

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3979 of 2020

Dr. Murari Kumr Jha Son of Mr. Chandra Kumar Jha, Resident of Village and
P.O.- Kahua, Via Benipur, District- Darbhanga, Bihar- 847103.

... .. Petitioner.

Versus

1. Nalanda University through Vice Chancellor, Rajgir, District- Nalanda, Bihar- 803116.
2. Vice Chancellor, Nalanda University, Rajgir, District- Nalanda, Bihar- 803116.
3. The Registrar, Nalanda University, Rajgir, District - Nalanda, Bihar- 803116.
4. Union of India through Secretary to the Government of India, Ministry of External Affairs, South Block, Central Secretariat, New Delhi- 110001.
5. The Secretary, Government of India, Ministry of External Affairs, South Block Central Secretariat, New Delhi- 110001.

... .. Respondents.

Appearance :

For the Petitioner	:	Mr. Md. Harun Quareshi, Advocate
For the Nalanda University	:	Mr. Anjani Kumar, Sr. Advocate
For the UOI	:	Mrs. Kanak Verma, C.G.C.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 10.12.2024

Heard Md. Harun Quareshi, learned counsel for the petitioner, Mr. Anjani Kumar, learned Senior Counsel for the Nalanda University (hereinafter for the sake brevity 'University') and Mrs. Kanak Verma, learned Central Government Counsel.

2. By filing the present petition under Article 226 of the Constitution of India, primarily the petitioner has challenged the termination of his employment by the University issued vide impugned office order dated 18.02.2019 (No. NU/108/2014-15/83) and for other ancillary reliefs.



3. The brief fact emanates from the case record is that on 19.12.2013, a job advertisement was issued inviting applications for various positions at University, including for Tenure Track positions as Assistant Professor. At that time, the petitioner was working as a Research Fellow in the Department of History, National University of Singapore, in Singapore. The petitioner holds two Ph.D. degrees, one from the Institute of History, Leiden University from Netherlands and another from the Center for Historical Studies, Jawaharlal Nehru University, New Delhi. The petitioner possesses considerable teaching experience and received several prizes and scholarship.

4. Responding to the advertisement as aforesaid, the petitioner applied for a Tenure-Track position on 03.01.2014. He was invited for an interview over Skype from the University's New Delhi office and his interview was conducted on 10.06.2014 by the Selection Committee of the University. After successful outcome of the application and interview, the same was communicated to the petitioner in the form of an offer letter dated 23.06.2014, by which the petitioner was invited to join the University as part of its founding faculty on very attractive terms. In the said offer letter, it was stipulated that this would be a Tenure Track position, and based upon the attractive terms,



and the assurance of a Tenure Track, leading to the Tenured (permanent) position in third year after review, the petitioner accepted the position and took the opportunity to contribute to the re-establishment of the famous historical University, which was then under the Chancellorship of Nobel Laureate Dr. Amartya Sen.

5. Upon the request of the Head of the Department at National University, Singapore (hereinafter in short as 'NUS') to the University, the petitioner continued to be in employment at the NUS till the end of December, 2014 and on 01.01.2015, the petitioner joined the University at the School of Historical Studies in the position of Tenure Track Assistant and relocated to Rajgir, Bihar from Singapore along with his wife and then two years old daughter. As the petitioner was relocating from Singapore with his family, his wife sought employment in the same University. She appeared for a written examination and interview and also got a job as a Laboratory Assistant at the School of Ecology and Environment Studies in the year 2016.

6. The petitioner commenced teaching MA students at the University where he designed the syllabus of three substantial seminar course. In addition, the petitioner also crafted and taught four weekly modules in the ongoing MA



courses. The petitioner further supervised seven MA Theses during his tenure on various themes, apart from the teaching responsibilities undertaken by the petitioner. The petitioner devoted himself wholeheartedly to the growth of this new institution and was found to be a highly popular teacher in the student reviews.

7. Although the petitioner had been assured, in terms of his Faculty Employment Contract, that there would be a Tenure Review during the academic year 2017-18 but this did not happen. On 17.11.2017, the petitioner was simply informed by the Officiating Registrar of the University that his Tenure Track position is extended for a further year i.e. from 01.01.2018 to 31.12.2018, on the existing terms and conditions. The petitioner was assured by the authorities of the University that the Tenure Review would take place in the subsequent years. Inasmuch as the petitioner was deeply engrossed in his teaching and research activities, he did not pay much heed to this development at that point.

8. As the respondent-University consistently projected itself as an 'International Institution', it actively encouraged its members to seek fellowships and research opportunities in other International Universities of repute. In April 2018, the petitioner



was offered a prestigious Post-Doctoral/Visiting Fellowship at the Weatherhead Initiative on Global History at Harvard University, USA, with a substantial funding of USD 50,000. This fellowship was for a period of 10 months covering two teaching/research semesters beginning from August, 2018. The petitioner wrote a letter to the respondent-University requesting permission to accept this prestigious offer, and in the event such permission was granted, also seeking extension of his Tenure Track contract w.e.f. 01.01.2019. In this regard, the petitioner also met personally with the Vice-Chancellor of the respondent -University, who assured him that such permission would be granted and a clear impression was given that the University is very pleased with this development. On the assurance of the Vice-Chancellor of the University, the petitioner sent an acceptance letter to Harvard University, USA and commenced preparations for this important move. As the wife of the petitioner and daughter were well settled in her University and school (respectively) at Rajgir, Bihar, it was not advisable to disrupt their lives for a short period and the petitioner decided that they would continue in India and stay in the University accommodation during this 10 months period until the petitioner's return in June, 2019.



9. It is the further case of the petitioner that vide order dated 03.08.2018, bearing F.No. NU/108/2014-15/104/Acad issued by the respondent-University, the petitioner was formally granted permission to take up the aforesaid Post-Doctoral/ Visiting Fellowship at the Weatherhead Initiative on Global History at Harvard University, United States of America certifying that the Nalanda University has no objection on his visit to Harvard University to avail this aforesaid fellowship. The petitioner joined his duties at Harvard University, USA with great anticipation and hope for his career advancement.

10. To the surprise and dismay of the petitioner, on 18.02.2019, he received the impugned order in which, *inter alia*, it is stated that request for an extension made by you has been received and considered. The same has, however, not been approved and he was also directed to vacate the premises and obtain 'No Dues Certificate'. The office order dated 18.02.2019 did not mention any details of the reasons why the petitioner's Tenure Track Assistant Professor position had been suddenly terminated without conducting a Tenure Review. Thereafter, the petitioner made several communications to the respondent-University but did not get any positive response. Finding no hope and response from the University's side, by filing a



petition, the petitioner approached before the Delhi High Court for declaring the impugned order as *void-ab-initio* but the same was dismissed on the ground of jurisdiction. Hence, this writ application.

11. It is submitted on behalf of the petitioner that Petitioner was appointed as Academic Staff by the Governing Board on the recommendation of the Selection Committee constituted as per the Nalanda University Act, 2010, under the provisions of Section 3(1) (j), (m), and (o) read with Section 14 of the Nalanda University Statutes, 2012 (hereinafter refer to as the statute). Further, salaries and service conditions of employees of the University to be fixed or altered by the Governing Body of the University. Thereafter, Section 13 of the statute discusses about the powers of Vice-Chancellor wherein the sub-clause (f) and (g) specifically states about the mode of selection of academic staff, and the Vice- chancellor has been given power to appoint such administrative/ad-hoc staff with the approval of the Governing Board. Also, the appointment of the petitioner is in line with the para 3.1 mentioned in the notification dated 18.07.2018, by the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges



and other Measures for the Maintenance of Standard in Higher Education) Regulation, 2018 (hereinafter referred to as the regulation).

12. He further submitted that the “Tenure Track” review mentioned in the appointment letter as well as the Contract has been defined in the para 13.6 of the National Education Policy and same is also reproduced in the Orissa High Court WP (C) 33452 of 2020. Subsequently, with respect to the tenure review, it may be noted that as per the extension granted vide letter dated 17.11.2017, the date of determination of the contract and therefore the date for his tenure review would fall during the period when he was away in the USA pursuing his fellowship, however, tenure review was not conducted on its actual scheduled date, but was adjourned to 31.12.2018 i.e., the date of determination of the extension of the contract of employment of petitioner.

13. He further submitted that can a tenure track contract be said to have determined itself without there having been a tenure review. He submitted that as per the appointment letter, faculty employment contract, and UGC Regulation (supra), the tenure review is inherent to the contract, it means a contract cannot be determined without adhering to the condition



precedent of review. A crystallised right to tenure review cannot be defeated by the efflux of time. Additionally, the para 11 of the regulation mentioned about the “Period of Probation and Confirmation.” Para 11.2 mentioned that the teacher on probation shall be confirmed at the end of one year, unless extended by another year through a specific order, before expiry of the first year. Consequently, in the case at present, the contractual period of original employment contract of the petitioner was indeed extended for another year before the expiry of his probation period. Lastly, the para 11.3 of the said regulation mentioned that “subject to clause 11 of this Regulation, it is obligatory on the part of the university/the concerned institution to issue an order of confirmation to the incumbents within 45 days of completion of the probation period after following the due process of verification of satisfactory performance.” However, in the case at hand, no tenure review has taken place around or after the expiry of the extended contract period, neither any other report or notice of non-confirmation was given to the petitioner within 45 days. Thus, considering the UGC Regulation, petitioner’s appointment stands confirmed on 45th day. In any case, the decision of non-confirmation or non-renewal can only be taken



by the appointing authority i.e., the Governing Board and only upon the requisite tenure review having been conducted, but the petitioner had received first notice of non-confirmation or non-renewal of the contract was issued on the 48th day i.e., 18.02.2019, under the signature of the Registrar but without approval of Governing Board. In the present case, not mere approval but an active decision of the Governing Board is required.

14. Learned counsel further draws the attention of this Court on the Section 13 (j) of the said statute that provides that the Vice-Chancellor shall have the power to send members of the staff for training or for a course of instructions subject to such terms and conditions as may be laid down in the ordinances from time to time. Similar, clause is also reiterated in para 2.1 of the Faculty Employment Contract signed by the petitioner, even the UGC regulation at para 8.2 mentioned about the “Study Leave” to avail the opportunity of scholarship/ fellowships.

15. Learned counsel for the petitioner further argued on the “breach of contract” and negated the submission of the respondents and stated that there was no such breach of employment contract made out, even if there was a purported



breach, any consequential enquiry and disciplinary action could have been undertaken only by the appointing authority i.e., “Governing Board” and not by the Vice Chancellor even on the approval of the Governing Board, as same is laid down in para 5 of the faculty employment contract. Learned counsel for the petitioner in buttress of his submission has relied on the following judgments:

(i) Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. reported in **(2013) 10 SCC 324** (relevant para-38).

(ii) Pradeep S/o Rajkumar Jain vs Manganese Ore (India) Limited & Ors. reported in **(2022) 3 SCC 683**.

(iii) Uttar Pradesh Power Transmission Corporation Limited and Anr. vs CG Power and Industrial Solutions Limited and Anr. since reported in **(2021) 6 SCC 15** (relevant paras-66 and 67).

(iv) Subodh Kumar Singh Rathour vs Chief Executive Officer and Ors. since reported in **(2024) SCC Online SC 1682** [relevant para-55 (v)]

16. Thus, on the strength of the aforesaid submissions and decisions, it is submitted that the cases in which the competent Court or Tribunal finds that the employer has acted in



gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the Court or Tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. Thus, it is submitted that the impugned order is fit to be set aside and this writ application may be allowed with all consequential benefits.

17. On the other hand, Mr. Anjani Kumar, learned senior counsel appearing for the University, advocating the correctness, legality and validity of the impugned order, has submitted that the petitioner was under the probation and the term of the contract in probation could not be extended in his absentia, therefore, this is not a case of termination, rather non-extension of term along with leave in absentia.

18. He further submitted that Section 33 (1) of the Nalanda University Act, 2010 clearly demarcates that “Every employee of the University shall be appointed under a written



contract, which shall be lodged with the University and a copy of which shall be furnished to the employee concerned”. Clause 1.1 of the Faculty Employment Contract specifically stipulates that “the entire period of the contract shall be probationary.” Also, the extension of one year given to the petitioner based upon the existing terms and conditions of contract, it means that extended period is also probationary.

19. He further submitted that the petitioner has violated the clause 2.1 of the contract by applying for 10 months Residential fellowship in Harvard University without obtaining prior written permission of the University. Subsequently, as per the record of the University, the petitioner did not have submitted his application for the fellowship at Harvard University through proper channel due to which his application was not formally forwarded by the University. There is no provision for long leave/loss of pay in the contractual provision, which is probationary. The University has considered the case of petitioner on individual merit basis as the said fellowship was a prestigious one and, due to this, his contractual terms were relaxed for him and allowed to avail the fellowship till the date of end of initial contract, i.e., up to 31.12.2018.

20. He further submitted that the petitioner is well



aware about his employment conditions with the University, which was purely on contract and on probation, which reflects through the letter of the petitioner dated 22nd October, 2018 with a captioned subject as 'Requesting for job extension' in which the petitioner has pleaded for grant of job extension stating that "*.....for a period that you may judge as appropriate.*" Moreover, the employment of the petitioner is subjected to be governed by the Nalanda University Act, 2010, the Statutes, the Ordinances etc. which clearly states that the appointment is on contract. The probation period of initial three years of the petitioner was extended further for one more year on existing terms and conditions meaning thereby that the extended period is also probationary.

21. It is further submitted that according to Section 33 (ii) of the Nalanda University Act, 2010, any dispute arising out of the contract between the University and any employee shall, at the request of the employee, be referred to an Arbitration Tribunal.

22. It is further submitted that the petitioner without obtaining written approval/consent of the University applied for 10 months of residential Fellowship in Harvard University which is tantamount to breach of Contract Agreement Clause



2.1. Learned counsel for the University placed reliance on the judgment dated 08.05.2023 passed by a coordinate Bench of this Court in the case of Dr. Naveen G H Vs. The Union of India and others (C.W.J.C. No.102 of 2023) and the order dated 14.09.2022 passed in the case of Anand Singh Vs. The University Grants Commission and others (C.W.J.C. No.10977 of 2022).

23. Thus, on the aforesaid submissions, it is submitted that the reliefs sought by the petitioner are not tenable on illegitimate and baseless claims and fit to be rejected and this writ application is fit to be dismissed.

24. It appears that pursuant to the decisions arrived at the East Asia Summit held on 15th January, 2007 in the Philippines, and subsequent East Asian Summit, on 21st of September, 2010, the Nalanda University Act, 2010 (Act No.39 of 2010) was enacted by the Parliament and it came into force on 25.11.2010. On 19.12.2013, a job advertisement was issued inviting applications for various positions at Nalanda University, including for Tenure Track positions as Assistant Professor. The petitioner applied for a tenure-track position of Assistant Professor in the School of Historical Studies, Nalanda University on 03.01.2014. He was invited for an interview over



Skype from the Nalanda University's New Delhi office and finding him successful, he was communicated through an offer letter dated 23.06.2014 and was invited to join the University as part of its founding faculty on very attractive terms. In the offer letter itself, it was stipulated that this would be a Tenure Track position, and based upon the attractive terms and the assurance of a Tenure Track, leading to the Tenured position in third year after review.

25. It further appears that on 01.01.2015, the petitioner joined the University and relocated to Rajgir. On 24.11.2015, an agreement was entered into between the parties, where it was stated that the petitioner is appointed as "*Assistant Professor on a full time employment within the School of Historical Studies and this is a tenure track position for a period of 3 years between 01.01.2015 to 01.01.2018.*" Clause 1.1 of the terms of employment clearly stipulates that following the review process, on completion of the contract, the services of the Employee may be considered for confirmation or termination. In terms of the Faculty Employment Contract, there would be a Tenure Review during the academic year 2017-2018 but this did not happen rather the petitioner was informed by the Officiating Registrar of the University that his Tenure Track



position is extended for a further year from 01.01.2018 to 31.12.2018, on the existing terms and conditions and the said tenure review would take place in the subsequent year.

26. It further appears that in April, 2018, the petitioner was offered a prestigious Post-Doctoral/Visiting Fellowship at the Weatherhead Initiative on Global History at Harvard University, USA. This fellowship was for a period of 10 months covering two teaching/research semesters beginning from August, 2018. The petitioner, after getting such an offer from a one of the prestigious Universities of USA, requested and personally met with the Vice Chancellor of the University seeking extension of his Tenure Track contract with effect from 01.01.2019. The petitioner was given a clear impression that the University is very pleased with this development and a press release regarding this news and put the said information on the University website. A screen shot of the said press release has been annexed as Annexure-8 to this writ application.

27. It further appears that based upon the enthusiastic assurance from the University, the petitioner sent an acceptance letter to Harvard University, USA. It is important to note here that vide letter dated 3rd of August, 2018, the Registrar of University gave a no objection certificate to the petitioner on his



visit to Harvard University to avail this fellowship. Further vide an office order dated 23.08.2018, the said permission was reiterated in which it is stated that “consequent upon the acceptance of request by the competent authority, Dr. Murari Kumar Jha, Assistant Professor, School of Historical Studies is permitted to avail a Residential Fellowship w.e.f. August 01, 2018 as a Visiting Fellow at Weatherhead Initiative on Global History, Harvard University and the petitioner joined in the same month. Thus, from the aforesaid, it is clear that petitioner joined the Harvard University after taking consent and prior permission from the University.

28. It further appears that as the contract between the petitioner and University was soon drawing to a close and he was not available in India for the Tenure Review so based on the clause 1.1 and clause 3 of the Faculty Employment Contract, the petitioner sent a letter on 22.10.2018 to the University reiterating his request for extension with effect from 01.01.2019. The petitioner followed up this letter on the telephone on several occasions, and throughout all these interactions he was repeatedly assured by officers of the University that the decision would be positive. As the contract period expired on 31.12.2018 and the petitioner had not received a formal response from the



University, he again sent a letter dated 15.01.2019 directly to the Vice Chancellor of the University raising his grievance. On 30.01.2019, the petitioner sent yet another reminder to the University. On 18.02.2019, the petitioner received the office order by which the petitioner was informed that your terms as Faculty (Assistant Professor-on contract) in School of historical studies has come to close on December 31, 2018. I have perused the said office order which did not provide any details of the reasons why the petitioner's Tenure Track as Assistant Professor had been terminated without conducting a Tenure Review rather it wrongly referred to his position as 'Faculty (Assistant Professor on contract)'.

29. It is not in dispute that the petitioner is well qualified. He performed his duties very well. Based on his excellent performance on various committees of the University, he was appointed to a very prestigious position of the member of the Academic Council of the University. The intimation of the award of the Harvard University fellowship to the petitioner at the Governing Board meeting was praised by its members.

30. It is also not in dispute that tenure review was not conducted by 01.01.2018, as promised in the initial contract but vide letter dated 17.11.2017, the arrangement was extended for a



further period of one year i.e. from 01.01.2018 to 31.12.2018. While the petitioner was abroad he wrote to the authorities for a formal notification of the extension. On 22.01.2019, the petitioner wrote letter to the University authorities requesting to release of increment and DA allowance. However, neither the tenure of the petitioner was extended nor the any payment was made to the petitioner.

31. I have gone through the judgments relied upon by learned counsel for the petitioner and learned senior counsel for the University as well. In the facts and circumstances of the case, the judgment relied upon on behalf of the University is not relevant in the facts and circumstances of the present case. To the submission that under Section 33 (ii) of the Nalanda University Act, 2010, the matter ought to have been sent to the Arbitration Tribunal, I have only to say that this Section will come into play only when the petitioner/concerned employee expresses his desire to refer the matter to an Arbitration Tribunal, then only this contractual matter will be sent for arbitration.

32. Having heard learned counsel for the parties, considering the entire conspectus of the case and after going through the case records available on record, I am of the



considered opinion that so far as the question of extension of Tenure Track is concerned, it is left to the wisdom of the Vice-Chancellor of the University to consider it, especially considering the entire track record and excellent performance of the petitioner within a period of two months, if the petitioner files an application showing his eagerness to rejoin the post. So far as the arrears of the increment, D.A. and other emoluments, if any, are concerned, the University is directed to calculate it in accordance with law and the same is directed to be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order. If the said payment is not made within the stipulated period, the same shall be made with an interest at the rate of 10% per annum from the date it is due till its payment.

33. With the aforesaid observation and direction, this writ application stands disposed of.

(Anjani Kumar Sharan, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	03.10.2024
Uploading Date	10.12.2024
Transmission Date	NA

