

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.261 of 2023

Prabhakar Sharma Son of Ramashray Singh, Resident of Aryapuri, Ratu Road, Near Manik Mansion Apartment, Police Station- Sukhdev Nagar, District- Ranchi, PIN- 834001.

... .. Petitioner

Versus

1. The Union of India through Secretary (EAST) Ministry of External Affairs, Jawaharlal Nehru Bhawan, New Delhi.
2. The Secretary (EAST), Ministry of External Affairs, Jawaharlal Nehru Bhawan, New Delhi.
3. The Secretary, Ministry of Finance, Government of India, New Delhi.
4. Nalanda University, Rajgir, Nalanda, Bihar.
5. The Governing Board, Nalanda University through its Chairman (Chancellor, 34A, Vrindavan Society 2, Panchrati, Pashan Road, Pune-411008).
6. Registrar, Nalanda University, Rajgir, Nalanda Bihar.
7. Vice Chancellor, Nalanda University, Rajgir, Nalanda Bihar.
8. Professor Sunaina Singh, At Present Vice Chancellor, Nalanda University, Rajgir, Nalanda, Bihar.
9. Director Administration, Nalanda University, Rajgir, Nalanda, Bihar.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Siyaram Shahi, Advocate Mr. Ram Ganesh, Advocate Mr. Rakesh Kumar, Advocate
For the Nalanda University	:	Mr. Anajni Kumar, Senior Advocate Mr. Amit Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 28-08-2023

Heard Mr. Siyaram Sahi, learned counsel for the petitioner and Mr. Anjani Kumar, learned Senior Advocate assisted by Mr. Amit Kumar Jha, learned Advocate for the Nalanda University (hereinafter referred to as the 'University').



2. This writ application has been filed seeking the following reliefs:-

“(i) For issuance of an appropriate writ/writs, order/orders, direction/directions for quashing the office order No. 859 dated 2.12.2022 issued under the signature of Registrar, Nalanda University, whereby and whereunder the appointment of the petitioner as Assistant professor on contract has been cancelled, contended in Annexure-20.

(ii) For issuance of an appropriate writ, commanding the respondent University to reinstate the petitioner on the post of Assistant Professor in the School of Ecology and Environment Studies, with all consequential benefits.

(iii) For any other relief or reliefs for which the petitioner is entitled under law as well as on facts.”

Submissions of the Petitioner

3. The petitioner in this case is aggrieved by and dissatisfied with the office order no. 859 dated 02.12.2022 issued by the Registrar, Nalanda University whereby and whereunder the petitioner has been communicated that he would cease to be on the rolls of the University with immediate effect. The impugned office order is Annexure ‘20’ to the writ application.

4. Learned counsel for the petitioner submits that this petitioner was initially appointed as a Faculty/ Assistant Professor vide office order dated 13th October, 2014 (Annexure ‘2’) for a period of three years. A Faculty Employment Contract (hereinafter referred to as ‘Faculty Employment Contract’ or ‘the Contract Document’) was executed between the petitioner and the Registrar for and on



behalf of Nalanda University. Under the Faculty Employment Contract (Annexure '3' to the writ application), it was agreed upon that there will be a tenure review at the end of the third year. The entire period of contract shall be probationary and after following the review process, on completion of the contract, the services of the employee may be considered for confirmation or termination. According to Annexure '3', the petitioner was appointed on a full-time basis in the School of Ecology and Environment Studies for a period of three years between 29.09.2014 and 29.09.2017.

5. Learned counsel submits that by virtue of the probation and confirmation clause of the contract document, the service of the petitioner was liable to be considered either for confirmation or termination on completion of the contract period. The fact is that after completion of the said period, the petitioner was allowed to continue and in such circumstance, he would be deemed to have been confirmed in service. Learned counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of **Dayaram Dayal Vs. State of M.P. and Another** reported in **AIR 1997 SC 3269** (paragraphs '9' and '13') and in the case of **Karnataka State Road Transport Corpn. and Others Vs. R. Govindaraj** reported in **AIR 2000 SC 2070** (paragraphs '10', '13' and '14').

6. It is his further submission that while the petitioner was continuing as Assistant Professor, the University came out with an



advertisement for appointment of Associate Professor. This has been termed 'rolling advertisement' by the University. The petitioner applied for the said post but he was not selected. One Kishore Dhawala was appointed as Associate Professor. The petitioner, thereafter, represented to the Vice Chancellor of the University on 16.07.2021 against rejection of his candidature and appointment of Mr. Kishore Dhawala. The petitioner tried to highlight the comparative merit through a chart and pointed out the publications which he had to his credit.

7. It is his submission that after filing of the representation by the petitioner, the Registrar of the University issued a show cause notice alleging that the petitioner had misconducted himself and vide said show cause notice, it was observed that the petitioner had made serious allegations against his own colleague undermining his credentials which puts a serious question on his academic ethics, integrity, propriety and collegiality.

8. Learned counsel submits that what was a simple representation of the petitioner to the Vice Chancellor highlighting his achievements and comparing his educational qualification and work experience with the newly appointed Mr. Kishore Dhawala has been taken as serious allegations against the colleague of the petitioner and that has been questioned on the ground of academic ethics, integrity, propriety and collegiality.



9. It is submitted that the petitioner filed his reply to the show cause vide Annexure '8' dated 31.07.2021 to the writ application whereafter no further action was taken and the things proceeded smoothly.

10. It is submitted that all of a sudden, an employee of the college lodged one FIR giving rise to Case No. 569 of 2022 with Rajgir Police Station wherein he alleged that someone had made an e-mail ID in his name and has been corresponding with several persons from the said e-mail ID. It was alleged that through this *farzi* e-mail ID personal information of the informant was gathered through recovery e-mail ID of this petitioner. It is also alleged that by using recovery e-mail ID of his brother Prateek Ojha and his father's mobile number, personal data of his co-worker Sagar has been obtained by some unknown person using the *farzi* e-mail ID.

11. In course of investigation, the police investigated the petitioner after giving benefit of Section 41 Cr.P.C. Immediately after that first FIR, Mr. Kishore Dhawala, the newly appointed Associate Professor also lodged a First Information Report wherein he alleged that several RTI applications have been filed by using his name and official address of Nalanda University, Rajgir and the *Farzi* e-mail ID has been used.

12. Learned counsel further submits that in fact while the investigation of those cases were going on, the laptop of the



petitioner was also hacked and in this regard, the petitioner informed the Rajgir Police and also met the Deputy Superintendent of Police, Rajgir whereafter a First Information Report with FIR No. 587 of 2022 as contained in Annexure '13' to the writ application has been lodged. It is stated that in the first FIR, the petitioner has been chargesheeted while the investigation in another two FIRs are still pending.

13. Learned counsel submits that the petitioner had lodged one Information Petition as well in the learned court below alleging the groupism prevailing in the University campus and that the petitioner has been falsely implicated in the first case.

14. Learned counsel submits that as a part of malafide exercise of power, the Registrar, Nalanda University issued a confidential memo with the approval of the competent authority i.e. the Vice Chancellor vide Letter dated November 4, 2022 (Annexure '16' to the writ application) wherein it was alleged that it had come to the notice of the University authorities that the police detained him and are inquiring on a matter of Cyber crime relating to fraudulent impersonations in the names of the University employees with an intention to malign the image of the University and its authorities vide FIR No. 569 of 2022. The memo alleged that the petitioner was working against the interest of the University with criminal intent and his conduct is not just unbecoming but also in breach of



confidentiality agreement indulging in prejudicial activities with fraudulent and criminal intent. With these aspersions, the petitioner was called upon to show cause as to why a stringent action should not be taken against him. He was asked to submit his response within a period of three days.

15. Learned counsel submits that the Memo dated November 4, 2022 does not mention a single instance as to how the petitioner is working against the interest of the University. The use of words such as ‘breach of confidentiality agreement’, ‘indulging in prejudicial activities’ and ‘fraudulent and criminal intent’ are the ornamental words which have been used in the memo without any substance.

16. The petitioner submitted a reply to the said memo vide Annexure ‘17’ to the writ application. He specifically asserted that there is a conspiracy of framing him, there was no breach of confidentiality agreement or wrong activities from his side and he has never tried to impersonate anyone in his life.

17. Learned counsel submits that by yet another memo dated November 15th, 2022 (Annexure ‘18’ to the writ application), the Registrar of the University alleged that since the petitioner had been detained by the Police to Inquire on a matter of Cyber crime related to fraudulent impersonations in the name of the University employees, it is within the purview of the University to examine any



document, record, system, any University property etc. The second paragraph of this memo says about the complaint lodged by the petitioner on 07.11.2022 in Rajgir Police Station but it is alleged that the petitioner had lodged this complaint without any prior permission of the University which are in clear violation of the provisions of the Code of Ethics Agreement under the Employment Contract signed by him. He was once again called upon to submit his explanation within three days.

18. Learned counsel for the petitioner submits that the petitioner submitted his reply vide Annexure '19' to the writ application wherein he pointed out the admission on the part of the authorities of un-authorized access of the computer and official e-mails and personal e-mails of the petitioner on 3rd and 4th November 2022 while the investigation on the part of the Police was still sub-judice.

19. It is submitted that in the aforementioned background, the impugned office order dated 02.12.2022 (Annexure '20') has been issued by the Registrar. The impugned order which is stigmatic and casting aspersion upon the petitioner has been issued by order of the Vice Chancellor of the University. Learned counsel submits that under the Contract document (Annexure '3') itself, it may be found that Clause '5' lays down the complete procedures relating to termination of employment. Under Clause '5.1', where there is an



allegation of misconduct against the employee, the Vice-Chancellor may, if she/he considers appropriate, by order in writing, place the employee under suspension and shall forthwith report to the Governing Body, the circumstances under which the order was made. By way of proviso to Clause '5.1', it is provided that the Governing Board may, if it is of the opinion that the circumstances of the case do not amount to misconduct on the part of the employee, revoke that order and a decision in the said respect must be taken within a period of three months from the date of issuance of the order of suspension. Under Clause '5.2' of the agreement, the Governing Body shall be entitled to remove an employee from the services of the University on the ground of misconduct or for indulging in activities that are unlawful and prohibited under the law of the land.

20. Learned counsel submits that in these circumstances, the impugned office order has not only been passed in haste by making use of some ornamental words but is also issued by the order of the Vice Chancellor who is not competent to take a decision regarding termination of the petitioner. It is, thus, submitted that the impugned order is bad in law and is liable to be set-aside with consequential reliefs to the petitioner.



Stand of the University

21. Mr. Anjani Kumar, learned senior counsel has opposed this writ application. Learned senior counsel has placed before this Court the stand of the University as contained in the counter affidavit as well as the supplementary counter affidavit. His submission is that the contention of the petitioner regarding his deemed confirmation is only a misconceived submission inasmuch as it would appear from the documents available with the counter affidavit that the petitioner had himself signed a fresh Faculty Employment Contract dated 21st day of August, 2020 (Annexure 'A' to the counter affidavit). This Contract takes note of the earlier Employment Contract of three years which has been extended from time to time until 27th September, 2022 and it further states that the term may further be extended from time to time on satisfactory performance. It is further submitted that the petitioner was on probation even after 27th September, 2022 as his Contract was extended vide Annexure '4' to the writ application for another period of six months.

22. Learned counsel submits that on perusal of this fresh Contract document, it would appear that Clause '1.2' talks of Probation and according to this provision, the entire period of initial Contract shall be on probation and based on effectiveness of delivery, accountability and integrity, the probationary period may further be



extended. It further states that there will be a review of the employment at the end of each year by the competent authority.

23. Learned senior counsel has then drawn the attention of this Court towards Clause '5' of the Contract document (Annexure 'A') and submits that even as Clause '5' talks of 'Resignation' by giving three months' notice in writing to the Vice Chancellor or three months' salary in lieu of the notice period, the further stipulation present under the said clause would show that the University is empowered to cease the service of an employee on completion of the term/tenure track at the end of the term or before, on the basis of overall contribution, accountability and conduct, without assigning any reason thereof.

24. Learned counsel submits that in fact the Vice Chancellor of the University has taken a decision to cease the service of the petitioner under this provision of the Contract document (Annexure 'A') and it cannot be said to be a case of termination as envisaged under Clause '4' of the Annexure 'A', wherein, in case of an allegation of misconduct or a conduct not in the interest of the University or prohibited by law, the employee may be terminated by the University alone.

25. Learned senior counsel submits that by signing Annexure 'A' to the counter affidavit, the petitioner has agreed to the terms of the contract, therefore, at this stage, he cannot take a plea



that it is not a case of cessation of service of the petitioner under Clause '5' of the Contract document.

26. Referring to the statements made in the supplementary counter affidavit and the enclosures thereto, learned senior counsel submits that the impugned office order was sent to the Hon'ble Chancellor, who is the Chairperson of the Governing Body of Nalanda University, vide e-mail dated 05.12.2022. It is further pointed out that the said e-mail was placed for consideration in the 19th meeting of the Governing Board held on 08.07.2023 and the Governing Board endorsed and confirmed the same. Learned counsel, therefore, submits that no fault may be found with the decision of the Vice Chancellor under Clause '5' of the Contract which has now the approval of the Governing Body. Learned senior counsel has also referred the powers of the Vice Chancellor conferred by virtue of Section 15(3) of the Nalanda University Act, 2010 (hereinafter referred to as the 'Act of 2010').

Consideration

27. Having heard learned counsel for the petitioner and learned senior counsel for the University and upon perusal of the records placed before this Court, this Court finds that under the first/initial Employment Contract vide Annexure '3' to the writ application, the petitioner was appointed as Assistant Professor on full-time employment. Clause '1.1' of this document specifically says



that the entire period of the contract shall be probationary and there will be a tenure review at the end of the third year. During this period of probation, the service of the employee can be terminated without assigning any reason by giving one month's notice or one month's salary in lieu thereof. To that extent, there is no quarrel and dispute between the parties.

28. One of the submissions on behalf of the petitioner is that in terms of Clause '1.1', the review process would lead to either of the two consequences, the petitioner would either be taken to have been confirmed in service or he has to be terminated. This issue is to be examined by this Court with reference to the subsequent developments, particularly, the second Contract document which has been brought on record by and on behalf of the University in form of Annexure 'A' to the counter affidavit. The documents in between the first and the last one i.e. Annexure 'A' to the counter affidavit are not significant at this stage.

29. While this Court finds that the first document specifically states that the entire period of contract shall be probationary, the last Contract document in its Clause '1.2' does not say so. This clause states "that the entire period of initial contract shall be on probation..." The period of initial contract was between 29.09.2014 to 29.09.2017.



30. To this Court, it is crystal clear that initial contract of the petitioner was the probation period and this fact gets support from Clause '1.2'. At least, the last Contract document (Annexure 'A' to the counter affidavit) nowhere says that by this document, the probationary period of the petitioner which started with the first Contract document is being extended. There is a general kind of statement that "...based on effectiveness of delivery, accountability and integrity and his/her probationary period may further be extended. There will be a review of the employment at the end of each year by the Competent Authority." However, vide Annexure '4' to the writ application when further extension was being given on 27.09.2022, it is written that the extended period will be on probation.

31. In the aforementioned circumstance, one thing is very clear that even though there is no specific communication that the service of the petitioner has been confirmed after completion of first three years under the first Contract document (Annexure '3' to the writ application), on review his Contract was being extended from time to time and it was again extended for a period of three years and six months vide the Contract document as contained in Annexure 'A' to the counter affidavit and Annexure '4' to the writ application respectively.

32. The submission of Mr. Anjani Kumar, learned senior Advocate is that the petitioner will be treated on probation, however,



learned counsel for the petitioner has submitted that the period of probation lapsed with the expiry of first three years and the petitioner was liable to be considered either for 'confirmation' or 'termination'. In view of the order which this Court proposes to pass at this stage, this Court would, however, not be going into a determination as to whether the petitioner has to be taken as a confirmed employee or not for the reason that this aspect is required to be looked into by the University afresh.

33. The facts of the case as revealed hereinabove demonstrate that initially there was a representation by the petitioner highlighting his achievements and he compared his educational qualification and other achievements with the newly appointed Associate Professor. Annexure '6' to the writ application is his representation to the Vice Chancellor and this Court has gone through the same. The representation states that the petitioner performed brilliantly in front of the Selection Committee and they were satisfied with his response and overall academic accomplishments and contributions to the field. He stated that he had not received any information regarding the outcome of the process but he learnt from his colleague Dr. Kishore Dhawala about his selection as Associate Professor. The petitioner further states that he must congratulate him for his new role at the University. The petitioner, thereafter, prepared a chart showing the comparative



qualification and work experience and then he requested the Vice Chancellor to review the overall process for selection of candidate to avoid appointment of under-qualified person instead of a well-qualified candidate at the School of Ecology and Environment Studies, Nalanda University. Immediately, after the representation (Annexure '6'), the petitioner was served with memo of July 19, 2021 and this Court is a bit surprised with the kind of aspersions made in the said memo with reference to Annexure '6'.

34. This Court is in fact unable to understand as to how allegations have been made that the petitioner had made serious allegations against his own colleague undermining his credentials. The said representation has been viewed seriously as an issue of misconduct and unbecoming of a faculty, debunking the integrity and propriety of the University. This Court is conscious of the judicial view that normally the Court should not enter into the merit of the allegations but in the facts of the present case with its naked eyes when the Court goes through Annexure '6' to the writ application which is the representation, prima-facie, this Court finds that what have been alleged about this representation in the memo of July 29, 2021 (Annexure '7' to the writ application) are not correct and it seems that some ornamental words have been purposely chosen to make a mountain out of a molehill.



35. This Court has further noticed that when the petitioner submitted his reply vide Annexure '8' to the writ application, the University remained silent and did not take further action. The contract was further extended on 27.10.2022.

36. Thereafter, a complaint case came to be lodged by one Mr. Manoj Kumar, the Assistant Electrical Engineer posted in the University who complained that his e-mail ID has been hacked and is being used to correspond with some persons. He alleged that the recovery e-mail ID of his brother Prateek Ojha and mobile number of his father has been used to gather certain personal information of his co-worker. This FIR was lodged against unknown on 10.10.2022 and in respect of this, the petitioner was called upon to appear before the Investigating Officer on 03.11.2022. The petitioner appeared and participated in the investigation process. On the very next day, his laptop was also hacked and in this regard, he made a complaint to the police, met the Deputy Superintendent of Police, Rajgir and then he also lodged a First Information Report on 07.11.2022. The fact is that the petitioner was not detained by police rather he was noticed to participate in the investigation and was given benefit of Section 41 (1) Cr.P.C. but then the Registrar of the University came out with a memo. Firstly vide Memo dated 4th November, 2022, taking note of the lodgment of the FIR No. 569 of 2022, it is alleged that the petitioner as a beneficiary of the University system is working against the interest of the University with criminal intent. How the



petitioner has acted against the interest of the University with criminal intent has not at all been pointed out in the memo. It is alleged that the petitioner acted in breach of the confidentiality agreement and indulged in prejudicial activities with fraudulent and criminal intent but again the memo nowhere points out that how the petitioner has breached the confidentiality agreement and indulged in prejudicial activities. There is no whisper of a single act of the petitioner which may be brought in the category of a case of breach of confidentiality agreement or an act of prejudicial activities. The fact remains that the FIR No. 569 of 2022 was under investigation on 4th November, 2022. In the second memo dated November 15, 2022, it was alleged that the petitioner had been detained by police to inquire into the matter and then it is alleged that the petitioner had lodged a complaint about the same matter on 07.11.2022 without any prior permission of the University. Again, this Court is unable to appreciate as to how the mere lodgment of a case by bringing to the notice of police certain unlawful act which required investigation by police would require prior permission of the University. Further, how participation of the petitioner in course of investigation of the first case would lead to a presumption that the petitioner working against the interest of the University and with criminal intent. A crime has been committed, as alleged by the petitioner by hacking his laptop and for that he made a complaint with the police giving rise to a First Information



Report lodged on 07.11.2022. To this Court, it appears that there was no reason for the Vice Chancellor of the University to say that why petitioner lodged this FIR without prior permission of the University. A crime is to be reported to the police and it requires nobody's permission unless the said crime is under a special statute and the statute prescribes any particular procedure to be followed before lodging of the case.

37. This Court, therefore, finds from the materials present on the record, without examining any evidence, with its own naked eyes prima-facie that the two memos i.e. dated November 4, 2022 and November 15, 2022 were served back to back in complete haste. The impugned order has been passed with reference to these memos.

Decision making process

38. Now, coming to the decision making process adopted by the Vice Chancellor of the University which is getting reflected in the impugned office order. In the impugned order, the petitioner has been informed that he has repeatedly violated the Contractual Employment Agreement signed by him which are highly unethical and constitute misconduct and that is unbecoming of a Faculty.

39. In the opinion of this Court, such observations in the impugned office order are stigmatic. It casts aspersions upon the petitioner, therefore, by no stretch of imagination it can be allowed to be argued that this order has been passed under Clause '5' of the



Contract document (Annexure 'A' to the counter affidavit). Clause '5' of the Contract document is being reproduced hereunder for a ready reference:-

“5. Resignation: The Employee may resign from her/his post by giving three months' notice in writing to the Vice-Chancellor, or three months' salary in lieu of the notice period, so that teaching and other activities are not affected. The University may also cease the services of the employee on completion of the term/tenure track at the end of the term or before, on the basis of overall contribution, accountability & conduct, without assigning any reason thereof. The Employee may also resign her/his engagement during the service period by giving one month notice or one month salary in lieu thereof during the period of probation. After completion of the probation period, the employee concerned will be required to serve the notice for a period of three months or three months' salary in lieu thereof.

Provided that the Vice Chancellor may defer acceptance of resignation for such period beyond three months up to a maximum of six months or the end of the ongoing semester, whichever is later, from the date indicated on the resignation letter by the employee to avoid any academic disruption.

Provided further that the Vice Chancellor may, waive the requirement of the notice period.”

(underline is mine)

40. On a bare perusal of Clause '5', it would appear that the concept of cessation of service of an employee takes within its fold such action which are taken by the University on the basis of overall contribution, accountability and conduct, without assigning any reason thereof. The words “without assigning any reason thereof” are words of significance. This may be the cases of simple cessation of service without assigning any reason. If the cessation



of service is being effected by casting aspersions against an employee, it is in fact a case of termination and Clause '4' of the Contract document would be attracted. Clause '4' of Annexure 'A' to the counter affidavit reads as under:-

“4. Termination: The employee under this agreement shall be liable to be terminated in the events of violation of the terms of this agreement by the Employee and furthermore, in accordance with the provisions contained under the Nalanda University Act, 2010, Statutes, Ordinances and Regulations as amended from time to time governing the affairs of the University with respect to termination of employment. Where, there is an allegation of misconduct or for indulging in activities that are not in the interest of the University and any other unlawful and prohibited activities under the law of land, against the Employee, the University, by order in writing, may place the Employee under suspension or termination as the case may be and shall report the matter to the Governing Board. In case of any disputes, the jurisdiction of the University is confined to the High Court of Judicature of Patna, Bihar as the Headquarter of the University is in the State of Bihar.”

(underline is mine)

41. In this case, this Court has no iota of doubt that the Vice Chancellor of the University was acting in hot haste. The two memos were served back to back and even as the investigation of the police cases were pending he fastened the guilt upon the petitioner without conducting any inquiry. In the name of compliance with the principles of natural justice, three days' time was given to the petitioner to submit his explanation on both the occasions but the impugned order as contained in Annexure '20' to



the writ application, nowhere considers the explanations of the petitioner.

42. In course of hearing, a question has further arisen as to whether the impugned order may be said to have been passed by the 'University' because both under Clause '4' as well as Clause '5' of Annexure 'A' to the counter affidavit, it is the 'University' who has to pass the order in writing. In this case, admittedly, the decision of termination of the petitioner has not been taken by the 'University', the decision was taken by the Vice Chancellor of the University and the same was communicated three days thereafter to the Hon'ble Chancellor through e-mail and the said e-mail was placed before the Governing Body after about eight months just to take note of the information and complete the formality that it has been placed before the Governing Body. Agenda Item No. 19.8 placed before the Governing Body reads as under:-

“The matters over which the approvals of the Chancellor has been received are placed for information of the Governing Body”.

43. Learned senior counsel for the University has submitted that in this manner, the impugned order be taken to have been ratified by the Governing Body of the University.

44. This Court is of the considered opinion that the order of termination of an employee under the Faculty Employment



Contract (Annexure 'A' to the counter affidavit) is to be passed by the University. The Contract document refers both the authorities i.e. the 'University' and the 'Vice Chancellor' at two different places in the same document and different powers have been conferred upon them. For example, while Clause '4' and Clause '5' specifically says about the order of termination and order of cessation to be done by the University, under proviso to Clause '5', the Vice-Chancellor of the University has been conferred with power to defer acceptance of resignation and he has power to waive the requirement of notice under Clause '5'. Thus, following the well-settled proposition of law that something which cannot be done directly cannot be allowed to be done indirectly and where the statute provides for a particular thing to be done in a particular manner, the thing must be done in the same manner or not at all, this Court is of the considered opinion that in this case, the Vice Chancellor of the University cannot be allowed to take a decision and that too a drastic decision of cessation or termination from service of an employee in a routine manner when the Contract document does not provide that power to the Vice-Chancellor and at the same time there is no blanket statutory power to the Vice-Chancellor. To say that the Vice-Chancellor had sent this information to the Hon'ble Chancellor and then it was sent to the Governing Body for information can not set the things right.



45. Learned senior counsel has taken this Court through the scheme of the Act of 2010. Section 3(t) defines the “University” which means the Nalanda University established and incorporated under Section ‘4’. Section 4(1) read with sub-Section (3) would lead to conclude that the University is a body corporate, it has perpetual succession and a common seal. Section ‘7’ provides for formation of a Governing Body and the Governing Body consists of (a) the Chancellor; (b) the Vice Chancellor; (c) five members from amongst the Member States which provide maximum financial assistance during a period of three years to be nominated by the Member States; (d) one member, not below the rank of Secretary in the Ministry of External Affairs to be nominated by the Central Government; (e) Two members, representing the State Government of Bihar, to be nominated by the State Government; (f) one member not below the rank of Additional Secretary in the Ministry of Human Resource Development, to be nominated by the Central Government; and (g) three members from amongst the persons being renowned academicians or educationists, to be nominated by the Central Government. Section ‘8’ provides the powers and functions of the Governing Board. Section ‘10’ deals with the powers of University and clause (xxi) under Section 10 provides one of the powers i.e.



to regulate and enforce discipline among the students and the employees and to take such disciplinary measures in this regard as may be deemed by the University to be necessary. The University has residuary powers under clause (xviii) of Section '10'. As against this, the powers of the Vice Chancellor may be found under Section 15 of the Act of 2010. Much emphasis has been given on behalf of the University on sub-Section (3) of Section '15', therefore, this Court deems it just and proper to extract Section 15(3) for a ready reference:-

“(3) The Vice-Chancellor may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the University by or under this Act and shall report to such authority the action taken by him on such matter:

Provided that if the authority concerned is of the opinion that such action ought not to have been taken, it may refer the matter to the Visitor whose decision thereon shall be final:

Provided further that any person in the service of the University who is aggrieved by any action taken by the Vice-Chancellor under this sub-section shall have the right to represent against such action to the Governing Board within ninety days from the date on which such action is communicated to him and thereupon the Governing Board may confirm, modify or reverse the action taken by the Vice-Chancellor.”

46. With reference to the aforementioned provision, Mr. Anjani Kumar, learned senior counsel has submitted that the Vice Chancellor is empowered to take immediate action wherever necessary on any matter and such power may include exercise of



any power conferred on any authority of the University by or under this Act.

47. To make it simple, this Court would refer Section '13' which talks of the officers of the University and they include (1) the Chancellor; (2) the Vice Chancellor; (3) the Registrars; (4) the Finance Officer; and (5) such other officers as will be declared by the Statutes to be the officers of the University. The authorities of the University are provided under Section '22' and that includes the Governing Body, the Academic Council, the Boards of Schools of Studies, the Finance Committee and such other authorities as may be declared by the Statutes to be the authorities of the University.

To this Court, it appears that while sub-Section (3) of Section '15' confers power upon the Vice Chancellor, it is crystal clear that such powers are to be exercised by the Vice Chancellor only when he is of the opinion that immediate action is necessary on any matter. In this case, nothing has been brought on the record by and on behalf of the University to demonstrate that the Vice Chancellor of the University had formed any such opinion and given the specific conditions under the Contract document and the powers of the University under Section '10', it cannot be envisaged that a power which is to be exercised in exceptional circumstance by the Vice Chancellor after forming an opinion that immediate action is necessary on any matter, can be exercised in a routine



manner. In this case, there is no plea even on the record on behalf of the University that any immediate action was necessary and that the Vice Chancellor had formed any such opinion.

48. For the aforementioned reasons, this Court concludes that not only the two memos but even the impugned order as contained in Annexure '20' to the writ application were issued by the Registrar of the University under the order of the Vice Chancellor in complete haste, without following the established procedure of law and the terms of the Contract document as contained in Annexure 'A' to the counter affidavit. In the process, a stigmatic order has been passed against the petitioner even without considering his explanations. The impugned office order is, thus, not sustainable in the eyes of law and is liable to be set aside.

49. The office order no. 859 dated 02.12.2022 issued by the Registrar of the University vide Annexure '20' to the writ application is hereby set aside. The matter is remitted to the competent authority to consider the entire issue afresh and take an appropriate decision in accordance with law and keeping in view the Contract documents which are binding on the parties.

50. In the process of adjudication of this writ application, this Court has made certain observations with regard to the two memos and such observations are based on what the Court has noticed from its naked eyes. It is made clear that while considering



those issues, the authorities of the University shall take independent view of the matter and the observations of this Court are confined for the purpose of adjudication of the present writ application.

51. As a result of setting aside of the impugned order as contained in Annexure ‘20’, the petitioner would be entitled for the consequential reliefs.

52. Mr. Anjani Kumar, learned senior counsel has pointed out to this Court that even if the Contract period of the petitioner would have remained intact, it would have come to an end on 27.03.2023. If it is so, by virtue of the writ application having been allowed, it will be open for the University to consider the case of the petitioner for further extension.

53. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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CAV DATE	
Uploading Date	29.08.2023
Transmission Date	

