

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2605 of 2024**

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Girijesh Nandan Kumar Son of Harnandan Sharma Resident of Village- Kespa, Police Station- Alipur (Tikari), District- Gaya, Presently Residing at Flat No.- 201, Shivendu Enclave, Ram Nagri, Sector- 2, Ashiyana Nagar, Land Mark- Near Shiv Mandir, Police Station- Rajeev Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The Tilka Manjhi Bhagalpur University Bhagalpur through the Vice Chancellor.
2. The Vice Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
3. The Chancellor of the University of Bihar, Patna.
4. The Registrar of the Tilka Manjhi Bhagalpur University, Bhagalpur.

... .. Respondent/s

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**Appearance :**

|                          |   |                                                                                |
|--------------------------|---|--------------------------------------------------------------------------------|
| For the Petitioner/s     | : | Mr. Sarv Deo Singh, Adv.<br>Mr. Sanjay Kumar, Adv.                             |
| For the University       | : | Mr. Anjani Kumar, Sr. Adv.<br>Mr. Ashhar Mustafa, Adv.<br>Mr. Amit Kumar, Adv. |
| For the Respondent no.3: |   | Mr. Jitendra Prasad Singh, Sr. Adv.<br>Mr. Rajiv Ranjan Kumar Pandey, Adv.     |

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**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**CAV JUDGMENT**

**Date : 09-07-2024**

Heard Mr. Sarv Deo Singh, learned counsel for the petitioner, Mr Anjani Kumar, learned Senior Counsel for the University assisted by Mr. Ashhar Mustafa and Mr. Jitendra Prasad Singh, learned Senior Counsel for the Hon'ble Chancellor assisted by Mr. Rajiv Ranjan Kumar Pandey.

2. Having heard learned counsel for the parties and for the reasons stated in this interlocutory application, this I.A. No. 01/2024 is allowed and the reliefs prayed in this interlocutory



application shall also be treated as a part of the relief prayed in the main writ application.

3. That the present writ application is being filed on behalf of the petitioners for the following relief(s):-

*“(i) To quash the Office Order No. 08/2024 contained in memo no. 327-395 dated 08.01.2024, by which the petitioner has been put under suspension. However, the said office order is without jurisdiction on the ground of that the Vice-chancellor is not the Appointing Authority and the action is against the Article 311 of the Constitution of India and against the Act and Statute<sup>4</sup> of the Bihar State University Act, 1976.*

*(ii) Through IA No. 01 of 2024, the prayer in the writ application was sought to be amended by adding additional prayer to quash Office Order No. 13 of 2024 contained in Memo No. 429-434 dated 16.01.2024, by which a committee has been constituted by the University for departmental enquiry against the petitioner.*

*And for any other relief/reliefs the petitioner may be found entitled in the facts and circumstances of the case.”*

4. The facts of the present case is that the petitioner is Associate Professor in the Department of English at J.N.L. College, Khagaul under the Patliputra University, Patna. After following the due process of selection the petitioner was appointed as Registrar in Tilka Manjhi Bhagalpur University, Bhagalpur. The appointment letter was issued by letter no. 1272 dated 05.08.2022 from the Office of Governor Secretariat, Bihar, Patna, (Annexure-P/1 of the writ petition). The petitioner was relieved from the college by the Principal of the J.N.L. College, Khagaul by letter no. 364/GS/2022 dated 06.08.2022.



The said letter of relieving was issued considering the appointment order dated 05.08.2022 as Registrar of the Tilka Manjhi Bhagalpur University, Bhagalpur (Annexure-P/2 of the writ petition). The petitioner given his joining before the University as Registrar. An Office Order No. 86/2022 which contained in Memo No. 8837-8907 dated 06.08.2022 issued by the University, the petitioner assumed the charge of the Office of Registrar (Annexure-P/3 of the writ petition).

5. Thereafter, the petitioner had written a letter to the Registrar of the Patliputra University, Patna on 08.08.2022 for grant of lien as well as relieving from Patliputra University. The said request letter was submitted by the petitioner in the light of appointment letter issued by the Office of Governor Secretariat, Bihar, Patna, dated 05.08.2022 being appointed as Registrar of the Tilka Manjhi Bhagalpur University, Bhagalpur (Annexure-P/4 of the writ petition). Learned counsel for the petitioner submits that there are some glaring facts which demonstrate that the present Vice Chancellor is not liking the petitioner as Registrar. There are some prejudicial circumstances in respect of this petitioner in the eyes of present Vice-Chancellor, meaning thereby in the service career the Vice-Chancellor has inimical attitude with this petitioner and therefore, he could not digested



this petitioner as Registrar of the University. The petitioner was appointed as Registrar on 05.08.2022 and the present Vice-Chancellor joined as Vice-Chancellor of the University on 23.08.2022 in the light of order issued from the Governor Secretariat, Bihar, Patna. Having the prejudicial attitude and with the malice view, the Vice-Chancellor issued an Office Order No. 08/2024 which contained in memo no. 327-395 dated 08.01.2024 (Annexure-P/5 of writ petition) by which the petitioner has been put under suspension. However, the Vice-Chancellor has no power to take Disciplinary Action against the Registrar of the University, because both have been appointed by the Chancellor of the Universities, therefore, the present suspension order is without jurisdiction.

6. The Office of Hon'ble Governor's Secretariat, Bihar, Patna issued letter no. 129 dated 21.01.2024 by which the petitioner has been relieved from the post of Registrar of the Tilka Manjhi Bhagalpur University, Bhagalpur with immediate effect. However, in the present letter reference of suspension order has not been mentioned but it is deemed and understood that the said relieving order has been issued considering the suspension order issued by the University (Annexure-P/6 of the writ petition). The University by the Office Order No. 13/2024



which contained in Memo No. 424-428 dated 16.01.2024 has been issued by which Departmental Enquiry Committee has been constituted against this petitioner. However, the said enquiry committee is against the Statute which provides preliminary enquiry and show cause to the concerned person, but in the present case there is no preliminary enquiry and no show cause notice was issued against the petitioner (Annexure-P/7 of the writ petition).

7. Similar issue regarding jurisdiction of the Vice-Chancellor was raised before this Hon'ble Court in C.W.J.C. No. 4103 of 2019. This Hon'ble Court after hearing the parties has passed an order on 30.05.2019 by which it has been held that the suspension order issued by the Vice-Chancellor is without jurisdiction. In the order dated 30.05.2019 passed in C.W.J.C. No. 4103 of 2019 this Hon'ble Court has held that the Vice-Chancellor can take Disciplinary Action under section 10(6) of the Bihar State University Act, 1976. It is further clarified that under section 10(18) of the Bihar State University Act, 1976 the Vice-Chancellor has no power to take Disciplinary Action against the officer who has not been appointed by the Vice-Chancellor.

8. Learned counsel for the petitioner submits that it is



admitted fact that the petitioner herein having been appointed by the Hon'ble Chancellor as Registrar of the Tilka Manjhi Bhagalpur University, Bhagalpur, therefore, the Vice-Chancellor has no power to put the petitioner under suspension. There is no provision either in the Bihar State University Act, 1976 or under the Statutes which empowers the Vice-Chancellor to place an officer of the University under suspension. Under the Statute Part II of the University, it is prescribed that Disciplinary Action can be taken by the Appointing Authority. Apart from that suspension have been considered as punishment under the Statute, therefore, the present impugned order is against the Statute of the University Part -II. He further submits that in the present case no show cause notice has been issued to the petitioner which is violation of principle of natural justice. He also submits that the Office Order No. 08/2024 which contained in memo no. 327-395 dated 08.01.2024 is without jurisdiction, arbitrary, unreasonable and in violation of principle of natural justice.

9. Learned counsel for the petitioner further submits that the objection was raised by the learned Senior counsel for the university that the subsequent appointment of registrar has not been challenged, in this regard the petitioner relied upon the



judgment of Hon'ble Supreme Court in the case of *Poonam Vs State of U.P. & others.* reported in *(2016) 2 SCC 779* by which it has been held that the person has the legal right to prosecute his cause of action and restore his legal right. The eclipse being over he has to come back to the same position. His right get revised and that revival of the right cannot be dented by the third party. Another objection was raised by the university in regard of availing the alternative remedy, in this regard the petitioner relied upon the judgment of Hon'ble Supreme Court reported in *1998 (8) SCC 1*, by which it has been held that alternative remedy is not mandatory and no law can restrain the Hon'ble High Court to entertain the case under article 226 of the Constitution of India.

10. A counter affidavit has been filed on behalf of the University in which it has been stated that since the petitioner is aggrieved by the decision of the Chancellor, he should have first approached the office of the Chancellor who is the appellate authority under the guiding statute. Admittedly, the petitioner never preferred any appeal or representation before the office of the Chancellor in the present matter. Since the petitioner has directly approached High Court without exhausting an effective alternative remedy of appeal prescribed in Statute, the Writ



Application may not be entertained. It is a matter of record that upon due consideration of the proposal of the Vice-Chancellor, the petitioner was relieved by the Chancellor on 21.01.2024 (Annexure-P/6 of the writ petition) and vide another notification contained in Letter No. TMBU-17/2023-130/GS(I) dated 21.01.2024, the Chancellor was pleased to appoint Dr. Vikas Chandra (Associate Professor, Botany, Maharaja College, Ara Veer Kunwar Singh University, Ara) to perform the duties of the Registrar of T.M.B.U. Bhagalpur with immediate effect. Pursuant thereto, he assumed the charge of the office of the Registrar at T.M.B.U., Bhagalpur on 23.01.2024 and is working since then and the petitioner has not challenged the appointment of the present Registrar (i.e. Dr. Vikas Chandra). Since, the petitioner has neither assailed Annexure-P/6 nor Letter No. TMBU-17/2023-130/GS(I) dated 21.01.2024, by which the Chancellor relieved the petitioner and appointed new Registrar at T.M.B.U. Bhagalpur, no effective relief can be granted to the petitioner.

11. Learned senior counsel for the University submits that this is just a sweeping irresponsible averment, which has not been substantiated by any material in the writ application. After going through the selection process, the present Vice-



Chancellor joined the University on 23.08.2022. So far as the appointment of the petitioner as Registrar is concerned, as per notification dated 05.08.2022, the same was a purely temporary arrangement and he assumed the office of Registrar on 06.08.2022. Prior thereto, the Vice Chancellor had no association or acquaintance with the petitioner and, thus, the plea is not worthy of any consideration. To the contrary, the petitioner has been habitually defying the orders of the Vice-Chancellor in a routine manner, for which, at least nine show cause notices were served to him. It is a matter of record that the petitioner was suspended on 08.01.2024. The same was communicated to the Chancellor on 16.01.2024, who rather confirmed the order of suspension and relieved the petitioner vide order dated 21.01.2024 and on the same day, he appointed one Dr. Vikash Chandra on the post of Registrar. Once the impugned decision has been approved by the Chancellor and there is no dispute with respect to the power of the Chancellor, the issue raised by the petitioner loses its relevance.

12. Learned senior counsel for the University further submits that the mandate and scope of Article 311 of the Constitution of India and Article 311(1) says that any authority subordinate to the appointing authority cannot (i) dismiss; or (ii)



remove any person holding any civil post in State or Union. Similarly, Article 311(2) mandates that no such person shall be (i) dismissed; or (ii) removed; or (iii) reduced in rank without prior enquiry and opportunity of hearing. It is, thus, clear from the plain reading of Article 311 that any authority subordinate to the appointing authority is restrained from passing any order of (i) dismissal, (ii) removal, or (iii) reduction of rank and in any of these three eventualities, there is express mandate of preliminary enquiry and opportunity of hearing. In the present case, the petitioner has been simply suspended for his continued indiscipline and insubordination. It has been reiterated time without numbers that suspension, *per se*, is not punishment. It simply amounts to temporary abeyance of employer-employee relationship ordinarily in contemplation of departmental proceeding. The qualifications prescribed in Article 311(1) and (2) are, thus, not attracted herein, as the impugned order does not pertain to any of the three eventualities contemplated in Article 311(1) and (2) i.e. (i) dismissal; or (ii) removal; or (iii) reduction of rank.

13. Learned senior counsel for the University further submits that there is no prohibition in law which restrains the Vice-Chancellor from issuing the impugned order in exercise of



disciplinary power vested in him under Section 10(18) of the Bihar State Universities Act, 1976 (hereafter referred as 1976 Act). Section 10 of 1976 Act deals with the subject Vice Chancellor and also outlines the power vested in his office. Section 10 (11) of the 1976 Act mandates that the Vice-Chancellor shall be responsible for the discipline of the University and it shall be lawful for him to take all steps which are necessary for maintaining the academic standard and administrative discipline of the University."

14. Learned senior counsel for the University further submits that as per Section 7(7) of the 1976 Act, the Registrar is defined as one of the Officers of the University. The power of the Vice Chancellor to take disciplinary action against the officers of the University is expressly given in Section 10(18) of the 1976 Act, which reads as hereunder:

*"10(18) The Vice-Chancellor shall have power to take disciplinary action against all employees of the University including the officers and teachers of the University".*

15. Learned senior counsel for the University further submits that needless to say, there is absolutely no ambiguity in the language of Section 10(18) of the 1976 Act. The provision fully empowers the Vice-Chancellor to take disciplinary action against the officers of the University as well, as defined in Section 7. It is indicated in the impugned order itself that the



same has been passed in exercise of express power under Section 10(18) of the 1976 Act.

16. Learned senior counsel for the University further submits that in view of the above, the submission advanced by the petitioner, that any authority sub-ordinate to the appointing authority cannot take any disciplinary action, brazenly offends the plain language of Section 10(18) of 1976 Act and offers a misconstrued reading of Article 311 of the Constitution of India. It is a literal rule of interpretation that a statute should be given its ordinary literal meaning and be read as it is. If the argument of the petitioner is still accepted, Section 10(18) of the 1976 Act would simply become redundant and the provision would be reduced to nullity. There is no room for doubt that Section 10(18) of 1976 Act expressly empowers the Vice-Chancellor to take disciplinary action against all employees of the University including its Officers and teachers. Since the provision is very much in rule book and the petitioner has also not assailed its validity, the Hon'ble Court is duty bound to give effect to the express power recognized therein.

17. Learned senior counsel for the University further submits that there is no apparent conflict between Article 311 of the Constitution of India and Section 10(18) of the 1976 Act, as



they operate in completely different sphere. Article 311 comes into play only in cases of (i) dismissal; (ii) removal; and (iii) reduction of rank. In case of any other eventuality like the present one where the petitioner was simply suspended, the qualifications prescribed under Article 311 may not come into play. And, thus, Section 10(18) of the 1976 Act can always operate harmoniously without offending Article 311 of the Constitution of India and this approach alone would be consistent with the old established principle of harmonious construction. He further submits that the petitioner has relied on the judgment dated 30.05.2019 passed by a co-ordinate bench of this Hon'ble Court in CWJC No. 4103 of 2019 to assert that in absence of any express provision in the Statute, the Vice Chancellor cannot legitimately put the petitioner under suspension. In the said case, in C.W.J.C. No. 4103/2019, the Finance Officer was suspended by the Vice-Chancellor and the same was never approved by the Chancellor. However, in the present case, the order of suspension passed by the Vice-Chancellor on 08.01.2024, was communicated to the Chancellor vide Letter No. 1591/VC/24 dated 16.01.2024 and the same was affirmed by the Hon'ble Chancellor who was pleased to relieve the petitioner vide Letter No. TMBU-17/2023-129/GS(I) dated



21.01.2024 with immediate effect. It is clear from the relieving letter dated 21.01.2024 issued from the office of the Hon'ble Chancellor that while affirming the decision of the Vice-Chancellor, the Office of the Chancellor relied on University letters dated 07.08.2023 and 16.01.2024. Vide letter dated 07.08.2023. The office of the Hon'ble Chancellor was apprised in advance about the habitual conduct of continued defiance, insubordination and indiscipline of the petitioner, for which, at least nine show cause notices were issued to him. It was also prayed to appoint a full time Registrar in place of the petitioner.

18. Learned senior counsel for the University further submits that, In the meanwhile, the petitioner again behaved in a very indisciplined and unruly manner and disrupted the meeting dated 08.11.2024 of the VCs, Pro-VCs, Registrars, Controllers of Examination, DSWs, Financial Advisors and Financial Officers of all the Universities of Bihar convened by the Education Department at Patna. Being shocked with his behaviour, all the VCs protested his conduct and walked out of the meeting. This was the immediate cause, which constrained the Vice Chancellor to take disciplinary action against the petitioner by suspending him on the same day i.e. 08.11.2024 in exercise of express power under Section 10(18) of 1976 Act. It



is noteworthy that on the very next day, a delegation of all the Vice-Chancellors met the Chancellor and formally presented their representation dated 09.01.2024 regarding the conduct of the petitioner in the meeting dated 08.01.2024. After suspending the petitioner and initiating disciplinary enquiry against him, the same was communicated by the Vice Chancellor to the Hon'ble Chancellor vide Letter No. 1591/VC/24 dated 16.01.2024. The communication, while inviting attention to the earlier transmitted letter dated 07.08.2023, also highlighted several instances of misconduct of the petitioner. Besides defying the orders of the Vice Chancellor, he was also in a habit of giving statements against the University in the print and electronic media.

19. Learned senior counsel for the University further submits that in C.W.J.C. No. 4103 of 2019, the Finance Officer was duly appointed by the Chancellor after considering the panel forwarded from the office of the Accountant General, Bihar. He belonged to Indian Audit and Account Services and was appointed on full time basis. However, in the present case, it is clear from Annexure-P/1 of the writ petition that the petitioner was appointed as Registrar only "on temporary basis till further orders". It was also emphasised in the last line of the



notification that "this is purely a temporary arrangement". Admittedly, petitioner is an Assistant professor in Department of English, J.N.L. College, Khagaul, Patliputra University, Patna (Annexure 4) that on his request, he was granted lien by his parent University to join as temporary Registrar at TMBU, Bhagalpur. He further submits that as it appears from the plain reading of judgment dated 30.05.2019 passed in C.W.J.C. No. 4103 of 2019 that the submission of the petitioner regarding the Vice-Chancellor not being the appointing authority, which is recorded in paragraph 3 of the judgment, has been summarily rejected by the Hon'ble Court vide para. 5 of the judgment for not being in consonance with the 1976 Act.

20. Learned senior counsel for the University further submits that the writ application, being C.W.J.C. No. 4103 of 2019, was allowed on the solitary consideration that though there is specific provision for suspension of employees of the University in Clause-10 of Statute (1) General Conditions of Service of Employees of Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila and KSD Sanskrit Universities, as approved by the Chancellor on 20.09.1980, there is no such specific provision which empowers the Vice Chancellor to suspend the Finance Officer of the University. This finding may



not be correct for the simple reason that Section 10(18) of 1976 Act expressly empowers the Vice-Chancellor to take disciplinary action against all employees of the University including its Officers and its teachers, of the University. It goes without saying that the power to take disciplinary action includes the power to suspend. Be that as it may, the issue of absence of provision of suspension or exercise of power by Vice-Chancellor de hors law/rule may not have any relevance in the present context once the impugned decision has already been approved by the Chancellor, who is admittedly the appointing authority of the petitioner. Thus, the judgment dated 30.05.2019 passed in CWJC No. 4103 of 2019 is of no avail to the petitioner.

21. Learned senior counsel for the University lastly submits that It needs no repetition that the requirement of preliminary enquiry and prior service of show cause notice has been prescribed in Article 311(2) of the Constitution of India only in case of (i) dismissal; (ii) removal; and (iii) reduction of rank. There is no such mandate either in the Constitution of India or any other law guiding law for the time being in force that an order of suspension must be preceded by preliminary enquiry and service of show cause notice. Admittedly, the law



on the issue is well settled and there is absolutely no conflict on the point.

22. Having heard the learned counsel for the parties, the short issue which arises for consideration before this Court is as to whether the Vice-chancellor of the University has the jurisdiction i.e. power and authority to place an officer of the University under suspension or is it only the Hon'ble Chancellor of the University who is competent to pass an order of suspension in respect of persons working on the post of Officer as the post of Registrar is 01 (one) amongst 10 (ten) posts defined as officer under Section 7 of the Bihar State University Act.

23. The issue necessitates the examination of the various provisions of the Bihar State University Act and Bihar State University Statute and it is apt to quote the relevant provision which reads as follows: -

**Section 7 of the Bihar University Act :-**

***"7. Officers of the University. The following shall be the officers of the University :-***

- (1) The Chancellor,***
- (2) The Vice-Chancellor,***
- (3) The Pro Vice-Chancellor,***
- (4) The Financial Adviser,***
- (5) The Dean, Students' Welfare,***
- (6) Proctor,***



*(7) Registrar,*

*(8) Inspector of Colleges,*

*(9) Finance Officer, and*

*(10) Such other person or persons as may be declared officers of the University by the Statues."*

**Section 10(6), 10(11) and 10(18) of the Bihar University Act:-**

***"10. The Vice-Chancellor ...***

*(6) The Vice-Chancellor shall subject to the provisions of this Act, the Statutes and the Ordinances have power to make appointment to posts within the sanctioned grades and scales of pay and within the sanctioned strength of the ministerial staff and other servants of the University not being teachers and officers of the University and have control and full disciplinary powers over such staff and servants.*

*(11) The Vice-Chancellor shall exercise general control over the educational arrangement of University and shall be responsible for the discipline of the University. It shall be lawful for the Vice- Chancellor to take all steps which are necessary for maintaining the academic standard and administrative discipline of the University.]*

*(18) The Vice-Chancellor shall have power to take disciplinary action against all employees of the University including officers and teachers of the University. Section 15 of the Bihar University Act :-*

*"15. (1) Notwithstanding any provisions of the Act, if the Chancellor thinks fit, he may request the State Government, Central Government, University Grants Commission or any University to send names of suitable officers including the retired officers of Bihar Administrative Services for the post of Registrar, and in that case State Government, Central Government, University Grants Commission or any University may send the name of one or more officers for consideration for appointment as Registrar under such terms and conditions of service, as he may consider fit, and then the Chancellor shall appoint the Registrar from amongst them.*

*(2) The Registrar shall be whole time officer of the University and he shall act as Secretary to the Senate, the Syndicate and the Academic Council and shall:-*

*(a) be the custodian of the records, the common seal and such other properties of the University as the Vice-Chancellor and*



*the Syndicate shall commit to his charge.*

*(b) conduct the official correspondence of the University, and shall maintain the proper investment of the University;*

*(c) perform such other duties as may be specified in the Statutes or prescribed by the Ordinance or the Regulation or as may be required from time to time by the Vice-Chancellor, Pro-Vice-Chancellor or the Syndicate.*

*(d) represent the University in suits or proceedings by or against the University, sign powers of Attorney and verify pleadings or depute his representative for the purpose;*

*(e) render assistance to the Vice- Chancellor and Pro-Vice-Chancellor in discharge of their duties in regard to the conduct of the examination and the publication of the results;*

*(f) look after the proper functioning of the institutions affiliated to the other than the Constituent Colleges and the Department of University and shall report to the Vice-Chancellor;*

*(g) have power to take disciplinary action against the employees belonging to the Ministerial staff and to suspend them pending inquiry to administer warning to them or to impose on them the penalty of censure or the withholding of increment:*

*Provided that no such penalty shall be imposed unless the person concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.*

*3(a) An appeal shall lie to the Vice- Chancellor against any order of the Registrar imposing the penalty of withholding the increment.*

*(b) In a case where the inquiry discloses that a punishment beyond the powers of the Registrar is called for, the Registrar shall, upon conclusion of the enquiry make a report to the Vice-Chancellor alongwith his recommendation for such action as to the Vice-Chancellor may deem fit.*

*(c) The Registrar may be transferred by the Chancellor from one University to another University, on the same or on any equivalent post or within the same University on any other equivalent post."*

24. The general condition of service of employees of



the Patna, Bihar, Ranchi, Bhagalpur, Magadh, L.N. Mithila and K.S.D. Sanskrit Universities" as proposed by the Chancellor on 20.09.1980 vide letter dated 18.11.1980 known as Bihar State University Statute and it is apt to quote the relevant provision which reads as follows :-

**Chapter - I**

**General Condition of Service**

**Section 34(i) Name of the Statutes.**

*1. These Statute may be called service statute of the University and they shall apply to all such*

*persons as are in the service of the University. Article 2 (XVIII)-'University Servant' means*

*a person in the employment of the University'*

*Article 10 is reproduced herein below :-*

*"(1)A University Servant should be placed under suspension for reasons to be recorded in writing and while doing so the following principles may be observed:*

*(i) If a University servant is being prosecuted on a criminal charge, he should be placed under suspension if he has been refused bail by the court and has been committed to prison.*

*(ii) In cases of criminal prosecution, a University servant should be suspended if the charge against him is such that on being found guilty of it, he is likely to be sentenced to a term of imprisonment, or on which he would be dismissed or removed from service, in a departmental enquiry. In such cases however the order of suspension need not be passed in every case immediately after cognizance has been taken. In suitable cases it may be passed after charges have been framed.*

*(2) Where a University servant is being proceeded against departmentally on charges of gross-misconduct, bribery, corruption or dereliction of duty, the question of suspension should be considered with reference to the prima facie evidence available against him. If there*



*are good reasons to believe on the basis of the material available at the time of the initiation of the proceedings, that the University servant has been guilty of gross-misconduct or dereliction of duty or bribery or corruption which, if proved, would lead to his dismissal or removal, he should be placed under suspension. In cases in which such prima facie evidence is lacking at the start, the question of suspension of the University servant may be kept pending till the findings of the enquiring officer are available. In such cases he should be required to proceed on such leave as may be due to him, and, if there is no leave to his credit, on extra-ordinary leave. On the conclusion of the enquiry, if it is found that the University servant is guilty of gross-misconduct or dereliction of duty or of bribery or corruption which would entail his dismissal or removal from service, he should be placed under suspension.*

*(3) In all cases, where there are reasons to believe that the University Servant, if allowed to continue in active service, might attempt to tamper with the evidence, he should be required to proceed on such leave as may be due to him, or, if there is no leave to his credit, on extra-ordinary leave, if he refuses to proceed on leave, he may be suspended:  
Provided that the period of suspension of such University servant shall not exceed one year from the date of suspension except in circumstances beyond the control of the University."*

25. From the reading of the above statutory provision and university statute it is manifest that the power to appoint a person to the post of Registrar is vested in the Hon'ble Chancellor and there can be no dispute with the proposition that the Hon'ble Chancellor would be the authority to impose punishment against a person working on the post of Registrar but can the Vice- chancellor who is the controlling and superior authority above the Registrar and below the Chancellor would be denuded of his power to suspend or initiate a disciplinary



action against a delinquent working on the post of Registrar if is act amounts to gross misconduct and suspend him in contemplation of disciplinary action or whether it is the Hon'ble Chancellor only who would be competent to order for initiation of disciplinary action and power to suspend a person working on post which has been defined as an Officer under Section 7 of the Bihar State University Act.

26. The law on this point is no longer res-integra as it has been decided by a catena of Judgment of Hon'ble Supreme Court that unless the statute or the ordinance specifically prohibit initiation of departmental proceeding, the controlling or superior authority has the power to initiate disciplinary action and to suspend an employee as power to initiate departmental proceeding and impose punishment are distinct and different concept in service jurisprudence and cannot be confused with each other.

27. Reference in this regard may be made to the Judgment of the Hon'ble Supreme Court in the case of P.B. Srinivasa Sastry Vs. Comptroller and Auditor General reported in (1993) 1 SCC 419 wherein the said distinction with respect to power to order initiation of disciplinary proceeding vis-à-vis order of punishment has been succinctly explained in the words



of Hon'ble Justice N.P.Singh, in paragraph no. 4 of the report :-

*"4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well known that departmental proceeding consists of several stages; the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any Rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such Rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such Rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a Rule, any superior authority who can be held to be*



*the controlling authority, can initiate such proceeding."*

28. The Hon'ble Supreme Court in the case of Transport Commissioner, Madras 5 Vs. A. Radha Krishna Moorthy reported in (1995) 1 SCC 332 while considering a somewhat identical issue has held in paragraph no. 8 as follows :-

*"8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly, it is held that this was not a permissible ground for quashing the charges by the Tribunal."*

29. To the same effect is the decision of the Hon'ble Supreme Court in the case of Steel Authority of India & Anr. Vs. Dr. R.K. Diwakar and Ors. reported in AIR 1998 SC 2210 wherein, it has been held in paragraph no. 4 and 5 as follows :-

*"4. Before us, the learned counsel appearing for the appellants, apart from bringing to our notice the relevant proceedings duly delegating the power to the Director, Medical and Health Services, invited our attention to a recent decision of this Court in Director General. ESI vs. T.Abdul Razak (1996 (4) SCC 708). In that case, in answering an identical question, this Court held as follows :-*

*"With regard to initiation of disciplinary proceedings by the Regional Director, we find that the legal position is well settled that it is not*



*necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority (See: State of M.P. v. Shardul Singh; P.V. Srinivasa Sastry v. Controller & Auditor General and Inspector General of Police v. General and Inspector General of Police v. Thavasiappan). The Regional Director, being the officer-in-charge of the region, was the controlling authority in respect of the respondents. He could institute the disciplinary proceedings against the respondents even in the absence of specific conferment of a power in that regard."*

*5. In the case on hand, it is not in dispute that the authority who issued the charge-sheet was the controlling authority."*

30. Thus, the three Judgments cited above clearly holds that the controlling authority being superior in rank has the jurisdiction to initiate disciplinary proceeding against an employee working under the controlling authority even in absence of specific conferment of power in that regard. The Hon'ble Supreme Court has further drawn a distinction between authority competent to impose penalty and the authority competent to initiate- departmental proceeding even in absence of specific conferment of power as in the case of penalty the authority competent to impose penalty must be the appointing authority but a departmental proceeding can be initiated by any superior authority subject to rider that he is to be the controlling



authority superior in rank to the officer albeit may be an Officer subordinate to the appointing authority. The Vice-Chancellor being the head of the University is the controlling authority in respect of the petitioner and thus there can be no dispute that the Vice Chancellor has the power to institute the disciplinary proceeding against the petitioner even in absence of specific conferment of power in that regard. The provision of Section 10(18) of the Bihar State University Act is in sync with the Judgment of the Hon'ble Supreme Court where power has been specifically conferred on the Vice-Chancellor to take disciplinary action against officers of the University as Section 10(18) of the Bihar State University Act empowers the ***"Vice-Chancellor to take disciplinary action against all employees of the University including officers and teachers of the University."***

31. Thus, when the Vice-Chancellor has been specifically conferred with the power to take disciplinary action against all employees including officers and teachers of the University, can it be said that the power to suspend an employee for his unruly behavior, in-subordination and rank indiscipline of abusing his colleague and superior authority resulting in disrupting of academic atmosphere and administrative discipline



is not vested with the Vice-Chancellor as held by the Hon'ble Single Judge in CWJC No. 4103 of 2019 or from the reading of the statutory provision, such powers is implicit by virtue of grant to initiate disciplinary proceeding.

32. A bare reading of the different provisions of the Bihar State University Act, its Statute and Ordinance it is manifest that there is no special conferment of power or embargo placed in suspending an officer as mentioned in Section 7 of the Bihar State University Act, exclusively to the Hon'ble Chancellor and therefore can this Court read the statutory provision placing such restriction on the power of Vice-Chancellor to place an officer under suspension. The answer to the said question would be a big 'No' as it is well settled that when a power is given to an Authority to do something, it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the Statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus, where an act confer jurisdiction, it impliedly also grants the power of doing all such acts or employee such means as are essentially necessary to its



execution. The Hon'ble Supreme Court in the case of Income Tax Officer, Cannanore Vs. M.K. Mohammed Kunhi reported in AIR 1969 SC 430 and in the case of Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. & Ors. reported in AIR 1996 SC 646 has clearly held that an express grant of statutory power carries with it by necessary implication, the authority to use all reasonable means to make such grant effective.

33. Thus, when the Vice-Chancellor has been conferred with the jurisdiction under Section 10(18) read with Section 10(11) of the Bihar State University Act to initiate disciplinary action against all employees of the University including officers and teachers of the University for the purpose of maintaining the academic standard and administrative discipline of the authority, the power to suspend an employee for his gross misconduct has to be read in the statutory provision and ordinance by necessary implication. Thus, the view taken by the Learned Single Judge in CWJC No. 4103 of 2019 that the competent authority to suspend an officer as mentioned in Section 7 of the Bihar State University Act is only the Hon'ble Chancellor is not in accord with the Bihar State University Act or its statute and the ordinance as the doctrine of implied power



read with the statutory provision was not placed before the Learned Single Judge which resulted in denuding the power impliedly vested in the vice chancellor.

34. Further, there is an additional ground to non-suit the petitioner as the Hon'ble Chancellor has been pleased to order to relieve the petitioner from the post of Registrar from the respondent university vide communication as contained in letter no-TMBU-17/2023-129 Dated 21.01.2024 and has appointed a new incumbent on the substantive post who has already assumed charge as evidenced by annexures brought on record by the Respondent University and therefore, the petitioner was required to bring the subsequent facts on record and make a direct challenge to the order relieving the petitioner from the post of registrar, a tenure post as the appointment of the petitioner was for a fixed period and on his being relieved from the post of Registrar, his tenure post as Registrar has been curtailed and had automatically come to a terminus and therefore, the question regarding the legality and correctness of the order of suspension would be an academic issue as no substantive relief can be granted if the petitioner has allowed the order relieving him from the post of Registrar to remain unimpeached.



35. As a sequitur, the writ petition is sans merit and accordingly the writ petition is dismissed for the reasons indicated above.

(Anjani Kumar Sharan, J)

anand/-

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