr. Anand Kumar,
learned counsel appearing on behalf of the respondent Nalanda
Open University.

2. Pursuant to order of this Court, Mr. Rajendra Kumar
Giri, learned counsel appearing on behalf of the Chancellor,
Universities of Bihar has produced before this Court the original
records pertaining to engagement of the petitioner on contractual



basis as Registrar (Examination) of Nalanda Open University and subsequent decision to cancel the said engagement.

3. The short facts of the case are that the petitioner was working as Registrar (Examination) in Nalanda Open Universities upon his appointment on regular basis on a recommendation of Bihar State (Constituent Colleges) Service Commission. He attained the age of superannuation on 31.08.2019.

4. Subsequently, he was engaged on contractual basis for two years from 01.09.2019 to 31.08.2021 with the issuance of an order from the Office of the Chancellor, Universities of Bihar, as contained in Memo. No. N.O.U.09/2019-2232/Rs.Sa.(1) dated 23.07.2019. Nearly five months thereafter, the Governor's Secretariat (Office of the Chancellor, Universities of Bihar) issued a notification contained in Memo. No. BSU(Registrar)-27/2017-3454/GS(1) dated 14.12.2009, whereby the petitioner's contractual engagement has been cancelled and respondent No.4 has been appointed as Registrar(Examination). The said notification dated 14.12.2019 is under challenge in the present writ application.

5. When the matter was taken up by this Court on 18.02.2020, this Court considered it apt to stay the operation of the impugned notification dated 14.12.2019, evidently, upon examination of the original records produced on behalf of the



office of the Chancellor, Universities of Bihar. The interim order passed by this Court dated 18.02.2020 reads as under : -

“Issue notice to the Respondent No. 4 both under ordinary process as well as registered cover with AD for which requisite etc. must be filed within one week.

Put up this case on 23rd March, 2020 after service of notice to the Respondent No. 4.

Pursuant to the order passed by this Court on 17th February, 2020, Mr. Rajendra Kumar Giri, learned counsel appearing on behalf of the respondents has produced the original record. From the noting side, it is apparent that when the petitioner attained the age of superannuation, a proposal was sent to the Office of the Hon'ble Chancellor for grant of extension considering his exemplary service rendered as the Registrar (Examination) in Nalanda Open University. In the noting there was clear cut stipulation that Mr. Sinha was appointed in the year 2001 on the recommendation of the University Service Commission as Commission Registrar in terms of the provisions of the Bihar State University Act, although Nalanda Open University has its own Act. It was noted that after attaining the age of retirement in no case the University shall extend the period of service of any teaching or non-teaching employees and therefore, the service of Mr. Sinha cannot be



extended beyond the age of retirement. But in the same noting it was pointed out that after the retirement, officer of the Bihar Administrative Service and retired defence personnel can be appointed as Registrar on contractual basis on the principle of last pay minus pension basis and as such the notings proceed that Mr. Sinha may be granted contractual appointment on the recommendation of the Vice-Chancellor, after obtaining the order of Hon'ble Chancellor. This is how Mr. Sidheshwar Prasad Sinha, the retired Registrar (Examination) was appointed on contractual basis. It appears that a complaint was made by one Mr. Yadav, B-69, Shashtri Nagar against the petitioner and on that complaint comment was called for from the Nalanda Open University. The Nalanda Open University in its report had submitted that the allegation leveled against the petitioner is baseless, details of the complaint and its reply find noted in the notesheet page no. 10 onwards. Thereafter a complaint was filed by Rajesh Ranjan Sahai, Joint Secretary, Magadh Teacher Training College, Gaya as well as President of the same college and petition of Rajesh Verma was received, highlighting the certain irregularities in connection with allocation of B.Ed admission seat. The complaint was made by college who were aggrieved by allocation of seat in the matter of admission in B.Ed course. It is to be noted that Nalanda Open



University was entrusted by the Chancellor to conduct examination and take steps for allocation of seats in different B.Ed colleges. Then on 09.12.2012 another round of enquiry started against this petitioner and VC was requested to send enquiry report within 15 days. Unfortunately, there is no adverse report as yet against the petitioner and when they find no material against the petitioner then a decision was taken to replace the petitioner and the acting Vice-Chancellor submitted a panel for appointment to the post of Registrar (Examination) in Nalanda Open University. It is not co-incidence that all the teachers belonging to college of commerce and science, constituent unit of Patliputra University, have been empaneled for appointment as Registrar (Examination) in Nalanda Open University on 13.12.2019 and on the basis of the aforesaid, the petitioner was terminated and in his place Dr. Sanjay Kumar has been appointed the Registrar (Examination) in Nalanda Open University.

Mr. Rajendra Kumar Giri, learned counsel for the Chancellor submits that the petitioner was appointed on contractual basis and there is no infirmity in the action of the Office of the Hon'ble Chancellor in terminating him. He further submits that in the contractual employment there was no fixed term and as such terminating the service of the petitioner does not



warrant any interference by this Court. The material that has come on the file and perused by this Court is indicating of the fact that everything was alright, every recommendation and appreciation was in favour of the petitioner and all concerned appreciated his administrative and other capability. He was appointed on contractual basis on the recommendation of the Vice-Chancellor of the Nalanda Open University.

After the allocation of seat in B.Ed College, certain aggrieved person approached the Chancellor, then an enquiry was done by the University and there was a clean chit by the University. A second round of enquiry was also initiated but nothing was reported against the petitioner, then the Office of the Chancellor decided to get rid of the petitioner by taking recourse to ambiguity in the contractual appointment to the extent that no tenure of contractual appointment was fixed.

Learned counsel for the Chancellor and senior Counsel appearing on behalf of the Nalanda Open University, Mr. P. K. Verma submitted that contractual engagement was in teeth of Section 54 of the Act. This is precisely an afterthought and indicates that the respondents have become wise when they did not find fault in the working of the petitioner as all the allegation as to corruption and otherwise was found not supported by material. Curiously enough three



names were sent by the in-charge Vice-Chancellor of Nalanda Open University from college of commerce, arts and science and out of the three, one Sanjay Kumar has been appointed as Registrar (Examination). In the aforesaid background, the Court is of the prima facie view that the entire exercise is mala fide in law.

Accordingly the order contained in Annexure-2 is stayed until further orders.”

6. The Court has been informed that the aforesaid interim order passed by this Court is under challenge before a Division Bench by filing three appeals under the Letters Patent of this Court by (i) the Office of Chancellor, Universities of Bihar (L.P.A. No. 185 of 2020), (ii) the Vice Chancellor, Nalanda Open University (L.P.A. No. 199 of 2020) and (iii) respondent No. 4 (L.P.A. No. 202 of 2020).

7. Complaining non-compliance of the interim order, the petitioner has filed a contempt petition registered as M.J.C. No. 945 of 2020, which is pending and is to be taken up after disposal of the aforesaid Letters Patent Appeals. The petitioner had approached the Supreme Court, as the contempt application filed on his behalf was not being taken up by this Court, giving rise to S.L.P. (Civil) No. 5964 of 2021, which has been disposed of by an order dated 23.08.2021 with following observations : -



“The present petition arises out of contempt petition initiated on behalf of the petitioner seeking enforcement or implementation of the order dated 18.02.2020. The aforesaid order passed by the Single Judge is presently under challenge in MJC No.945 of 2020. Because of Covid 19 pandemic situation, none of these cases have been taken up for disposal.

Mr. Anand Nandan, learned advocate appearing for the petitioner seeks enforcement of the order dated 18.02.2020 and submits inter alia that the contractual term of the petitioner is to come to an end on 31.08.2021.

Considering the entirety of the matter, in our view, it would be appropriate if writ petition is taken up for hearing by the Single Judge of the High Court at an early date.

We, therefore, request the High Court to consider disposing of CWJC. No.692/2019 at an early date.

The Registry of the High Court is directed to place a copy of the order before the Hon’ble Chief Justice of the High Court for information.”

(underlined for emphasis)

8. It is noteworthy that the Office of the Chancellor issued a communication addressed to the Vice-Chancellor, Nalanda Open University, to implement the aforementioned



interim order passed by this Court. This is not in dispute that despite the communication made by the Office of the Chancellor in the light of the interim order passed by this Court, the petitioner was not allowed to join the post of Registrar (Examination) in the University. It has been stated at the bar that a miscellaneous application was filed on behalf of the petitioner before the Supreme Court seeking certain clarification/direction, which was subsequently permitted to be withdrawn by an order dated 08.10.2021.

9. It is the petitioner's case that in the light of the interim order passed by this Court, he had submitted his joining in the University on 22.02.2020, which fact has not been denied.

10. No counter affidavit has been filed on behalf of the Chancellor's office though a counter affidavit has been filed on behalf of the private respondent No. 4.

11. On perusal of the original records, it transpires that apart from certain complaints received by the Office of the Chancellor against the petitioner, the proviso to Section 54(1) of the Nalanda Open University Act, 1995 ('NOU Act' for short) was one of the considerations for canceling the petitioner's engagement on contractual basis. Further, one of the notings in the original file indicates that the petitioner's engagement on contractual basis was



considered to be mistakenly made under the provisions of Bihar State Universities Act, 1976, which was not applicable in case of Nalanda Open University. In order to correct the said mistake, the file was processed to take a decision on cancellation of petitioner's engagement on contractual basis, in the light of the proviso to Section 54(1) of the NOU Act.

12. The said noting at page 19 of the original records reads as under :

“On the reading of note at 3/N it is clear that he was appointed on contractual basis under BSU Act, 1976. The note speaks of sec. 67(a) of BSU Act in para 3 of 3/N Para 4 says his services can't be extended beyond the age of retirement and para 5 states to appoint him at par with BSU Act 1976 (under sec 15) like other Universities under BSU Act. The officer is/was serving in Nalanda Open Univ which is governed by NOU Act, 1995 wherein his services can't be extended nor can he be re-appointed as can be seen under Section 54(1) of NOU Act {page 18/N para 2}.

Therefore re-appointment of Dr. S.P. Sinha under contract is against the Statutes & thus null and void. More over there is no order of HE for re-appointment for a period of 2 years. This period was unilaterally fixed by the then Principal Secretary on his own level.



On the basis of facts and circumstances mentioned above HE may like to terminate the contractual services of Dr. S.P.Sinha, Registrar (Exam) and would like to consider appointing Registrar(Exam) NOU from amongst the names sent by the VC as mentioned in para 4 pg 18/N.

For kind orders please.”

13. Section 54(1) of the NOU Act reads as under : -

54. Retirement from service. - (1) *Save as otherwise expressly provided in this Act. -*

(i) the date of retirement of teaching employees and of such non-teaching employees of the University as are in inferior service, shall be the date on which they attain the age of sixty-two years;

(ii) the date of all other employees not included in (i) above, shall be the date on which they attain the age of sixty years;

(iii) if an employee of another University of this State, who under the Act of that University, is to retire on attaining the age of sixty-two years, joins the service of this University, such an employee shall retire on the date on which he attains the age of sixty-two years:

Provided that a teaching or non-teaching employees whose date of retirement falls on the first day of a month will retire from service from the afternoon of the last date of the



preceding month and if the date of retirement falls on any other date of the months, he will retire in the afternoon of the last date of that month:

Provided further that the University shall not extend the period of service or re-appoint any teaching or non-teaching employee after his completing the age of sixty or sixty-two years, as the case may be.”

(Underlined for emphasis)

14. It is clear on reading of the proviso to Section 54(1) of the NOU Act that it is impermissible to extend the period of service or reappoint a teaching or non-teaching employee after his completing the age of 60-62 years as the case may be. This is not in dispute, however, that the petitioner's service was not extended nor he was reemployed rather he was engaged on contractual basis. It has also been argued on behalf of the petitioner that similar provision is there under the proviso to Section 67(a) of the Bihar State University Act, 1976 in Section 67(1) thereof and, therefore, the noting in the file that relevant provision under Section 54(1) of the NOU was of no consequence.

15. The reappointment of the petitioner on contractual basis was, in the subsequent opinion of the Office of Chancellor, null and void. It was further noted that there was no order passed by the Chancellor for reappointment for a period of two years,



which was unilaterally fixed by the then Principal Secretary. Accordingly, a decision was taken to terminate the contractual engagement of the petitioner and to appoint respondent No.4 in his place from a panel sent by the Vice-Chancellor of the University.

16. Mr. P.K.Sahi, learned Senior Counsel appearing on behalf of the petitioner has made three fold submissions. He has firstly submitted that the order cancelling petitioner's appointment is in violation of principles of natural justice inasmuch as no notice was ever served upon him before taking a decision to cancel his appointment. He has secondly submitted that the Office of the Chancellor, while taking a decision to engage the petitioner on contractual basis was conscious of the statutory prescription that the service of a teaching or non-teaching employee could not be extended nor he could be reemployed after his retirement on completion of 60 years/62 years, as the case might be. Accordingly, instead of reappointing the petitioner or extending the period of his service, a decision was taken to engage him on contractual basis. Refuting the stand on behalf of the Chancellor of the Universities of Bihar that the file for engaging the petitioner on contractual basis was wrongly processed with reference to the provisions under the Bihar State Universities Act, 1976, without noticing the bar under Section 54(1) of the NOU Act, he has



contended that there is identical bar under Section 67 of the Bihar State Universities Act. He has thirdly submitted that as on date, the period of two years for which the petitioner was engaged on contractual basis has also come to an end. In such circumstance, there is no question of the petitioner now resuming his duties on the basis of the said contractual engagement. He, however, submits that in the absence of any order of stay passed by any superior Court or the appellate Court on the interim order passed by this Court dated 18.02.2020, the respondent University was under obligation to accept the petitioner's joining. According to him, non-implementation of the interim order of this Court amounts to deliberate disobedience of this Court's order and constitutes contempt of this Court and, therefore, the respondents cannot be heard on merits without purging the contempt. He has accordingly submitted that the petitioner is entitled for salary for the period during which, despite interim order of this Court, he was not allowed to function, though he had submitted his joining.

17. Mr. Rajendra Kumar Giri, learned counsel appearing on behalf of the Office of the Chancellor has placed heavy reliance on the provision under Section 54(1) of the NOU Act and has submitted that the decision to engage the petitioner on contractual basis was taken apparently in ignorance of the said provision.



Accordingly, to undo the illegality committed in engagement of the petitioner on contractual basis, a decision was rightly taken to cancel the same. He has submitted that what could not be done directly by operation of the proviso to Section 54(1) of the Act could not have been done indirectly by engaging the petitioner on contractual basis.

18. This is to be noted that a counter affidavit has been filed on behalf of respondent No.4 stating therein that no letter was ever issued by the Vice-Chancellor of the University to the Chancellor for engagement of the petitioner on contractual basis and, therefore, the very basis of the decision of the Chancellor to appoint the petitioner on contractual basis is absent. The University has also not filed any counter affidavit in this case.

19. It is stated by Mr. Giri, learned counsel for the Office of the Chancellor and Dr. Anand Kumar, learned counsel for the University that respondent No.4 has also been removed from the post of Registrar(Examination) of the University. In respect of the communication from the Vice-Chancellor of the University addressed to the Chancellor with regard to petitioner's engagement on contractual basis, Mr. Giri has referred to the original records and has pointed out that such request was in fact received by the Office of the Chancellor, which is there on record.



20. The statement made by respondent No.4 in the counter affidavit, thus, needs not be addressed in view of the specific stand taken on behalf of the Chancellor.

21. On perusal of the pleadings on record and rival submissions made on behalf of the parties, I find substance in submission made by Mr. P.K.Sahi, learned Senior Counsel appearing on behalf of the petitioner that it was incumbent upon the respondents to have given the petitioner an opportunity of hearing before cancelling his engagement on contractual basis.

22. Further, from the notings of the file, as quoted above, it appears that the petitioner's engagement on contractual basis has been treated to be a reappointment within the meaning of the proviso to Section 54(1) of the NOU Act. It is evident from the original records that the Chancellor had taken a decision to engage the petitioner on contractual basis instead of extending his service or reappointing him in view of the statutory bar. The Office of the Chancellor, it appears had taken a considered decision that extension of service of the petitioner or his reappointment, in the background of his utility of his service mentioned in the communication made by the Vice-Chancellor, would be in contravention of the statutory provisions and, therefore, he was appointed on contractual basis.



23. In such view of the matter, the conclusion arrived at by the Office of the Chancellor that the petitioner's engagement on contractual basis was null and void, is not acceptable to this Court.

24. It is unfortunate that no explanation has been put forth by the respondents as to what prevented them from implementing this Court's interim order dated 18.02.2020. There is non-compliance of the said order despite clear direction issued by the Office of the Chancellor dated 29.01.2021 addressed to the Vice-Chancellor of the University, wherein it had been mentioned that the interim order of this Court dated 18.02.2020 should be implemented immediately, which shall, though, be subject to final outcome of L.P.A. No. 185 of 2020 and L.P.A. No. 199 of 2020.

25. Be that as it may, since I am of the considered view that the impugned order contained in Memo. No. BSU(Registrar)-27/2017-3454/GS(1) dated 14.12.2009 cancelling the petitioner's appointment is against the principles of natural justice, the same is quashed. Consequences of quashing of the order shall follow. Accordingly, the petitioner shall be entitled to all emoluments as if no order cancelling his engagement on contractual basis was ever passed. Such emoluments must be paid to the petitioner within two months from the date of production/receipt of a copy of this order.

26. This application is allowed.



27. Let the original records of the Office of the Chancellor produced by Mr. Giri, learned counsel, be returned back to him.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20.11.2021.
Transmission Date	N/A

