

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3456 of 2020

Shambhu Nath Singh son of Late Ram Abhilash Singh resident of SOJNMS,
Block No. 15/A, IGNOU Campus, Maidan Garhi, South Delhi, District-
Delhi, Pin Code- 110068

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna
2. Patna University, Patna through its Registrar
3. Registrar, Patna University, Patna
4. The Vice Chancellor, Patna University, Patna
5. The Chancellor of Universities , Raj Bhagwan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	: Mr. Abhinav Srivastava
For the Respondent No. 5	: Mr. Janardan Prasad Singh, Sr. Advocate Mr. Rajiv Ranjan, Advocate
For the Respondent No. 2 to 4	: Mr. Bijendra Kumar Singh, Advocate
For the State	: Mr. Hitesh Suman, AC to SC 13

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 29-11-2024 The petitioner was appointed in the capacity of Vice Chancellor of the University on regular basis in terms of the provisions contained under Section 11(2) of the Patna University Act, 1976. He submitted his joining report on 02nd August 2011 and went on discharging his duties. While discharging duties as Vice Chancellor of the University, the Division Bench of this Court passed an order on 7th December 2012 in CWJC No. 10569 of 2011 whereby and whereunder, the notification dated 01st August 2011 on the basis of which the



petitioner and other similarly situated persons had been appointed in the capacity of Vice Chancellors and Pro Vice Chancellors of different universities in the State of Bihar was set aside and accordingly, the Chancellor of the University of Bihar was directed to take steps towards making appointments of Vice-Chancellors and Pro-Vice Chancellors in the universities within State of Bihar in accordance with the provisions contained in Bihar State Universities Act, 1976 and Patna University Act, 1976. Subsequent to the said order passed by the Division Bench of this Court, the Governor's Secretariat passed an order on 10th December 2012 directing the petitioner and other persons to continue their function as Vice Chancellor/Pro-Vice Chancellor of the universities, as the case may be as interim measure. While he was working as In-charge Vice Chancellor of the Patna University, he was again appointed in the capacity of the Vice Chancellor of the same University on regular basis. The said appointment and other co-ordinate appointments were challenged in judicial side which went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court in SLP(C) No. 12409/2013 and SLP(C) No. 8066/2013 restrained the petitioner and other similarly situated persons from functioning as such and the operation of the notifications by



which they were appointed was also stayed. As soon as the said order was passed by the Hon'ble Supreme Court, the petitioner submitted a letter dated 19th March 2013, tendering his resignation from the post of Vice Chancellor of the University with effect from the date of the said letter in order to enable him to join as a Professor at School of Journalism, New Media Studies, Indira Gandhi National Open University, New Delhi. It is further stated by the petitioner that the Hon'ble Supreme Court subsequently passed another order on 19th August 2013 in the above-mentioned SLPs setting aside the appointment of the petitioner and other incumbents who were appointed as Vice-Chancellors and Pro-Vice Chancellors in different universities. On the basis of the final order passed by the Hon'ble Supreme Court, a letter was issued on 20th August 2013 by the Registrar of the University by which the petitioner was relieved from his duties as Vice Chancellor of Patna University in order to enable him to join his present institution, i.e., Indira Gandhi National Open University, New Delhi.

2. In the instant writ petition, the petitioner has claimed issuance of appropriate writ/writs for payment of his salary and other emoluments during the period between 19th March 2013 and 20th August 2013, as he was not relieved during



the said period to join his place of posting at parent university.

3. Thus, the petitioner has prayed for quashing of the letter dated 15th April 2019 issued by the Registrar of the Patna University, Patna by which the claim of the petitioner for payment of arrears of salary for the period between 20th March 2013 to 19th August 2013 was rejected and issuance of a direction upon the concerned authority to make payment of penal interest over and above the amount of interest of arrear salary and other allowance as may be found admissible in favour of the petitioner along with all other consequential benefits.

4. The respondents have exchanged counter-affidavits which, in my considered opinion do not deserve elaborate discussion in view of the decision quashed by a Co-ordinate Bench in CWJC No. 11984 of 2014.

5. It is pertinent to mention here that after institution of the instant writ petition, a Co-ordinate Bench directed the respondents to file counter-affidavit on the following issues:-

(i) whether the petitioner was relieved in terms of Annexure 1 dated 19th March 2013 or not on 19th March 2013

(ii) if the petitioner was relieved only on 20th August 2013, how the petitioner can be deprived of the salary for the



period between 19th March 2013 to 20th August 2013.

6. The University was also directed to explain how the University can take the decision contrary to Annexure 12 being a decision of the Chancellor of the University whose decision is binding on all authorities of the University.

7. In CWJC No. 11984 of 2014, the issue involved was whether the petitioner was entitled to payment of salary of the substantive post for the period in between 19th February 2013 to 19th August 2013. In the said case, the petitioner was the erstwhile Pro-Vice Chancellor of the Magadh University. The Co-ordinate Bench of this Court on careful perusal of the materials available on said record held as follows:-

“In the instant case also when the materials available on record indicate that the petitioner after order of stay by the Apex Court, has submitted joining but he was not allowed to join. Now taking the plea that the petitioner cannot be paid salary on the ground of "No work no pay", does not merit consideration as the Court is of the view that principles of "no work no pay" applies where the individual voluntarily refuse to render services. In the instant case when the petitioner has submitted joining and he was not allowed to join, it does not lie in the mouth of the University to say that principle of "no work no pay" will apply because the University has not allowed the petitioner to join. It is well settled principles of law that the respondents cannot say that they have not



*allowed to join the petitioner and as such petitioner would not be paid salary on the ground of "No work No pay". Reference in this connection may be made to the judgment of Chief Justice Chhagla in the case of **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City: AIR 1954 Bom. 232**, wherein the Chief Justice Chhagla has discussed the aforesaid principle of law and equity in the following words:-*

"But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under Sub- section (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person--we take it that the Income-tax Department is included in that definition--can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

8. Considering the entire facts of this case, the Court is of the view that the petitioner cannot be denied salary for the period he was prevented from performing the duty by the respondents by not accepting the joining.

9. In view of the judgment of the LPA Court in LPA No. 1436/2015 the decision of the Hon'ble Chancellor cannot be a ground to deny payment of salary to the petitioner.



10. Accordingly, the writ petition is allowed in the light of the judgment of the Division Bench in LPA No. 1436 of 2015 dated 10.1.2018. The respondents are hereby directed to ensure payment of salary of the petitioner for the period the petitioner was not paid his salary prior to his appointment as Pro-Vice Chancellor and for the period the petitioner was not allowed to join after the order of stay of the appointment of the petitioner as Pro-Vice Chancellor. Entire exercise in this regard must be completed by the University within a maximum period of 60 days from the date of receipt/production of a copy of this order.”

8. It is needless to say that the respondent authority has denied payment of arrear salary and other consequential benefits in favour of the petitioner on the principle of “No work, no pay” however, it is no longer *res integra* that the principle of “No work, no pay” only applies when an incumbent voluntarily refuses to render his service. In the instant case, there is no *iota* of evidence that the present petitioner voluntarily refused to render his service.

9. The relief sort for by the petitioner for payment of arrear salary was rejected on the basis of a legal opinion (Annexure 14) on the ground, *inter alia*, :-

“Dr. S.N. Singh was not holding any substantive post in the Patna University. After the restrain order from the Apex Court, i.e., since 18.03.2013 and that too after having his appointment quashed as being



held void ab initio, Dr. S.N. Singh has no case for salary as the Vice Chancellor of the Patna University.”

10. This legal opinion suffers on the teeth of the judgment settled by this Court in CWJC No. 11984 of 2014. The petitioner is entitled to be governed like similarly placed persons so far as it relates to payment of arrear salary and other emoluments for the period between 20th March 2013 to 19th August 2013.

11. For the reasons stated above, the respondents, specially respondents no. 3 and 4 are directed to release the arrear salary and other emoluments for the said period between 19th March 2013 to 19th August 2013 to the petitioner within 60 days from the date of this order. The instant writ petition is accordingly, disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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