

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.823 of 2018

In

Civil Writ Jurisdiction Case No.11909 of 2007

Arjun Choudhary son of Late Saryug Choudhary Resident of Mohalla
Saidnagar, Near Kali Asthan, P.O. and P.S. Laheria Sarai, District Darbhanga.

... .. Appellant/s

Versus

1. The Union Of India through the Secretary, Ministry of Human Resource Development, Govt. of India, New Delhi.
2. The Joint Secretary (Languages) Ministry of Human Resource Development, Govt. of India, New Delhi.
3. The Director (Languages) Education Development, Ministry of Human Resource Development, Govt. of India, New Delhi.
4. The Rastriya Sanskrit Sansthan, through its Registrar, 56-67, Institutional Area, Janakpuri, New Delhi.
5. The Vice Chancellor, Rastriya Sanskrit Sansthan, 56-67, Institutional Area, Janakpuri, New Delhi.
6. The Registrar, Rastriya Sanskrit Sansthan, 56-67, Institutional Area, Janakpuri, New Delhi.
7. The Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, through its Chairman, at and P.O. Kolhanta Patori, P.S. Moro, District Darbhanga.
8. Chairman Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, through its Chairman, at and P.O. Kolhanta Patori, P.S. Moro, District Darbhanga.
9. Dr. Sadanand Jha, Scholar Nominee of Union of India, Member, Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, through its Chairman, at and P.O. Kolhanta Patori, P.S. Moro, District Darbhanga.
10. Deb Narayan Yadav, State of Bihar representative member, Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, Darbhanga
11. Ramanuj Sharma, founder Society (Annapurnas Rajkumari Ganesh Sharma Kendriya Vidyapith, Kolhanta Patori) representative member Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, through its Chairman, at and P.O. Kolhanta Patori, P.S. Moro, District Darbhanga.
12. Principal, Raj Kumari Sharma Sanskrit Vidyapeeth, Kelhanta Patory.

... .. Respondent/s

with



Letters Patent Appeal No. 1654 of 2018
In
Civil Writ Jurisdiction Case No.11909 of 2007

1. The Rastriya Sanskrit Sansthan Through Its Registrar 56-57, Institutional Area, Janakpuri, New Delhi.
2. The Vice Chancellor, Rastriya Sanskrit Sansthan, 56-57, Institutional Area, Janakpuri, New Delhi.
3. The Registrar, Rastriya Sanskrit Sansthan, 56-57, Institutional Area, Janakpuri, New Delhi.

... .. Appellant/s

Versus

1. Arjun Choudhary Son of Late Saryug Choudhary Resident of Mohalla, Saidnagar, Near Kali Asthan, P.O. and P.S. Laheria Seraj, Dist- Darbhanga.
2. The Union of India through the Secretary, Ministry of Human Resource Development, Govt. of India, New Delhi.
3. The Joint Secretary (Languages), Ministry of Human Resource Development, Govt. of India, New Delhi.
4. The Director (Languages) Education Department, Ministry of Human Resource Development, Govt. of India, New Delhi.
5. The Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, through its Chairman, at and P.O. Kolhanta Patori, P.S. Moro, Dist- Darbhanga.
6. The Chairman, Managing Committee Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at and P.O. Kolhanta Patori, P.S. Moro, Dist- Darbhanga.
7. Dr. Sadanand Jha, Scholar nominee of Union of India, Member, Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at and P.O. Kolhanta Patori, P.S. Moro, Dist- Darbhanga.
8. Dev Narayan Yadav, State of Bihar representative member, Managing Committee Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at and P.O. Kolhanta Patori, P.S. Moro, Dist- Darbhanga.
9. Ramanuj Sharma, Founder Society (Annapurna Rajkumari Ganesh Sharma Kendriya Sanskrit, Vidyapith, Kolhanta Patori) representative member Managing Committee Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at and P.O.- Kolhanta Patori, P.S. Moro, Dist- Darbhanga.
10. The Principal, Raj Kumari Sharma Sanskrit Vidyapeeth, Kelhanta Patory.

... .. Respondent/s

with
Letters Patent Appeal No. 1322 of 2019
In
Civil Writ Jurisdiction Case No.11909 of 2007



1. The Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapeeth Kolhanta, Patory through its Chairman At and P.O.-Kolhanta, Patory, P.S. Moro, Dist. Darbhanga.
2. The Chairman, Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapeeth, Kolhanta, Patory At and P.O.-Kolhanta, Patory, P.S. Moro, Dist. Darbhanga.

... .. Appellant/s

Versus

1. Arjun Choudhary Son of Late Saryug Choudhary, Resident of Mohalla-Saidnagar, Near Kali Asthan, P.O. P.S.-Laheriasarai, District-Darbhangha.
2. The Union of India through the Secretary, Ministry of Human Resources Development, Government of India, Shastri Bhawan, New Delhi.
3. The Joint Secretary (Languages), Ministry of Human Resources Development, Government of India, Shastri Bhavan, New Delhi.
4. The Director (Languages), Education Department, Ministry of Human Resources Development, Government of India, Shastri Bhavan, New Delhi.
5. The Rashtriya Sanskrit Sansthan, a Deemed University, established under the Ministry of Human Resources Development, Government of India, 56-57, Institutional Area, Janakpuri, New Delhi.
6. The Vice Chancellor, Rashtriya Sanskrit Sansthan, 56-57, Institutional Area, Janakpuri, New Delhi.
7. The Registrar, Rashtriya Sanskrit Sansthan, 56-57, Institutional Area, Janakpuri, New Delhi.
8. Dr. Sadanand Jha, Scholar Nominee of Union of India, Member-Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapeeth, Kolhanta, Patory, At and P.O. Kolhanta Patory, P.S. Moro, Dist. Darbhanga.
9. Dev Narayan Yadav, State of Bihar Representative Member, Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapeeth, Kolhanta, Patory, At and P.O. Kolhanta Patory, P.S. Moro, Dist. Darbhanga.
10. Ramanuj Sharma, Founder Society (Annapurna Rajkumari Ganesh Sharma Kendriya Sanskrit Vidyapeeth, Kolhanta, Patory) Representative member Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapeeth, Kolhanta, Patory, At and P.O. Kolhanta Patory, P.S. Moro, Dist. Darbhanga.
11. The Principal, Rajkumari Ganesh Sharma Sanskrit Vidyapeeth, Kolhanta, Patory, At and P.O. Kolhanta Patory, P.S. Moro, Dist. Darbhanga.

... .. Respondent/s

Appearance :

(In Letters Patent Appeal No. 823 of 2018)

For the Appellant/s : Mr.Amarendra Narayan, Advocate

For the Union of India : Mrs.Kanak Verma, CGC

(In Letters Patent Appeal No. 1654 of 2018)

For the Appellant/s : Mr.S.D.Sanjay, Sr. Advocate

Mrs.Priya Gupta, Advocate

For the Respondent/s : Mr.Amarendra Narayan, Advocate

(In Letters Patent Appeal No. 1322 of 2019)



For the Appellant/s : Mr.Hemant Kumar Jha, Advocate
For the Respondent/s : Mr.S.D. Sanjay, Sr. Advocate
For the Union of India : Mrs.Kanak Verma, CGC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 06-12-2022

These three Letter Patent Appeal filed by the Arjun Choudhary the then Prinicipal of Rajkumari Ganesh Sharma Vidyapith, Kolhanta Patori, Darbhanga. The other two appeals is by Rastriya Sanskrit Sansthan Through Its Registrar and The Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapeeth. All the three appellants have assailed the order of the learned Single Judge dated 03.04.2018 passed in CWJC No. 11909 of 2007.

2. Appellant-Arjun Choudhary has questioned to the extent that there is no order of reinstatement, LPA No. 1654 of 2018 questioned the leaned Single Judge order to the extent asking appellant to initiate further proceedings, whereas he is not the proper and competent authority to proceed against Arjun Choudhary. The appellant-The Managing Committee, Rajakumari Ganesh Sharma Sanskrit Vidyapeeth through its Chairman in LPA No. 1322 of 2019 contended that he is the competent authority to take any further action against Arjun Choudhary and not appellant



No. 2-The Vice Chancellor, Rastriya Sankrit Sansthan in LPA No.1654 of 2018 as directed by the learned Single Judge.

3. *Prima facie*, the learned Single Judge has committed error in directing appellant No.2 in LPA No.1654 of 2018 (The Vice Chancellor, Rashtriya Sanskrit Sansthan) whereas, there is no master and servant relationship between Arjun Choudhary and second appellant-Vice Chancellor, Rashtriya Sanskrit Sansthan. On the other hand, master and servant relationship is between Arjun Choudhary and appellant-The Registrar, Rastriya Sanskrit Sansthan, to the above effect letters to appeal have been filed by management.

4. Learned counsel for the appellant Arjun Choudhary submitted that he is entitled for reinstatement. On the other hand, during pendency of the litigation one Arbind Sharma is stated to have been appointed as Principal on 17.12.2007, in the result the appellant cannot be accommodated against the Principal post. In the light of the appointment order issued in favour of Arbind Sharma who has been arrayed as necessary proper party during pendency of the CWJC No.11909 of 2007. However, perusal of the cause title and record the appellant Arjun Choudhary-petitioner has failed to amend the cause title in incorporating name of Arbind Sharma as repondent No.13 (newly added respondent). Even, the



registry of this Court has not taken note of in respect of allowing the petitioner-Arjun Choudhary application to implead Arbind Sharma.

5. In view of these facts and circumstances learned Single Judge has committed error in not ordering reinstatement of Arjun Choudhary and also not decided what is the status of Arbind Sharma who has been appointed on 17.12.2007 in place of appellant-Arjun Choudhary.

6. Apex Court in the case of **MD. ECIL vs. B. Karunakaran** reported in (1993) 4 SCC 727 and **Chairman-cum-Managing Coal India Ltd. vs. Ananta Saha & Ors.** reported in (2011) 5 SCC 142, Para 46 to 50 held as under:-

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment of arrears of salary till date. Shri Bandopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work—no pay”. The delinquent had been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary



authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in R. Thiruvirkolam v. Presiding Officer, Punjab Dairy Development Corpn. Ltd. v. Kala Singh and Graphite India Ltd. v. Durgapur Projects Ltd.

48. In ECIL v. B. Karunakar, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or



tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC v. Mitthu Singh , Akola Taluka Education Society v. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. v. Kashinath Ganapati Kambale.

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs."

7. Further, Apex Court in the latest decision in the case of **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in **2022 Live Law SC 736** reiterated the principle laid down by the Apex Court. The principle laid down in the aforesaid judicial pronouncement are that if dismissal order of an employee is set aside on technicality in that event, matter would be remanded to the disciplinary authority to commence the inquiry from the defective stage and thereafter, regulate the intervening period from the dismissal till pass of a fresh order. Further, the principle laid down in the aforesaid decisions are that insofar as reinstatement of dismissed employee in the event of quashing of dismissal order,



discretion is vested with the disciplinary authority either to place an employees/officer under suspension or reinstatement. In view of the aforesaid judicial pronouncement the disciplinary authority is hereby directed to commence the inquiry from the defective stage and complete within a period of four months from the date of receipt of this order. Insofar as reinstatement/suspension is concerned the disciplinary authority is hereby directed to take a decision either to reinstate appellant-Arjun Choudhary or place him under suspension till passing of a fresh order. Thereafter, regulate the intervening period from the date of initial dismissal till passing of a fresh order as a duty or otherwise, in accordance with law.

8. Learned Single Judge has committed error insofar as reminding matter to second LPA-The Rastriya Sanskrit Sansthan Through its Registry which is not the competent authority in respect of placing any action against the appellant-Arjun Choudhary. Therefore, the competent authority/disciplinary authority/appointing authority is hereby directed to take further action and commence inquiry from the defective stage and complete the same as stated above. To the above extent order of the learned Single Judge stands modified.

9. Accordingly, these three LPAs allowed in part.



10. Respective parties are hereby directed to cooperate in implementation of the aforesaid order. If inquiry is not completed before 01.07.2023 in that event, the appellant-Arjun Choudhary is entitled to 50% of the retiral benefits and the same shall be released on or before 15.07.2023.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

abhishekkkr/-

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CAV DATE	
Uploading Date	14.12.2022
Transmission Date	

