

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16284 of 2021

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Sudhanshu Shekhar Bhaskaram S/o Late Byasdeo Bhaskar, R/o Village - Belthu, P.O.- Harpur, P.S.- Shahkund, District - Bhagalpur, Bihar - 813108 presently Posted As Associate Professor as HOD, Zoology Department A.S. College, Bikramganj, Rohtas.

... .. Petitioner

Versus

1. The Veer Kunwar Singh University, Ara through its Registrar.
2. The Vice Chancellor, Veer Kunwar Singh University, Ara.
3. The Registrar, Veer Kunwar Singh University, Ara.
4. The Financial Advisor, Veer Kunwar Singh University, Ara.
5. The Bursar, A.S. College Bikramganj District Rohtas.
6. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
7. Dr. Santosh Kumar Singh, Associate Professor, Philosophy Department, A.S. College, Bikramganj.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Verma, Advocate Mr.Abhishek Kumar, Advocate
For the University	:	Mr.P.N.Shahi, Sr. Advocate Mr.Ritesh Kumar, Advocate
For the Respondent No. 7:		Mr.Abhinav Srivastava, Advocate Mr.Gyan Shankar, Advocate
For the State	:	Mr.S.K.Ranjan, AC to GP-17

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 29-08-2023 The original copy of the writ application as well as the reply to the I.A. No. 1/2023 are taken on the record.

2. Heard learned counsel for the petitioner, learned counsel for the Veer Kunwar Singh University, Ara (hereinafter referred to as the ‘University’), learned counsel for Respondent No. 7 and learned counsel for the State.

3. Petitioner in the present writ application is



seeking a writ in the nature of Writ of Certiorari to quash and cancel the notification as contained in Memo No. 1641/Estab/2021 dated 16.08.2021 issued by the Registrar of the University whereby and whereunder the Respondent No. 7 has been appointed as Professor In-charge of Anjabit Singh College, Bikramganj (Rohtas) replacing the petitioner by cancelling the notification of the University dated 12.07.2018 by which the petitioner was appointed as Professor In-charge of the College.

4. Learned counsel for the petitioner has assailed the impugned order as contained in Annexure 'P-9' to the writ application on the grounds *inter alia* that this order has been passed in violation of principles of natural justice and the Vice Chancellor of the University has appointed Respondent No. 7 who has been found guilty in a disciplinary proceeding conducted against him on the direction of the Lokayukt, Bihar, Patna. It is stated that vide Memo No. Legal/Misc./19/17/206/Estab/2020 dated 22.01.2020 (Annexure 'P-10'), the Respondent No. 7 has been punished for violation of the financial rules and his increments for next three years have been stopped.



5. Learned counsel for the petitioner has taken this Court through the earlier round of litigation between the petitioner and one Dr. Kanhaiya Rai in CWJC No. 14245 of 2018 which was disposed of vide order dated 11.04.2019 by this Court with a direction to the Vice Chancellor of the University to hear the respective parties and take an appropriate decision in the matter of appointment of the Professor In-charge of the College. The said writ application was filed by Dr. Kanhaiya Rai for quashing of the notification dated 12.07.2018 by which the Respondent No. 6 (the present petitioner) was appointed as Professor In-charge of the College replacing the writ petitioner.

6. It appears that in the light of the order of this Court vide Annexure 'P-4', the Vice Chancellor considered the case of the petitioner and Dr. Kanhaiya Rai whereafter vide notification contained in Memo No. 2652 dated 24.09.2019 it was held that the claim of seniority by said Dr. Kanhaiya Rai was not correct. By virtue of the order of this Court in CWJC No. 14245 of 2018, during the interregnum period the Respondent No. 6 continued to hold



the post of Professor In-charge.

7. Learned counsel submits that vide notification dated 18.05.2021 an inquiry team was constituted to look into the alleged allegation of financial indiscipline against the Respondent No. 6- petitioner. The Two Member Committee was constituted vide Annexure 'P-7' dated 18.05.2021 but for a period of three months no development took place. Again vide Memo No. 1512 dated 14.08.2021 (Annexure 'P-8') another Committee was constituted comprising three members and they were directed to submit the inquiry report at the earliest.

8. It appears that vide impugned notification dated 16.08.2021, the petitioner was removed as Professor In-charge because of the start of the disciplinary proceeding against him and in his place Respondent No. 7 has been ordered to take charge as Professor In-charge.

9. Learned counsel for the petitioner submits that within two days of the constitution of the Three Members Committee the petitioner has been removed without giving any opportunity of hearing. It is not the case of the University that the petitioner was not cooperating with the



inquiry team in the matter of carrying the inquiry into the issue of financial indiscipline.

10. Mr. P. N. Shahi, learned Senior Counsel for the University has contested the writ application. It is his stand that the Three Members Committee was constituted vide memo dated 16.09.2022 to consider the punishment awarded to Respondent No. 7 and one another person of the concerned college. The said Committee submitted its report and on perusal thereof the University came to a conclusion that since the charges were not proved against Respondent No. 7, therefore, the punishment of stoppage of three increment passed against Respondent No. 7 is fit to be withdrawn from the date of its issuance. Annexure 'A' to the counter affidavit of the University is the Memo No. 1777/ Etab/22 dated 13.10.2022 by which the University notified recall of the order of punishment of Respondent No. 7. It, however, appears from further statement of the counter affidavit of the University that the University has recalled Memo No. 1777/ Etab/22 dated 13.10.2022 vide Memo No. 351 dated 19.10.2022 (Annexure 'B' to the counter affidavit).



11. It is submitted that under Statute 32 (19)(1) and (2) of the Bihar State Universities Act, 1976 there is a provision for appointment of Professor In-charge in absence of a regular Principal. The Professor In-charge is to be the senior most teacher available in the College and there is no provision in the Act that a person who has inflicted with a minor punishment, cannot be appointed as Professor In-charge/ Principal of the College.

12. Mr. Abhinav Srivastava, learned counsel for Respondent No. 7 submits that Respondent No. 7 is five years senior to the petitioner, therefore, he would be entitled to be considered for the Professor In-charge in absence of a regular Principal of the College. It is his further submission that the order of punishment inflicted upon Respondent No. 7 has already lived its life and lost its effectiveness over three years by now.

13. Having heard learned counsel for the parties and on perusal of the records, this Court finds that so far as Respondent No. 7 is concerned, as on today the order of punishment as contained in Annexure '10' to the writ application inflicted upon him still exists. The said order



has not been appealed against and otherwise not interfered with by a competent court of law. This Court is unable to accept the submission of learned Senior Counsel for the University that the punishment is in the nature of a minor punishment because a bare perusal of Annexure '10' would show that by the said order not only the three annual increments of Respondent No. 7 were stopped, the findings with respect to charge nos. 4 and 5 hold Respondent No. 7 guilty of financial indiscipline while working as Bursar and the loss amount is said to be recoverable.

14. Learned counsel for the University has though informed this Court that the loss amount has been refunded by the contractor to the University, however, the findings contained in the order of punishment is staring at the face of Respondent No. 7.

15. This Court further finds from the records that earlier the claim of Respondent No. 7 for his posting as Proctor was rejected vide Letter No. 2524/Estab/17 dated 09.12.2017 written by the Registrar of the University to the Principal of the College for the reason that as per direction of the Lokayukt, Bihar a team had been constituted to



inquire into the matter against Respondent No. 7.

16. This Court is of the considered opinion that if pendency of the inquiry against Respondent No. 7 was an issue and for that reason the Respondent No. 7 was not found suitable for recommendation to the post of Proctor, how the University can take a plea that the same and one person who has now been found guilty for the financial indiscipline would have no difficulty in becoming the Professor In-charge of the College. The stand of the University are self-contradictory and inconsistent.

17. This Court further finds that the impugned order has been passed in complete violation of principles of natural justice. No doubt an inquiry has been initiated by constituting a three member inquiry team to look into the issue of financial indiscipline by the petitioner and the University is fully competent to take an appropriate view of the matter as to whether the petitioner should continue as Professor In-charge of the College during the ongoing inquiry, the minimum requirement was that before taking a decision to remove the petitioner as Professor In-charge of the College, he should have been given an opportunity of



hearing. In any case, his replacement by Respondent No. 7 is not justified in the given facts and circumstances of the case.

18. In result, the impugned order as contained in Annexure 'P-9' is set aside. The consequential action would follow.

19. Let it be made clear that this Court has not gone into any issue of seniority *inter se* between the petitioner and Respondent No. 7 and any other issue save and except the manner in which the decision making process has been taken up by the University.

20. This writ application stands disposed of accordingly.

21. As a result of adjudication of the present writ application, the impugned order dated 18.08.2022 would merge with the final order and the interim order directing appointment of Administrator is vacated.

(Rajeev Ranjan Prasad, J)

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