

12.
12.04.2023.
Ct. No. 11.
F.B.

**MAT 554 of 2023
with
IA No. CAN 1 of 2023**

**Kazi Nazrul University & Ors.
-Vs.-
Sri Chandan Koner & Ors.**

**Mr. Arunangshu Chakraborty,
Mr. Arijit Bera,
Ms. Geniya Mukherjee,
Ms. Zeba Rashid,
Ms. Shaika Amin,
Ms. Shrabani Banerjee
..... For the Appellants.**

**Mr. Jaydip Kar,
Mr. Billwadal Bhattacharyya,
Mr. Pijush Biswas,
Mr. Puspasish Gupta
..... For the Respondent
No. 1.**

**Mr. Srijib Chakraborty
..... For the Respondent
No. 3.**

**Mr. S. N. Ghosh
..... For the Respondent
No. 4.**

**Mr. Swapan Kumar Datta,
Mr. Tapas Kumar Mandal
..... For the State.**

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

Under challenge in this appeal in the interim
order of the Hon'ble Single Bench dated 22nd of March,

2023 passed in the Writ Petition, being WPA No. 6850 of 2023.

By the said interim order, the Hon'ble Single Bench was pleased to stay the communication of the order of termination of service of the writ petitioner as the Registrar of the University for a period of three weeks from date or, until further orders, whichever is earlier.

The Hon'ble Single Bench was also pleased to observe that the writ petition requires further consideration on affidavits.

This Court is informed that affidavits have already been exchanged by and between the parties and the writ petition has appeared for final consideration before the Hon'ble Single Bench.

Notwithstanding the above position, the appellant/the University is in appeal before this Court seeking setting aside of the interim order (*supra*).

A primary point raised by Learned Counsel appearing for the University and for its Vice-Chancellor (VC), the latter having been added as a party respondent by name to this appeal, pertains to the legal ground that the Hon'ble Single Bench ought not to have stayed the order of termination at all. It is submitted on the basis of several judicial authorities that an order of

stay on the order of termination which has taken effect, cannot co-exist with the act of terminating the employee concerned from service. It is clarified that at the highest the Hon'ble Single Bench could have made the order of termination conditional upon the final outcome of the writ petition.

It is further submitted by Learned Counsel (*supra*) that allowing the terminated employee, in this case the writ petitioner, to work in the interregnum pending final hearing of the writ petition would amount to abuse of the legal process. It is submitted that the Hon'ble Single Bench erred by failing to appreciate that in the event wrong acts which are not commensurate to standards of the University are done by the employee/the writ petitioner in this case during the pendency of the writ petition, the University cannot recover its loss by way of damages.

On the contrary, in the event the writ petition succeeds, the writ petitioner shall be in a position to regain both his post and his financial loss. It is hence reiterated by the appellant that the Hon'ble Single Bench misapplied itself to the dispute which purely involves principles of service jurisprudence by granting the interim relief.

The second limb of submission of the appellant pertains to the exercise of emergency powers by the VC. It is submitted that under the Act of the University enacted in the year 2015, it is the VC who is the Administrative Authority to take steps in the event of any emergency situation which requires to be handled. Therefore, the decision of the VC to terminate the service of the writ petitioner on the ground of non-satisfactory service is an exercise of such emergency powers and cannot be called into question on the ground of lack of jurisdiction.

Per contra, Learned Counsel appearing for the Respondent No. 1/the Writ Petitioner, submits that the terms of appointment of the writ petitioner clearly enjoin the Executive Council of the University to take steps in furtherance of termination of such service. In the instant case it does not transpire from the order of termination issued by the VC that the Executive Council has been consulted at all and/or its approval taken in terms of the University Act of 2015.

Relying on several authorities, Learned Counsel for the Writ Petitioner/the Respondent to this appeal, further submits that since the order of the VC terminating the writ petitioner is without jurisdiction, the Hon'ble Single Bench correctly acted in restoring the position as existing prior to such order having been

passed. It is therefore, submitted that the facts in the cases relied upon by the appellant stand distinguished from the present facts inasmuch as an order which is a *nullity* may be stayed by an appropriate Court.

Having heard the parties and considering the materials placed, at this stage this Court is satisfied that the Hon'ble Single Bench duly applied its mind to the particular facts of this case and has now decided to examine the validity of the action brought by the writ petitioner on the ground that his termination by the authority concerned was completely lacking in jurisdiction, in addition to the same being cryptic, i.e without any reasons in support of its finding of non-satisfactory service.

It requires no reiteration that a Judgement/Order without reasons is like a *cloudless sky* (Ref: 2013) 14 SCC 348 at Paragraph 17).

In the backdrop of the above discussion, this Court does not interfere with the order impugned and neither does this Court detain the appeal. The writ petition accordingly returns to the Hon'ble Single Bench for consideration on merits.

MAT 554 of 2023 with **IA No. CAN 1 of 2023** stand accordingly **disposed of**.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)